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## In defence of messy or multi-principle contracts <sup>1</sup>

### 1. INTRODUCTION

“Any attempt to achieve both objectives – intertemporal insurance and interpersonal distribution – in a single ‘pension pillar’ involves messy and dynamically unstable compromises” (The World Bank, 1995).

From taxation to social insurance, the central redistributive institutions of the modern welfare state have allegedly lost their economic sustainability and/or their social support. The consequence is the so-called ‘crisis of the welfare state’. This ‘crisis’ has led to restricted access to resources (goods and services) and the invalidation of some of the social contracts that have served social security, social integration, and some form of social justice. This paper searches for reasons to explain the rejection of these contracts.

Four ideal-typical patterns of access to resources are defined and some of their social characteristics are examined. The wording ‘patterns of access’ intentionally mirrors Polanyi’s concept of ‘patterns of integration’<sup>2</sup> because Polanyi’s approach, which I try to follow, is based on societal rather than individual aspects of access to resources. The patterns described below do not fully coincide with those of Polanyi who defined the *oikos* or family household, reciprocity, redistribution, and the self-regulating and price-regulating market as patterns of integration which have played a dominant role in society over the course of time. My aim is much more modest; it

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<sup>2</sup> K. POLANYI, *The Great Transformation* (Boston, Beacon Press, 1944).

is to analyse some of the ways of accessing resources in contemporary ‘developed’ societies. I examine the following patterns of access:

- *one-sided giving* without the expectation of anything in return - that is charity or alms-giving;
- *reciprocity* - that is donation with the expectation of something in return, although equivalence is not calculated;
- *citizens’ rights* - rights to ‘social inheritance’ as described by Marshall,<sup>3</sup> implying a modicum of welfare, decent working conditions, education, health services, etc.;
- *exchange* based on the market principle. This principle is shaped by supply and demand, with prices ultimately defined by the opportunity costs of the partners. Substantively it is economic activity based on freedom of property ownership and freedom of contract in the context of unlimited ‘free’ competition and profit maximisation.

These four patterns are not exhaustive. The many other patterns of access to resources, ranging from household farming to gains from crime, are, however, not relevant to the argument in this paper, and are therefore not examined.

The last three patterns of access may be seen as ‘contracts’. In what follows the concept of contract is used in an expansive sense to refer not only to written contracts, but also to those that are unwritten. The unwritten contract, i.e. the *contract as promise*, is indeed the starting point of contract law. As Fried writes:

“there exists a convention that defines the practice of promising and its entailments. This convention provides a way that a person may create expectations in others. By virtue of the basic Kantian principles of trust and respect, it is wrong to invoke that convention in order to make a promise, and then break it.”<sup>4</sup>

The ‘social contract’ is also understood as a promise or agreement between actors on a societal level.

The second section of the paper describes the four patterns of access to resources referred to above and the social relationships that are created between the participants. The relationships between the partners may be symmetrical or asymmetrical; while the symmetry may be formal or substantive.

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<sup>3</sup> T. H. MARSHALL, ‘Citizenship and Social Class’, in: *Sociology at the Crossroads* (London, Heinemann, 1963).

<sup>4</sup> C. FRIED, *Contract as Promise: a Theory of Contractual Obligation* (Cambridge, Harvard University Press, 1981), p. 17.

The third section deals with some of the social characteristics of the four patterns of access. The dominant rationality of the transaction may be economic or non-economic. The potential extent of the coverage and the adequacy of the provisions vary and the legal rules differ from one pattern to another.

The fourth section attempts to extract some 'legitimizing principles' from the different patterns. It should be noted that the argument about principles may seem tautological. For instance reciprocity as a form of access to resources, e.g. in the gift relationship, is legitimated by the principle of reciprocity, defined as normatively-expected counter-service without the calculation of equivalence.

The fifth section shifts from ideal-typical patterns of access to real-life transactions which may be encountered today. One important difference is that, in real life, transactions or contracts may be underpinned by several, sometimes contradictory, principles. In this case the transaction or contract becomes 'messy'. Thus, in both the modern labour contract and in social insurance, the pure market principle has been 'messed with'. When labour law and social law are applied on top of the principle of exchange, then the market principle becomes combined with the principle of reciprocity (or solidarity, defined as the reciprocity principle as it operates on the macro-level) and with social rights. It is argued that messy contracts can serve complex social purposes better - in terms of coverage, adequacy, and encouraging social integration - than purer patterns of access to resources. This is because they can accommodate diverse and often conflicting purposes and interests. Of course the 'blending' itself may have occurred because a compromise was reached between conflicting interests.

The sixth section describes the impact of the era of neo-liberal ideology on the old messy contracts. It is argued that their curtailment or abolition has been the result of political and economic motivations rather than because of their alleged unsustainability. The functional alternatives to the rejected messy contracts proposed by neo-liberals and neo-conservatives may indicate a return to the old single-principle transactions of charity and the pure market. These patterns of access bring with them the old asymmetries as well as obvious social disfunctions. To deal with the latter, new messy contracts have been invented. Some of these may preserve symmetry, adequacy and dignity - subsidised 'real' jobs for instance - but they are often too costly and therefore of limited coverage. Others are cheaper but may neglect important principles such as citizens' rights and can be harmful to democratic and humane values.

The seventh and last section deals with the idea of a basic income as a possible new solution to the problem. The arguments for it are strong. Yet if, as a pattern of access, it is based exclusively on the rights of citizens, it may turn out to be very fragile. It is open to question whether civil society will demand and accept this or any other solution which could solve the paradox of increasing poverty and insecurity coinciding with increasing wealth.

## 2. 'PATTERNS OF ACCESS TO RESOURCES' AND THE RELATIONSHIPS BUILT INTO THEM

### 2.1 Charity

Charitable giving – whether in the form of private alms-giving or public assistance – is by definition one-sided. It entails a substantively asymmetrical relationship, and the act itself reinforces the inequality. One-sided giving makes a moral debtor of the receiver who owes at least humble gratitude to the generous benefactor. In earlier times the main reward of charitable giving was, of course, salvation.<sup>5</sup> However, in modern times there are important symbolic gains associated with charitable giving – the sense of social superiority it affords, the social prestige attached to philanthropy, and the feeling of moral self-righteousness it may create. Caution is needed, however, in assessing the gains. If symbolic gains are equated with real (material) ones then it does not make sense to distinguish reciprocity (gift and counter-gift) from charity (one-sided giving). But the difference between them is significant; in the case of reciprocity the counter-gift or counter-service is seen as a duty sanctioned by social norms.

