

Mutual Obligation

Ethical and social implications

Pamela Kinnear

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Research Fellow, The Australia Institute

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Executive Summary

This paper is a philosophical investigation of the mutual obligation principle and its application to current welfare policy. It finds that the ethical foundations of the Howard Government's Mutual Obligation policies do not stand up to scrutiny, and that the way the idea of mutual obligation is currently being used in public debate misrepresents the philosophical traditions of which it claims to be a part. It also finds that the broad appeal of the mutual obligation principle is based on a number of popular misconceptions about the nature of unemployment in Australia.

Two strands of philosophical debate underlie the justification for Mutual Obligation policies – the idea of the social contract and the idea that rights are accompanied by reciprocal duties or obligations.

The rhetoric of mutual obligation often uses ethical principles drawn from social contract theory. However, on closer examination, this ethical tradition does not apply to welfare programs that aim to help society's most disadvantaged. The modern contract theorist, John Rawls, argues that individuals incur obligations only when two conditions apply – society's institutions must be just, and individuals must have freely accepted the benefits provided by society.

Are the circumstances that give rise to unemployment just? Australia's system of economic management has relied on creating joblessness to sustain economic growth. Economists believe that there is a trade-off between inflation and unemployment, but governments have made inflation the priority for the benefit of the broader community. In addition, policies to promote rapid economic restructuring have created structural unemployment in an endeavour to strengthen the economy as a whole. Unemployed people have therefore made an involuntary sacrifice for the economic well-being of employed people. As a result, the starting point for obligations to accrue is not just.

Is acceptance of unemployment benefits a choice? For people to incur obligations from accepting benefits they must exercise choice in a context of meaningful alternatives. It is uncontested that some welfare recipients – such as people with profound disabilities and the aged – have no choice. The imposition of Mutual Obligation requirements on unemployed people is based on the belief that they are able to exercise a degree of control over their situation and thus choose to accept welfare benefits. But in a modern economy subject to structural unemployment, for many unemployed people there is no real alternative to accepting welfare benefits. This is especially true for unemployed people with few skills and capacities, with disabilities or disadvantageous life circumstances, or who suffer discrimination in the labour market.

Thus the Government's Mutual Obligation program fails the principle of fairness on both counts. Unemployed people are subject to a double penalty by society – they are denied the means of making a living and penalised by society for accepting support.

While Mutual Obligation policies are often justified on the grounds that society has become too selfish and greedy, the current policy reverses the basic values of reciprocity. Since those in work have benefited from the disadvantage visited on those who have been made unemployed, those in work should be grateful to those forced onto unemployment benefits. The demand by those in a position of social advantage that those who are disadvantaged make social repayments is itself evidence of the moral crisis of 'taking without giving'. Mutual Obligation policies may be a *manifestation* of moral decline, rather than the answer to it.

The ethical case for a social contract is further eroded because only the least well-off in society have obligations imposed on them. In contrast to the 'stick' applied to some unemployed people, other recipients of government largesse have no compulsory obligations imposed on them. Examples include investment incentives to industry, financial incentives to trainee doctors in the hope that they will work in the bush, and payments to land-owners to better care for the environment. These groups are not required to give something back in return, even though they are in a much better position to do so. There are no persuasive arguments for singling out certain income support recipients in the way Mutual Obligation policies do.

Fair welfare policy should acknowledge that the need for support arises from the failure of society to provide opportunities rather than from the personal failings of recipients. It should also acknowledge that the rest of society has benefited from the misfortune of unemployed people, and on this basis develop policies that reflect true mutuality. Government programs to overcome disadvantage and joblessness are essential to this, so that where obligations are accepted by income support recipients there are realistic alternatives providing for a meaningful choice.

1. Introduction

Since the early 1990s in Australia, the idea that unemployed people should be required to undertake compulsory designated activities in return for their benefits has gained increasing influence on social security policy. The Howard Government has applied this idea through a series of compulsory ‘activity tests’ which are covered by the policy known as ‘Mutual Obligation’. Over the years, Mutual Obligation activity tests have been applied increasingly to certain categories of long-term unemployed people. Proposals to extend Mutual Obligation policies to other groups of income support recipients are currently being considered.¹

This is not a new or a uniquely Australian development. Rather, it is consistent with the re-formation of welfare policy in other Western democratic nations – especially in Britain, New Zealand and the United States of America.

The idea of mutual obligation² is said to be ‘simple yet compelling’, one based on commonsense and widely shared moral principles (Newman 1999, p. 3). It turns on the principle that if the community, through its elected government, has an obligation to provide income support for some members, then those who are being supported have corresponding obligations to the community. Put simply, people should not get something for nothing – the world does not ‘owe anyone a living’.

In a changing economic and social world, policies based upon the idea of mutual obligation modify one of the pillars of the welfare state – the idea that provision of welfare is a ‘right’ or an entitlement. Rather, recast as ‘obligation’, income support is now conditional on recipients contracting to undertake activities that will reduce their dependence on welfare and increase their capacity for self-reliance. As well as its ‘commonsense’ appeal, the application of the idea to social welfare policies is justified by the claimed financial unsustainability of the old welfare state.

The idea of mutual obligation has support across a wide spectrum of opinion. It appeals to those who believe that many are cheating or abusing the goodwill of taxpaying citizens, those who are inclined to disparage ‘dole bludgers’ and those who believe that many recipients of income support are irresponsible. But the ‘mutuality’ of the concept also has appeal to many who are critical of governments for not providing adequate assistance to members of society who may be trapped in cycles of poverty and long-term reliance on income support. The idea also has resonance with communitarians, those who value greater self-determination and empowerment of individuals and communities.

¹ From July 1st 2000 all job seekers were made subject to increased activity testing through the ‘Preparing for Work’ initiative, an agreement they are required to sign setting out a set of activities that they will undertake and for which they can be penalised if they do not. In addition, through its review of Australia’s social security system, the Government is currently considering extending Mutual Obligation requirements to sole parents and people with a disability.

² The capitalised form of the term ‘Mutual Obligation’ will be used when referring to the specific Government program that applies to certain groups of unemployed people. Otherwise, the lower case form is used to refer to the more general concept of mutual obligation.

Despite the broad appeal of the idea of mutual obligation, its application, especially by the Howard Government, has also attracted strong criticism. The welfare sector in particular has emphasised the punitive nature of the policy. It has argued that the victims of economic restructuring are being blamed and punished for circumstances that are beyond their control and that the Government has not been holding up its end of the bargain with unemployed people.

These criticisms have not dissuaded the Government from pursuing its intention to extend and embed the concept as the governing principle of the Australian social security system. As the first step in this overhaul, the Government commissioned an inquiry into the reform of the social security system by an independent Reference Group consisting of a diverse range of respected experts in matters of social policy. The Reference Group's interim report was brought down in March 2000 and, at the time of writing, the Government is considering the recommendations of the final report due for release soon.

Although retaining serious reservations about the details and implementation of reform measures, the welfare sector nevertheless appears to view the reform process as an opportunity for Mutual Obligation to be applied in ways that enhance, rather than undermine, socially just outcomes.

The consequence of this is that the concept and policy framework of mutual obligation now has become universally accepted and defines the boundaries within which those committed to better policy must now operate. The legitimacy of the concept of mutual obligation as the basis for social security provision is, to a large degree, accepted uncritically. As one commentator has noted, mutual obligation is an idea that is 'here to stay' (Curtain 1999, p. 25).

Given the scope of the proposed reforms and the central place of mutual obligation in them, there is a glaring absence of critical examination of the idea of mutual obligation. It is the intention of this paper to fill the gap – to examine the popular appeal of the concept against a more rigorous analysis of its philosophical and moral bases, as well as its implications for social justice.

In doing so, the paper will ask whether mutual obligation is a useful and justifiable basis for welfare policy, whether it is the way to greater social justice in the modern world and whether it is likely to strengthen or erode social bonds.

2. Mutual Obligation Policies in Australia

Australia, along with similar Western nations, has experienced a number of important economic, demographic and social changes in recent decades that bear on welfare policy. These include increasing levels of unemployment, the growth of part-time and casual work, the growth of female employment, the changing skill requirements of an information and service-based economy, increased rates of family breakdown and sole parenthood and the ageing of the population. These changes are argued to have placed increased pressure on welfare systems and have led to a shift in policy away from passive, entitlement-based provision towards ‘active’ systems that place obligations upon the recipients of welfare payments to seek ways of moving off welfare support.

The idea of mutual obligation has come to be a central pillar of Third Way politics – which are seen by many as the sensible alternative to the post-war welfare state in a highly competitive global economy.³ Not only is this shift seen to be more economically sustainable, but it is also argued that unconditional payments generate ‘welfare dependency’, perpetuate poverty, increase social exclusion and detach disadvantaged citizens from the labour market and other forms of social and economic participation. Advocates argue that long-term welfare reliance and poverty create self-defeating psychological, behavioural and educational incapacities in welfare recipients, their families and their communities. As a result, it is considered that welfare recipients are unable to voluntarily take up opportunities that are provided and must therefore be compelled to do so. Governments must exercise ‘tough love’, and ‘help and hassle’ welfare recipients towards greater self-reliance.⁴