Charity or one-sided giving has become institutionalised in modern societies as social assistance. Increasingly problems have arisen because it conflicts with at least two features of the aspirations and realities of modern citizenship. Modern citizenship is ideally based on an essential equality of all citizens, and it has actually led to a weakening of social hierarchies. However, the asymmetry built into assistance contrasts with these assumptions of equality and weakening hierarchies. Further, the Rousseauian concept of citizenship includes the right to preserve one's life, an inalienable right "inherent in all human beings."<sup>6</sup> This right implies enforceability and the absence of stigma – two features of assistance that have seldom materialised.

It has to be added that rights derived from the social contract have apparently always constituted a weaker social norm than balanced reciprocity, or the biblical principle of earning one's bread with the sweat of one's brow. Indeed, an important difficulty with assistance emerged because those who could work, and thus help themselves to escape poverty, could not always make a living from their toil. According to Castel, the real 'social problem', *la 'question sociale'*, which emerged in the fourteenth century, was created by them and by those in this

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<sup>5</sup> R. CASTEL, *Les Métamorphoses de la Question Sociale: Une Anachronique du Salarial* (Paris, Fayard, 1995), p. 47.

<sup>6</sup> D.L. SILLS (ed.), *International Encyclopedia of the Social Sciences* 14 (New York, The Macmillan Company and The Free Press, 1968), p. 376.

position. It has become increasingly clear, particularly since the emergence of the free labour market, that the apparently irresolvable question is how to handle those who are in theory able to reciprocate but are, in practice, not in a position to do so.

The history of social assistance, until World War II, is the story of a search for methods to separate the able-bodied from the not-fully-able-bodied poor, and then to deal with the able-bodied. The most frequent methods were the following: criminalising them by subjecting them to more or less harsh punishment; coercing them to do some work; giving them alms based on the principle of less eligibility and stigmatisation; or forgetting about them altogether. From the early years of the twentieth century, but particularly after World War II, the dimension of the problem, and the instruments of poverty politics, have changed. Unemployment has acquired '*droit de cité*'. It has been recognised that non-work is not always an individual choice but is often a socially produced market failure that can and should be corrected or compensated for.

With the measures intended to provide a 'living wage', the number of working poor has also declined. Social hierarchies have also weakened since World War II, and the acceptance of an unconditional right to life has spread. However, this state of affairs is changing again and the old problems - low wages and blaming unemployment on the unemployed - are returning in a new guise. This will be examined later.

## ***2.2 Reciprocity***

Reciprocity, as defined here, emphasises the symmetry of the relations between the partners. In a reciprocal relationship the transaction is constructed in such a way as to produce symmetry in a substantive sense. Reciprocity unlike charity is by definition a transaction among social equals, and it serves to preserve this equality or symmetry. The essence of this pattern is its social, ethical or affective contents, and a concern with the strength of social bonds. This type of reciprocal pattern flourishes within the extended family; it survives in friendly societies, in gift relations, in the mutual exchange of services. The conditions in Polanyi's account that made reciprocity a dominant pattern have changed. However, some characteristics of the reciprocal transaction have not, even though they are seldom made explicit.

A reciprocal relationship does not guarantee the exchange of 'equal' values; the objects of the exchange may not even be precisely commensurable. It is probably necessary for there to be an interval of time between giving and receiving in order to mask its economically rational underpinnings. This is possible if there are shared feelings of fairness which exclude substantial economic, or other, gains for one party. Reciprocity continues to imply that the economic kernel is enmeshed in social bonds. At least in principle, the maintenance or the strengthening of the bond is an objective in itself, and the economic transaction is a means to this end or "a function of

social organisation.”<sup>7</sup> There are no written contracts containing precise terms but, rather, a deep-rooted sense of mutual obligation and mutual trust that the obligation will be honoured.

All these characteristics apply to the spontaneous solidarity which can emerge in small communities. The situation changes when societies become large and dense, with long chains of interdependencies that are increasingly impersonal. Reciprocity on the micro-level survives in many forms and some of its essential features may appear on the societal level as macro-level solidarity in the form of unwritten societal contracts. The contract between generations built into schemes of publicly managed redistribution is one example.

### 2.3 *The market*

The market originally was no more than the place for bartering where goods could be bought or sold. With the advent of market society, it has become an institution which shapes the whole organisation of society. The operation of the market is centred on economic interest or gain. This creates a new situation: “instead of the economy being embedded in social relations, social relations are embedded in the economic system.”<sup>8</sup> The main pillars of the modern self-regulating and price-setting markets are: freedom of ownership which may operate as capital and is geared to profit making; free competition between the units; free labour; and freedom of contract. While written contracts long predate the market society, genuinely free contracts could not become dominant until - after long and bloody struggles - the bonds on labour, land and capital had been discarded.

Market contracts are usually described as a relationship between free and equal partners, a symmetrical relationship *par excellence*. The symmetry certainly prevails in a legal sense, as legal dispositions can not infringe the freedom of either of the partners. Yet the characteristics of the contract, as well as its outcome, are deeply influenced by the bargaining position of the partners. This may be shaped by a number of factors which include the equilibrium of supply and demand; the urgency of the worker’s need to enter the contract which may undermine his or her ability to drive a hard bargain (in economic terms, it is the opportunity cost paid by the worker for the job); by the degree of organisation of the partners (whether they enjoy a monopoly, are backed by trade unions, etc.); and by their relationship to the central power which may subtly influence their bargaining position.

In other words, while market relations may be formally equal, they may also in a substantive sense be highly asymmetrical. Thus formally and legally equal partners may sign economic contracts, the outcome of which is disproportionately advantageous to one of them. This applies particularly strongly to the labour market, all the more so since access to work which

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<sup>7</sup> *see, supra* note 2, p. 49.

is free in theory is not necessarily free in practice. As long as unequal partners face each other and the weaker partner lacks support, labour will remain a pure commodity that can be sold cheaply or not sold at all. The theory of contract law cannot solve the riddle of this discrepancy between formal symmetry and substantive asymmetry. It recognises some instances of unfairly one-sided agreements, i.e. instances when one partner takes advantage of the weakness of the other, in tort, duress, and unconscionability.<sup>9</sup> Despite this, contract law treats these events as random and individual cases, rather than as a socially recurring situation. In the real labour market, the unequal position of the partners is not the exception but the rule. The emergence of labour law was needed to redress the unfair balance. However, it signified the end of the 'ideal type' of the pure market contract.