2.1 Labor’s reciprocal obligation

Although in Australia Mutual Obligation is currently being implemented under a conservative government, the idea formally entered Australian social policy during the Hawke and Keating Labor Governments. While Australia has always had a degree of conditionality in its income support programs, throughout the 1970s and 1980s the conditions were gradually strengthened as public sympathy for unemployed people declined.⁵

In 1988 a major review of the welfare system took up the OECD’s notion of the ‘active society’ which promoted policies of assisting unemployed people through the intensification of training and labour market programs. The review replaced the ‘work test’ with an ‘activity test’ in which ‘an unemployed person is required to actively look for work and in return society accepts an obligation to pay income support’ (Cass 1988, p. 143). The Labor Government then introduced a range of labour market programs and

³ The best known of these policy initiatives have been the US *Personal Responsibility and Work Opportunity Reconciliation Act*, introduced in 1996 by the Clinton Administration, and the Blair Government’s ‘New Deal’.

⁴ See this argument in Mead (1997a), p. 61-62

⁵ Since 1945, work test requirements (such as not becoming voluntarily unemployed or refusing a suitable offer) have been a condition of continued receipt of unemployment benefits.

put in place mechanisms to ensure that welfare recipients complied with their obligations to participate in the programs (National Welfare Rights Network 1996, p. 6).

The notion that unemployed people should have strictly enforced obligations to seek work was popular on both sides of politics. During its time in opposition, the Coalition began to incorporate the idea into its own policies. In its 1991 *Fightback!* document, the Opposition proposed stricter test requirements and the concept of a training wage (Finn 1997, p. 22-23).

Labor's commitment to the principle that it termed 'reciprocal obligation' reached fulfillment in the release of the 1994 *Working Nation* employment manifesto.⁶ *Working Nation* introduced the Job Compact for the long-term unemployed as a core initiative. Based upon consultations that revealed 'strong community concern that some unemployed people were making insufficient effort to find employment' (Commonwealth of Australia 1994a, p. 9), the Government undertook to provide the long-term unemployed (those unemployed for 18 months or more) with a guaranteed job for between 6-12 months as well as a program of intensive, targeted assistance. In return for this guarantee, unemployed people faced higher penalties if they did not accept a reasonable job offer (Commonwealth of Australia 1994a, p. 125). Labor's 'reciprocal obligation' differed from the current idea of 'mutual obligation' insofar as it placed specific obligations upon the government to provide guaranteed employment. The Job Compact and other programs associated with Working Nation operated for only a relatively short period of time until the Labor Party lost power in the 1996 Federal election.

2.2 The Coalition's Mutual Obligation policy

With the change of government in 1996, the Coalition abandoned the Working Nation and Job Compact programs. The new Government justified this action by arguing that the Job Compact program had not been effective or sufficiently well focused and was unduly bureaucratic and expensive (Finn 1997, p. 29). Moreover, the interventionist features of Working Nation were at odds with the Coalition's more market-oriented approach to solving economic and social problems (Kerr and Savelsberg 1999, p. 250). The Coalition scaled down labour market programs significantly, deregulated the training market, and privatised the employment assistance service, but retained a commitment to compulsory activity tests and penalty systems. On numerous occasions, Government ministers argued that it is reasonable to ask people to make some contribution to society in return for receiving income support. The principle, now given the specific title of 'Mutual Obligation', became the cornerstone of new efforts to tighten activity tests, crack down on 'welfare cheats' and impose harsher penalties upon those considered not to be seriously looking for work. The Government projected savings to the welfare bill of \$800 million (Finn 1997, p. 75).

The operation of Mutual Obligation began with the Work for the Dole (WFD) program – still the most well-known component of the Mutual Obligation requirements. Designed

⁶ Commonwealth of Australia (1994a, 1994b)

principally as a work preparation, rather than a skills development or job placement program, the focus is on encouraging good work habits, self-esteem and motivation, rather than training participants in a specific set of marketable skills. Initially having fairly narrow eligibility criteria, the program has gradually expanded to include a wide range of people on unemployment benefits.⁷

In 1999, the Mutual Obligation scheme expanded beyond the WFD program to provide greater choice to those subject to its provisions. It now includes fourteen possible ways of fulfilling Mutual Obligation requirements. The fourteen components are divided into three broad classes of activities: employment and community participation, training, and intensive assistance.⁸ The WFD program operates as a 'default' option for all those who are eligible for Mutual Obligation activities and are not involved in any other activities.⁹

As of July 1st 2000, all recipients of unemployment benefits were required to sign a 'Preparing for Work Agreement'. The agreement commits the unemployed person to undertake a number of activities intended to assist them to find work. Sanctions are applied to those who breach their agreement (see Boxes 1 and 2 below).¹⁰

2.3 Responses to Mutual Obligation

Despite the Government's enthusiastic defense of Mutual Obligation, others are less convinced of its merits. Here we outline some concerns expressed by the welfare sector, participants themselves and the general public.