#### 2.4 *Redistribution*

Redistribution implies that a central power collects - and then distributes - part of the produce (or production). The objective may only be to ensure the survival and reproduction of the community by, for example, mitigating the consequences of a bad crop. Redistribution may serve to defend the community, or to strengthen the feeling of belonging to a community by having, for example, communal feasts. In organised states, it may finance war making and/or public administration, or it may just strengthen the central power by increasing its wealth. Redistribution necessarily implies asymmetrical relations because a central power is involved. Yet the asymmetry can be insignificant, as in the case of the headman and the members of a hunting tribe, or huge as in the early Empires or modern dictatorships.

The role of redistribution in modern societies has become crucial. Modern states centralise between thirty and sixty percent of their GDP. State redistribution applies to all state functions, the redistribution of incomes being only one of them. However, this paper focuses particularly on income distribution. Redistribution may or may not change significantly the original inequality of income distribution; the final outcome depends on the balance of political forces as they shape the progressiveness of tax allowances and income transfers.

Since modern societies are all stratified, and the central power is above the citizens, the asymmetrical relations within redistribution are unavoidable. Whether and to what extent the relations are also substantively unequal depends on at least two factors. First, the nature and 'modus operandi' of the political power has a major effect on how substantively unequal these relations are. In any undemocratic regime, which may be a capitalist dictatorship or totalitarian socialist state, the central power cannot be controlled in any way. Therefore the relationship between the parties is not only formally, but also substantively, unequal. Relations are

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<sup>8</sup> *see, supra* note 2, p. 57.

paternalistic at best, and are not based on mutual agreement between the social partners. This is true even if civil, political, or even social rights are formally enshrined in the constitution. In genuine modern democracies, the extent of the asymmetry depends on the control that may be exercised over governance in general and the institutions of redistribution in particular; in other words it depends on the accountability of governments and the strength of civic society. If democracy works, then the asymmetry between the partners is mitigated. Ideally there should be a permanent public discourse on the rules of redistribution, since this would strengthen its legitimacy, and enable it to adjust to changing conditions.

The second factor impacting on the relation between formal and substantive asymmetry is connected to the substance of the transaction, with the presence or absence of reciprocity within redistribution. Reciprocity can be defined as a balance between giving and receiving, but without aiming for equivalence. Since administration by a central power means there cannot be formal symmetry, reciprocity and redistribution appear to be based on contrary principles. However, they have some common features that make them compatible. In common with reciprocity, redistribution is usually not exclusively driven by economic rationality. Redistribution and reciprocity may both give priority to social or perhaps moral objectives without paying too much attention to the terms of the transaction. The interval of time between giving and receiving, which masks the economic basis of reciprocity, may still be important in redistribution. The idea of 'contract as promise' may continue to function (as in the social contract between generations). My contention is that if a vague or unclear balance between giving and receiving, which serves to protect the weaker partner, is maintained, then the substantive asymmetry between the partners, which is characteristic of charity and many free labour contracts, may be reduced.

To sum up, in the case of charity the relationship between the partners is asymmetrical; in the case of reciprocity it is formally and substantively symmetrical; in the case of the market, formal symmetry is accompanied by substantive asymmetry; and in the case of redistribution, it will depend even more than in the other instances on power relations, and is therefore indeterminate.

### **3. SOME CHARACTERISTICS OF THE PATTERNS OF ACCESS**

#### ***3.1 Rationalities operating in the patterns***

The patterns of access differ according to the rationality which operates in them. Rationality, in the Weberian tradition, refers to ends and means and the relationship between them.

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<sup>9</sup> *see, supra* note 4.



One concern here is whether the patterns of access to goods are determined solely by economic considerations, or whether they also may accommodate other, mainly social or ethical, ends. The unfettered modern market operates with formal economic rationality; the objective of market transactions being defined solely in economic terms. Non-economic (social or ethical) considerations cannot be considered.

Market rationality or the market principle may be placed at one end of an imaginary scale. At the other extreme one finds non-contractual, one-sided alms-giving or assistance, where economic or social rationality is completely hidden under the veil of moral principles such as protecting the vulnerable. Somewhere in the middle of the scale, there is a delicate balance between economic and ethical or social rationalities where reciprocal or redistributive patterns are located.<sup>10</sup> Of the ethical issues, the right to live and the survival of the individual have always had a special place. Of the social considerations, concern with survival (reproduction) and social integration have always been prevalent.

Patterns of access impact differently on system integration and social integration.<sup>11</sup> System-integration, promoted by trade, transport, communication and administration, with the market as a crucial institution, assures continuity in the operation and reproduction of the given society. However, it does not automatically promote social integration, which can be defined as the binding together of society's members through shared norms and shared identities. As long as a society exists, social integration must co-exist with system integration, although either may be weaker or stronger than the other. Social integration is more vulnerable than system integration in modern market-dominated societies. Huge efforts are needed to force other value-laden rationalities upon the pure market principle.

### ***3.2 Coverage and adequacy***

The satisfaction of a socially acceptable level of need for all citizens has been one of the goals of modern welfare states. The various types of access to resources serve the aims of universal access and adequate standards in different ways and with different levels of success. Incidentally, there is a tendency to reproduce the language and approach of economics, allegedly the only 'noble' and 'exact' social science, in other approaches to social affairs (social policy included), and this has led to coverage being called 'effectivity', and adequacy 'efficiency'.

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<sup>10</sup> The early markets, which predated 'market society', also mixed economic objectives with social considerations or moral obligations. For instance, the 'just price' of Thomas of Aquinas, which applied throughout the Middle Ages, had to assure a sufficient livelihood for both the buyer and the seller. See M. M. POSTAN, *The Medieval Economy and Society: an Economic History of Britain 1000-1500* (London, Penguin, 1972) p. 255.

In the real world there is little likelihood of charity and reciprocity covering the majority. They both assume face-to-face contacts or at least short chains of interdependence. Nobody can assure or guarantee that such contacts will spread over the whole community, particularly as they must be voluntary transactions and cannot, therefore, be enforced by law. In modern market societies the market principle reaches everybody in theory. In practice, however, many may be excluded from it for spatial, personal, economic or social reasons. There are a number of well-known forms of exclusion. One is the inability to acquire resources through the market, i.e. through work or other market-based entitlements (such as capital gains or interest from savings). This can happen when the supply of jobs is less than the demand for them. Significantly, the literature on market failures has little to say about this. If it is referred to at all, the blame for the failure is invariably placed on state regulation, or on the collective efforts of the workers. These interventions allegedly disturb the self-regulatory capacity of the market ultimately to bring supply and demand into equilibrium. The problem for workers as 'sellers' is that 'ultimately' it may take too long for them to acquire the resources in question. The other form of exclusion from the market is, of course, poverty, the financial inability to cover needs which are seen as essential for social citizenship. This failure of the market is well acknowledged – social policy is, after all, often understood as finding a means to correct it. Whether social policy really fulfils this role depends to a large extent on the institutions of central redistribution.

The adequacy of standards refers to how well needs are covered and how well risks are handled. Social assistance and pure market contracts are both defective in these respects. The outcome of reciprocity is indeterminate from this perspective. The level of adequacy of benefits assured by central redistribution is a political matter.<sup>12</sup>

### 3.3 *Legal arrangements*

A further feature of access to resources is the legal principles operating in each of the patterns of access. Since this can be very complex, only a few salient points will be taken up here. In private transactions, such as alms-giving or reciprocal gift-exchange, the intervention of formal law is marginal. These patterns are largely regulated by pre-legal social norms, by customs crystallised as tradition. In the case of the market and of central redistribution, the Weberian distinction

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<sup>11</sup> D. LOCKWOOD, 'Social Integration and System Integration', in: G. K. Zollschan and W. Hirsch (eds.): *Explorations in Social Change* (Boston, Houghton Mifflin, 1964); J. HABERMAS, *The Theory of Communicative Action*, London, Heinemann, 1984).

<sup>12</sup> J. VEIT-WILSON, *Setting Adequacy Standards: How Governments Define Minimum Incomes* (Bristol, The Policy Press, 1998).

between formal law and substantive law or substantive justice becomes crucial.<sup>13</sup> Formal law assures calculability and unambiguity, and guarantees the application of rules “without regard for persons.”<sup>14</sup> This ‘inhumanity’ may clash with sentiments, ethical considerations or popular feelings about justice:

“The propertyless masses especially are not served by a formal ‘equality before the law’ and a ‘calculable’ adjudication and administration as demanded by the ‘bourgeois’ interests. Naturally, in their eyes, justice and administration should serve to compensate for their economic and social life-opportunities in the face of the propertied classes. Justice and administration can fulfil this function only if they assume an informal character to a far-reaching extent. It must be informal because it is substantively ‘ethical’ (‘Kadi-justice’).”<sup>15</sup>

It appears that social law, and in particular labour law, has to a large extent followed Weber’s analyses by translating many informal ethical considerations into calculable legal dispositions. In other words ‘Kadi-justice’ has, to some extent, been formalised. Thus social law can be adapted to the requirements of the market, but it has also changed, to some degree, the logic of the market itself.

#### **4. SOCIETAL PRINCIPLES LEGITIMATING THE PATTERNS OF ACCESS TO RESOURCES**

There are many individual entitlements to resources such as achievement, merit, inheritance or luck. They are widely accepted, if not absolutely uncontested legitimating principles of access to resources. Societal legitimating principles, unlike individual ones, are seldom, if ever, discussed. However, in the societal approach followed here, the individual’s entitlement is not explored. I attempt here to extract the collective or societal principles in each of the patterns from the characteristics listed above.

A political or social pattern or institution may be considered legitimate if it is in accordance with the law and if it is accepted as normal practice by the large majority of citizens. The first condition in effect means only that the practice must not contradict valid laws; thus

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<sup>13</sup> The distinction is discussed at several places in *Economy and Society*, for instance in the chapters on bureaucracy and on the sociology of law. (I do not specify chapters because their numbering and titles differ by edition).

<sup>14</sup> H. H. GERTH, C. W. MILLS (eds.) *From Max Weber: Essays in Sociology* (New York, Oxford University Press, 1946), p. 215.

<sup>15</sup> *see supra* note 14, p. 221.

explicit legislation is unnecessary. It is less easy to explain precisely what is meant by the second condition, that it must be a 'normal' societal practice. In the case of access to resources, one proof of legitimacy of a pattern may be that it is widespread. However, this is neither a necessary, nor a sufficient, condition. Although alms-giving seldom occurs in well-functioning welfare states, it may be considered an acceptable act. Corruption may be extremely widespread in some societies, but it will not be accepted as normal or legitimate. Public feelings form the decisive proof but they are difficult to gauge. Political elections may give some indirect information about the approval of public schemes while sociological methods may offer more help. I come now to the task of identifying the societal principles which legitimate the patterns of access to resources. It is important to note that all the concepts are tentative and contestable.

- *Altruism*<sup>16</sup> the selfless love of others, is a widely accepted ethical principle that is seen as the main, perhaps the only, legitimising principle behind charitable alms-giving. Other motives, e.g. the strengthening of a superior position and the expectation of worldly or transcendental rewards, may be widespread but are rarely legitimate. Charitable giving as a micro-level transaction has been institutionalised on the macro-level as social assistance, and this causes problems (discussed elsewhere in the article).
- *Reciprocity* implies that the members of society approve of the transactions (donation and expected counter-donation) that occur 'spontaneously'. It also implies that the partners are seen as social equals; that equivalence is not exactly calculated; and that economic profit is excluded from any calculations or motivations. Reciprocity usually takes place on the micro-level, and its single legitimating support is the reciprocity principle. While it is normally a face-to-face relationship, it may also appear in larger communities as an impersonal relationship. Here the solidarity principle is evident, for example in public health or public pension schemes. Its legitimacy then becomes more problematic. Reciprocity is spontaneous but solidarity has to be democratically debated and continuously renegotiated in order to ensure the consent of all the parties. If this is not the case, it becomes enforced solidarity which may be rejected because it violates certain freedoms, and is a form of one-sided paternalism. Reciprocity is based on social norms; macro-level solidaristic arrangements must be framed in legislation, and the terms of the agreement have to be defined, even if equivalence is not aimed at. Thus market-like elements have to be added to the reciprocal principle. Hence reciprocity which has been transformed into solidarity is unlikely to become a successful legitimising principle on its own.

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<sup>16</sup> <sup>16</sup> Altruism and reciprocity are of course also distinguished in the magisterial work of R. TITMUSS, *The Gift Relationship. From human blood to social policy* (London, George Allen and Unwin., 1970). Using a different context, his distinction may be less clear-cut.

- The *logic of the market* is the legitimating principle behind an unfettered market, and entails freedom of ownership of land, labour, and capital, competition, and the search for profit. These are all widely accepted principles and have been given legal protection. However, there are two provisos. In some market societies, legislation may limit some freedoms such as land ownership. This is the case, for example, in Israel. In many other market societies, some constituent elements of the market logic, such as unlimited profit-making or substantively unequal contracts, are widely contested by the public. This means that the unfettered market logic may not always operate successfully on the societal level as the only legitimating principle.
- *Citizens' rights* as a legitimating principle assures access to decent survival, to work, to adequate working conditions, and to a share in the social inheritance. It is also a means of assuring dignity, because rights may assure help without stigma. However, citizens' rights may only constitute a single legitimating principle if society at large gives its consent to laws defining an unconditional and legally enforceable right to a socially acceptable life. In reality, citizens' rights have very rarely been accepted as the sole legitimating principle behind social redistribution.

Thus, all the single-principle patterns have weaknesses. They create or strengthen substantive inequality (charity and the market); their coverage may be restricted (charity and reciprocity); their adequacy is questionable (charity, reciprocity and the market); their social legitimation may be defective (the market and citizens' rights).

Welfare states have attempted to overcome these deficiencies. To this end they combine several of the above principles by creating new patterns of access which have taken the form, for instance, of legally enforceable assistance or universal grants combining altruism, social rights, and sometimes (real or sham) reciprocity. More importantly, two new 'contracts' – the regulated labour contract, and social insurance – have evolved through fierce social struggles. They combine some elements of reciprocity, market logic, and citizens' rights. These 'messy contracts' can accommodate conflicting interests and realise, at least to some degree, a variety of social aims. Some details of their operation merit attention.

## 5. MESSY CONTRACTS

### 5.1 Labour contracts

Pure contracts characterise the unregulated market. Of course, as Polanyi has pointed out, there is no such thing as an unregulated market for "*laissez-faire* itself was enforced by the

state.”<sup>17</sup> - However, the purpose of regulation may be to - promote or protect the operation of a ‘pure market’, or to curb its ferocity -

Civil (private) law may intervene in a market contract if the terms are deemed to be unfairly one-sided, taking advantage of the weakness of one of the parties. These interventions are haphazard in most segments of the market with one exception, namely the labour market. As Max Weber observed, the unequal situation of the contracting parties and the disproportionality of the outcomes have been the rule rather than the exception in the labour market. It has gradually been recognised that this state of affairs creates social unrest, and harms the reproduction of labour:

“When workers are subjected to a dominating power, be it exercised in the name of the capitalist owner or the community, the danger of arbitrariness exists. *Labour law* is needed to prevent the harms of arbitrariness.”<sup>18</sup>

Since the end of the nineteenth century, and in particular since 1945, individual labour contracts, previously characterised by the defencelessness of workers, have been increasingly surrounded by collective, protective rules. According to Supiot, all work accomplished in the labour market should be linked to rights and duties towards the collectivity within a solidaristic system.<sup>19</sup> Protective legislation encompasses (as a minimum) labour law and social law. As Castel emphasises, the coupling of the pure market contract with protective legislation transformed the scene, conferring an acceptable social status and dignity to labour.<sup>20</sup> Although this insight is of outstanding importance, it is largely neglected in current debates.

With protective legislation, the pure labour contract has become ‘messy’. Pure economic rationality and the laws of supply and demand have become distorted. What is more, there is no theoretical procedure to measure the distortion, the deviation from the economically rational equilibrium wage. The only way to obtain information about it would be to abolish the protective laws, or, in current parlance, to deregulate the labour market.

Unemployment insurance schemes can be seen as an outgrowth of the protective labour contract. These are also messy. In fact actuarial fairness is not even at issue.

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<sup>17</sup> *see supra* note 3, p. 139.

<sup>18</sup> Jean Rivero and Jean Sabatier - quoted in I. HAGENMAYER, (...) SZEGEDINÉ, G. K. SEBESTYÉN, *A gazdasági társaságok munkajogi kérdései. (Company labour law issues)* (Budapest, Agrocent Kiadó, 1994), p. 139.

<sup>19</sup> A. SUPIOT, ‘L’Avenir d’un Vieux Couple: Travail et Sécurité Sociale’, *Droit Social*, No. 9-10, (Septembre-Octobre), 1995.

<sup>20</sup> *See supra* note 5.

## 5.2 *The case of social insurance*

Social insurance, in particular old age insurance (the only form considered here), is another messy contract. On the face of it, a modern public pension scheme, whether funded or pay-as-you-go, is simply the institutionalisation of equivalent transfers between the economically active and the retired, a form of inter-temporal redistribution. However, reality is less simple. The so-called equivalence principle may have been relatively pronounced in the early (funded) Bismarckian schemes but later, and particularly after 1945 when most European countries switched to public pay-as-you-go schemes, departures from this principle have multiplied. Let me review some of the departures from the market logic.

A public pension scheme that is flat-rate but related to the former payment of progressive taxes or contributions is certainly not a market contract. The reciprocity principle plays an important role. There is give and take (tax-paying as a counterpart of old-age benefit) but there is no attempt to introduce the market principle of equivalent exchange, nor even any attempt to register the inputs and the outputs on an individual level. Meanwhile the scheme necessarily produces significant vertical redistribution. This means that its legitimacy is questioned unless the citizens' right principle is very strong. (The radical erosion of the relative value of the British old age pension over the last twenty years is a case in point).

Elements of a market contract appear in earnings-related schemes, whether they are paid for by taxes or by contributions. In what follows I concentrate on public, earnings-related, pay-as-you-go schemes. Such schemes are not pure economic transactions and violate the market's logic. They have, explicitly or implicitly, social and ethical objectives. They serve security in old age and endeavour to assure adequacy. While the early schemes were seriously biased against women, new endeavours attempt to diminish gender inequality. Most importantly, the right to a pension is intricately related to the wage structure. The 'status' obtained by the legally protected worker is transferred to the pensioner, assuring some dignity for the elderly. It must be said that all these features tend to materialise only when the middle classes have become interested enough to accept compulsory participation in such schemes.<sup>21</sup> This led to improved standards in order to better accommodate them, and the increased constituency strengthened public support for, and hence the legitimacy of, the schemes.

Further, in the above pension schemes, formal law is restricted. In the case of a market contract, the agents are formally free. In the case of public pension insurance schemes joining is

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<sup>21</sup> P. BALDWIN, *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875-1975* (Cambridge, Cambridge University Press, 1990).

usually compulsory.<sup>22</sup> The freedom to make a profit is also restricted. In a market contract, and thus in private insurance, profit seeking is a legitimate concern. In social insurance it is not and this is partly why social insurance is cheaper.

The balance of individual accounts, the so-called ‘equivalence principle’ (the equivalence between the sums paid in and taken out after the deduction of costs and the addition of any interest) is not respected. There are departures from the equivalence principle in all directions. Some of them favour better off and stronger groups, even without their explicit pressure. Others favour weaker groups. In some cases the balance of the distortions is indeterminate, or, as in case of the indexation of pensions, may affect all pensioners.

Among the pro-rich distortions one may point to the fact that a public pension scheme is usually a contract with open-ended time limits. One may outlive one’s total savings. Thus occupational groups with a longer life expectancy who usually belong to the better-off strata certainly gain in an all-encompassing scheme. By and large the same groups also profit basing the pension on earnings at the end of a career as their earnings tend to increase up to this point.<sup>23</sup> Where there is a separate public scheme for civil servants it will almost certainly depart from equivalence to reward their loyalty to the state.

As the examples below show, pension insurance has also endeavoured to offer some advantages to weaker groups who would have lost out under pure market conditions.

- It is often ignored in calculations which emphasise the advantages of the better-off that, while contributory schemes usually have built-in ceilings for the calculation of pensions and for the contributions paid by the employees, employers usually pay a payroll tax on the basis of the whole payroll. Higher earners therefore generate additional assets for the funds.
- A further disposition favouring weaker groups, perhaps the most important one, is the acceptance of an adequate minimum pension for those who for whatever reason cannot accumulate enough pension rights to attain a socially acceptable minimum standard.
- Workers may be given preferential treatment if they are employed in unhealthy jobs; those who lose their jobs some years before the statutory age limit may be given early retirement; disability pensions go disproportionately to those who have worked in unsafe and unhealthy jobs.
- Socially differentiated mortality rates suggest that survivors’ pensions may also favour the poorer and sicker strata.

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<sup>22</sup> In the last decades the ‘invention’ of publicly enforced private pension schemes has raised even more tricky legal questions. If joining is enforced by the state, it is a legitimate question whether the benefits should also be guaranteed by the state.

<sup>23</sup> WORLD BANK, *Averting the Old Age Crisis: Policies to Protect the Old and Promote Growth* (New York: Oxford University Press, 1994), pp.130-135.



- Recent considerations about gender equity prescribe equal treatment in calculating pensions. These considerations have become the norm in Europe. Gender neutrality is necessarily actuarially unfair as it disregards the fact that women have a longer life expectancy than men. The same norms prescribe that career breaks should not be penalised in the calculation of pensions.<sup>24</sup> Whether these amendments fully correct the unfair treatment of women which was built into the early Bismarckian or Beveridgean schemes may be doubted, but there is an attempt to do so.
- As far as equity between different generations is concerned, the main example of non-equivalence is the indexation of pensions. Pensioners gain most when, under conditions of increasing real wages, pensions are linked to wages. This may be seen as an example of a right to social inheritance. The practice was applied in the majority of OECD countries in the mid-seventies and despite strong pressures, it is still widespread.<sup>25</sup> Fair indexation was abandoned early in the UK whereas in many Central-Eastern European countries, Hungary included, indexing to wages occurred *after* the transition. It is being rapidly replaced, though, by Swiss indexation, i.e. indexation only in respect of prices. This is almost universal when real wages take an upward turn.

Public pension insurance is clearly a messy contract. As Hayek argued, in connection with the 1935 social security programme in the USA, the outcome may be qualified as sham or as sheer pettifoggery.<sup>26</sup> Yet even if one recognises both the black lies, which are conducive to regressive redistribution, and the white lies, which produce positive redistribution, one may still doubt that all these lies amount to sophistry.

Historical evidence suggests that the symbolism or white lies incorporated in social insurance principles has been welcomed by the insured. From the end of the nineteenth century workers have accepted (albeit sometimes reluctantly) the obligation to join pension schemes. This was because the acquired right was devoid of the demeaning impact of one-sided charity, as it freed workers from the stigma of assistance and was seen as self-help. Many of the black lies, the regressive elements, helped to make the collective, compulsory schemes acceptable to the better-off strata. The final and hardly contestable outcome was, in those countries where these schemes have covered the vast majority of earners, a genuine improvement in the life-long

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<sup>24</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, *Modernising and Improving Social Protection in the European Union* (1997).

<sup>25</sup> H. VORDING, K. GOUDSWAARD, 'Legal indexation of social security benefits: an international comparison of systems and their effects', in: T. R. Marmor, P. R. de Jong (eds.), *Ageing, Social Security and Affordability* (Aldershot, Ashgate, 1998) p. 66.

<sup>26</sup> O. ISSING, 'Der Sozialstaat auf der Prüfstand', in: K. Morath (ed.) *Verlässliche Soziale Sicherung* (Franfurter Institut - Stiftung Marktwirtschaft und Politik, Bad-Homburg, 1998), p.15.

security of the elderly, and the radical reduction of poverty amongst them, over and above the social gains already mentioned.

The mix of principles built into the labour contract and into social insurance has offered the best feasible solution for societal policy. These contracts can, to a large extent, honour the age-old norm of approximately balancing rights and duties (or give and take), and combine economic functions with ethical considerations, social rationality, symmetrical (or substantively equal) relationships and social rights. They can also promote, to some extent, integrative ‘social citizenship’ by reducing the role of demeaning one-sided charitable donations, and by applying enforced solidarity to everybody. In other words, the messy contract can incorporate opposed interests and can reconcile, at least to some extent, individualism with collective structures. This has been the basis for its strong civil support and relative stability.

It must be made explicit that all the socially advantageous features of messy contracts have been limited to those covered by them. This limitation may become increasingly unjust as their coverage is shrinking. However, if this is the case, the new formulae replacing them will have to recognise their strengths and, if possible, make use of them.

## **6. THE DISSOLUTION AND REINVENTION OF THE MESSY CONTRACTS**

The pressures towards making messy contracts ‘transparent’ have been growing for some time. The weakening of former labour rights is ubiquitous. As for insurance, the World Bank affirms:

“The design of every pension system ... has a built-in conflict of objectives. Ideally one would want to enable everyone to reconstitute a target share of his or her own career earnings in retirement. At the same time, civilised societies want some floor to be placed below everyone’s living standard in retirement, regardless of what they actually earned and contributed. Any attempt to achieve both objectives – intertemporal insurance and interpersonal distribution – in a single ‘pension pillar’ involves messy and dynamically unstable compromises.”<sup>27</sup>

Significantly, this statement is to be found in a chapter entitled ‘Toward a new social contract’. The other public insurance schemes, e.g. schemes covering sickness or unemployment, are attacked for similar reasons, or because they are costly (and thus unsustainable), or because they create dependency.

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<sup>27</sup> WORLD BANK, *Hungary: Structural Reforms for Sustainable Growth* (Washington D.C., 1995), p.31.

There are a number of solutions advocated by neo-liberals: the revocation of employment rights; the abandonment of the concept of the living wage; means-tested minima for those who have not acquired sufficient insurance rights; low or perhaps medium level social insurance for those who satisfy the contribution conditions; private ‘money-purchase’ schemes (private pension schemes) for old-age security; private insurance for all other ‘risks’<sup>28</sup>; and the abolition of all dispositions that create rights without duties. The encouragement of private charity is also on the agenda. In other words, single-principle patterns are advocated, but not all of them. Citizens’ rights, as a single principle giving access to resources, are rejected.

The dismantling of public pension schemes and other social policy instruments, has been particularly evident in the transition countries.<sup>29</sup> The changes in Central and Eastern Europe have been more drastic than in the European Union. The economic crisis may explain radical cutbacks, but it does not explain the deep structural reforms that have occurred. These have happened largely because civil society has not been strong enough to resist illiberal governance and private economic interests.

In what follows, the discussion of the changes is restricted to unemployment protection for two reasons. In this field similar processes have occurred in Central, Eastern and Western Europe, and they have occurred for similar reasons. More to the point, the search for instruments to deal with unemployment has led to the reinvention of messy contracts, and a closer look at these is therefore warranted.

Unemployment insurance as it developed after 1945 was particularly messy, so much so that private insurance did not find the field attractive for a long time. The contract was based mostly on the reciprocity principle. It was tacitly assumed that unemployment was a transitory stage: the unemployed having worked as long as they could, would start to work again as soon as

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<sup>28</sup> The private insurance market is serious about this business as is affirmed by Mark Boléat, Director General of the Association of British Insurers: “Insurance companies have a particularly keen interest in welfare state reform. There is an inevitable overlap between the products they offer and what the state offers through the social security system... It may well be that there will be new business opportunities for insurance companies.” (*Insurance ...1998, no page numbering*). *Insurance - The Solution to Welfare Problems* is a collation of the papers presented by leading industry representatives at the *Insurance Summit*, London, May 1998, organised by the European Policy Forum in association with Market Access and supported by the Geneva Association (Association Internationale pour l’Étude de l’Économie de l’Assurance), supported by a number of British insurer companies (PPP Healthcare Group, Abbey National, NatWest, Guardian and Royal and SunAlliance). (Unfortunately there is no page numbering in the publication.)

jobs became available. Under these conditions unemployment benefits could be set at a relatively decent level, and the status of the unemployed was not stigmatised.

This has changed with the well-known transformation of the labour market. There are now too many unemployed, and their number may soar even further; too many long-term unemployed without any genuine hope of returning to a job; too many young people, with no past and perhaps no future ‘credits’, are unemployed; and atypical, unprotected and uninsured jobs are proliferating.

When and where unemployment has become prevalent and enduring, the old messy contract has usually broken down. The underlying assumptions about reciprocity could not be upheld. Thus a search for functional alternatives started.

One attempt, prevalent in all the transition countries but also in the Netherlands, aimed at reducing the number of the unemployed on the rolls by unloading them onto some other scheme which was better able to accommodate them. The first and most humane attempt was to transfer them onto a pension scheme, hence the swelling of the number of people on invalidity pensions or taking early retirement. An immediate consequence was the overburdening of the messy public pension scheme, and this fuelled attacks on it. Its legitimacy may have also weakened; this has certainly been the case in the Netherlands although the issue has not been well researched elsewhere. (In Hungary invalidity pensions seem to elicit more approval than the harsher treatment of many of the losers of the transition). In any case, the revision of the invalidity rolls and the tightening of eligibility conditions have started in many countries.

The next step was to shift the unemployed, who were squeezed out from messy contracts (from unemployment benefit or from pension schemes) onto a ‘purer’ scheme. They were transferred to the social assistance rolls, i.e. to pure one-sided charity. However, when many able-bodied persons are forced onto assistance, the weakness of this single-support scheme becomes apparent. The moral obligation to help the needy is one-sided: the ‘haves’ are required to give to the ‘have-nots’. But when the have-nots become too numerous, they become a huge burden, even if the provisions made for them are far lower than in the messy contracts. Because of this one-sided burden, the moral obligation sooner or later wanes. In other words, this transaction model also becomes overburdened.

The consequences are well known. One of them is the tax revolt against one-sided giving. A vicious circle leading to lower taxation is started. Another is a lowering of the level of assistance and the “subsistence level may even deteriorate to a survival mode.”<sup>30</sup> Most importantly, an increasingly severe selection process starts among the needy. The ‘deserving

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<sup>29</sup> for example, see: K. MÜLLER, A. RYLL, H. J. WAGENER (eds.), *Transformation of Social Security: Pensions in Central-Eastern Europe* (Heidelberg, Physica Verlag, 1999).

<sup>30</sup> H. J. GANS, *The War Against the Poor: the Underclass and Antipoverty Policy* (New York, Basic Books, 1995), p. 103.

poor', always defined with some degree of arbitrariness, enjoy a weakened right to life. They may still be offered assistance, albeit at a lower level, but this may well be characterised by increased discretion and uncertainty and involve more humiliating means-testing and behavioural testing. In Hungary, for example, the government reintroduced discretion in the child assistance scheme, and closer control of families with children at school in 1999.

The weakening legitimacy of one-sided assistance has led to the invention of new 'messy' contracts. In some cases, this has involved pursuing the old ideals of the welfare consensus, such as symmetry, adequacy, inclusiveness, and dignity secured by rights. In others, the same objectives may have been declared without any real attempt to ensure their fulfilment.

Non-stigmatising messy contracts usually combine reciprocity, the market principle and social rights in new ways. They may take the form of relatively well-remunerated retraining programmes offering marketable skills. (The success ratio of retraining programs varies, although unfortunately they are usually not very high). They may be subsidised, but real jobs offering inclusion and a living wage, albeit with employment subsidies, may also have many drawbacks.<sup>31</sup> The experience of alternating placement, which has been introduced in Denmark, in order to avoid permanent exclusion may belong here. So do cheap, subsidised micro-credits which help the unemployed to start small ventures, coupled with free or cheap training and counselling. In Hungary, the Foundation for Self-Reliance has for ten years experimented with some success with this type of messy contract in order to help unemployed Romas (Gypsies) to develop strategies of survival. These programmes are expensive, and require special skills, a strong commitment by the political leadership and the support of the public. As these conditions seldom coexist, such optimal solutions are as yet rare.

The cheaper and increasingly prevalent alternative is 'workfare', a new messy contract combining the market principle with restricted reciprocity and legal coercion. It may be termed a 'pseudo-reciprocal pseudo-contract'. A typical example is the introduction of forced work or workfare in the guise of a genuine market contract. More often than not, this is not a real market contract: at least one of the agents does not enter the contract freely, so even formal equality is compromised. More or less free bargaining is replaced by an absolute constraint to accept the terms dictated by the stronger partner, in this case the state. In Hungary workfare, and the inadequate relationship it contains, was introduced in 1999. The work required for the continuation of assistance may be remunerated at two-thirds of the minimum wage. Workfare is not a regulated market contract because it is not surrounded by labour and social rights. It is likewise not reciprocity because it is not based on substantive equality, there is no time gap

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<sup>31</sup> G. STANDING, *Global Labour Flexibility: Seeking Distributive Justice* (London, MacMillan Press, 1999), pp. 301-306.

between giving and taking, and the ethical or trust element is also absent. This sham is characterised by Goodin as “immoral and hypocritical.”<sup>32</sup>

The enforced ‘pseudo-reciprocal pseudo-contract’ involves a paradox. Tremendous efforts are deployed to denounce the enforced solidarity of the all-encompassing social insurance schemes on the grounds that they restrict the freedom of those who join them. Meanwhile, there is increasing support for enforced reciprocity, a far stronger abuse of freedom, but one that is reserved for the poor. Yet, both neo-liberals and neo-conservatives seem to approve of this messy contract.

There may be intermediate solutions. The French *Revenu Minimum d’Insertion* appears to be a less than optimal but nonetheless viable option. The idea is similar to the pseudo-reciprocal pseudo-contracts, but it is an individualised ‘contract’ signed by two partners which perhaps leaves the recipient with some dignity. Also, the recipient is allowed some freedom in choosing the form of counter-performance.

Deregulated low wage jobs subsidised by earned income tax credits constitute a particularly interesting case. The market logic and assistance principles are not mixed but work in tandem. This may depress the demand for higher wages and serves to protect the employer at the expense of the taxpayer.<sup>33</sup> The earned income tax credit has become the biggest welfare program in the US, it is growing in the UK, and the idea is spreading. The practice seems to have been legitimised. It may be attractive because, on the face of it, the market is left untouched, and part of the public expenditure (the tax allowance) remains invisible.<sup>34</sup> — A further explanatory element may be that the tax credit is an *individualised strategy*, it does not *create any collective structure* through membership in the scheme.

Because the pseudo-contract is demeaning and illiberal, and because it does not usually offer a way out of poverty, many may not comply with it. When they do not qualify for assistance, and do not accept the pseudo-contract, they have only the family (if they have one) to rely on. The family is again becoming the last resort that picks up the pieces of a fragmented welfare system. Indeed it appears that the metaphor of the state as the ultimate safety net or last resort is increasingly misleading and untrue. Where the state restricts its responsibilities, the so-called ‘safety’ net will never be safe. Meanwhile, the family becomes seriously overburdened:

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<sup>32</sup> R. E. GOODIN, ‘More than Anyone Bargained For: Beyond the Welfare Contract’ 12 *Ethics and International Affairs*, 1998, pp. 141-158.

<sup>33</sup> The earned income tax credit which subsidises wages from outside public sources is reminiscent of the Speenhamland Law (1795). However, the Speenhamland rate was uniform for all the poor and disregarded work (*see, supra* note 2).

financially, physically and emotionally. The consequences are varied, sometimes contradictory. Poor families in Hungary may react by giving birth to a large number of children because family benefits may be the only income they know they will get. In some parts of Italy the reaction is Malthusian, an absolute ban on children, with harmful repercussions for social reproduction.

The last step on this road is total disaffiliation. For those abandoned by the social institutions of integration and by the family, the unconditional right to life is suppressed. The consequence of these changes is not only the further increase of income inequalities and poverty, but also the withering away of the idea of equal citizenship, and of the idea that each person's life and human dignity must be respected.

## 7. CONCLUSION: IS THERE A WAY OUT?

The above argument leads to a difficult conclusion: the means of ensuring job scarcity, of guaranteeing a social place that assures a dignified existence to able-bodied non-workers and a secure old age does not as yet exist. The reason is not the scarcity of resources, but their distribution.

The Basic Income scheme is the solution most often recommended for providing a floor, at least in high or middle-income countries, which is demonstrably feasible without raising the issue of global redistribution. The Basic Income or Citizenship Income has a long and impressive intellectual history, and an increasing number of proponents. A consensual definition includes 'an income granted unconditionally to all on an individual basis, without means test or work requirement.'<sup>35</sup> The arguments recently reviewed by Standing<sup>36</sup> in favour of a gradual introduction of the scheme, which would co-exist with many other market and non-market patterns, have a strong appeal. The BI in his view does not exclude strong and renewed efforts to ensure employment rights or job creation and, at least initially, would free society from the many ills of social assistance such as all the traps, and of the need to separate the deserving from the undeserving poor.

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<sup>34</sup> A. SINFIELD, 'Social Protection versus Tax Benefits' in: D. Pieters (ed.) *Social Protection in the Next Generation in Europe* (EISS Yearbook, Kluwer Law International, 1997), pp. 111-152.

<sup>35</sup> <http://www.etes.ucl.ac.be/BIEN/bien.html>, or Newsletter of the Basic Income European Network 32, Spring 1999

<sup>36</sup> *see, supra* note 30.

Despite its attractions many are not quite happy with the unconditional access. “A major reason for opposition to citizen income is the fact that it is unconditional: some people worry that it will lead to dependency. I believe therefore that the citizen income should be *conditional on participation* in society.”<sup>37</sup> The definition of ‘participation’ would include people at work, those retired, sick or unemployed, in education or training, and caring for dependants – a wider definition of social contribution. Unfortunately the *redefinition of work* would entail that all the difficulties connected with bureaucratic recording and the separation of wheat from chaff starts again. These difficulties just underline that it is difficult even to conceptualise a pattern of access supported by a single principle: citizens’ rights, or perhaps ‘denizen’s’ right covering also immigrant people.

I am sorry to end this paper with a not very cheerful conclusion. I think to have shown that messy contracts could serve complex social purposes combining broad coverage, adequacy, and encouraging social integration. They could accommodate diverse and often conflicting purposes and interests. Of course the ‘blending’ itself may have occurred because of some shared convictions that now seem to vain. The desirability to tame the market, the unacceptability of unlimited inequalities, the need for a public agent serving the ‘public good’ were principles agreed upon by a democratically operating community able to reconcile conflicting interests. Currently the field of forces seem to change. While the majority of citizens still believe in the former principles<sup>38</sup> they seem to be unable to oppose the new dominant ideologies and dominant forces that find acceptable increasing inequalities within and between countries alongside with increasing deep poverty.

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<sup>37</sup> A.B. ATKINSON (1997) “Improving the state of welfare’. *The Observer*, 8 June 1997.

<sup>38</sup> S. SVALLFORS AND P. TAYLOR-GOUBY, eds, *The End of the Welfare State? Public Attitudes to State Retrenchment*. (London: Routledge, 1999)



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