The welfare sector

The welfare sector has never opposed the idea of mutual obligation *per se*, but it has heavily criticized the application of the concept in government policy. The sector has consistently raised a number of concerns:¹¹

⁷ Initially the WFD program covered only 18-24 year olds who had been on unemployment benefits for six months or more. Gradual expansions over time means that eligibility now includes older unemployed people (24-35 year olds) who have received unemployment benefits for 12 months or more as well as Year 12 school leavers who receive Youth Allowance for three months or more.

⁸ The major options in these 14 are: Intensive Assistance; Work for the Dole; part-time work; Community Development Employment Program (CDEP); voluntary work; Education and Training; and Literacy and Numeracy training. Others include relocating to areas of higher employment; Green Corps participation; English lessons for migrants, Jobs Pathway Programme (JPP); Job Placement, Employment and Training Programme (JPET), Career Counseling Programme (CPP); New Apprenticeships access programme; and Job Search Training.

⁹ It is estimated that in the financial year 2000-1, more than 300,000 young unemployed people will participate in one or more of the 14 options in fulfillment of their mutual obligation requirements (Curtain 1999, p.5). On current estimates, the program will cover between 45 and 50 per cent of Australia's unemployed population and close to 100 per cent of young unemployed people (Reith 1999).

¹⁰ Abbott (2000)

¹¹ ACOSS (2000); McClelland (1998); McDonald (1999); National Welfare Rights Network (1996); National Welfare Rights Network (1999); Raper (1999a; 1999b)

Box 1: Breaches and Penalties

Unemployed people can breach their obligations in two ways:

Administrative breaches such as non-attendance at a Centrelink office when required, failure to reply to correspondence or to notify of changed circumstances.

Activity test breaches such as failing to turn up to the designated activity without a 'reasonable excuse'.

Any administrative breach results in a 16 per cent reduction in payment for a period of thirteen weeks.

A first activity test breach results in an 18 per cent reduction for twenty-six weeks, a second breach results in a 24 per cent reduction for the same period of time whilst any subsequent breach results in a withdrawal of income support for a total of eight weeks.

At current benefit rates, the income loss from these penalties ranges from \$339 to \$1,304. In the three years from 1997 to 2000, the number of breaches recorded by Centrelink increased by 102 per cent. By the end of the financial year (1999-2000), it is estimated that a total of 223,350 people will have been breached and penalised (ACOSS 2000, p. 2).

Box 2: Appealing Breaches

People who have been breached may appeal the decision.

Whilst some do appeal decisions, many also do not because of factors such as: a lack of knowledge of their appeal rights; an unwillingness to engage with the complexity and difficulty of launching an appeal; a lack of confidence that they will succeed in their appeal; cultural impediments; and, mental or physical illness.

Twenty-one per cent of appeals against Activity Test breaches and twenty five per cent of appeals against Administrative breaches are upheld at the level of the original decisions maker. Forty-seven per cent of those that reach the Administrative Appeals Tribunal are successful (ACOSS 2000, p. 4). Whilst this may point to the efficacy of the appeal as a mechanism of due process, it also demonstrates a worrying level of poor and unfair original decisions.

A recent study has shown that Indigenous people are twice as likely to be breached than non-Indigenous people and that they are less likely to appeal the decision. The research suggests that Indigenous people may simply decide to "put up with or 'wear' the reduction in income in order to avoid further bureaucratic contact" (Sanders 1999, p. 95).

- the policy is not truly mutual because the Government is not doing enough to fulfill its obligations;
- the payment reductions for people living on low incomes are unjustifiably harsh (see Box 1 for the penalty schedule) and the impact is felt disproportionately by those who are most disadvantaged (see Box 2 for the impact of penalties upon Indigenous people). Moreover, original breach decisions are regularly overturned on appeal indicating that many were wrongly applied in the first instance;
- it is unacceptable to compel unemployed people to undertake activities that cannot be demonstrated to enhance their long-term position; and
- the policy places undue focus upon the deficiencies of individual job seekers rather than upon the structural impediments that they face.

Participants

As Mutual Obligation programs are evaluated, there is evidence that some of those who participate in the programs enjoy and benefit from participation. The Government is keen to promote such findings to support the continuation and extension of the programs, especially its WFD program (DEWRSB 1999). Although an independent study (Sawer 2000) has to some extent corroborated the findings of the DEWRSB study that participants were generally satisfied with WFD and gained some benefits from the program, the findings were qualified by some serious concerns expressed by participants.

- Many resented the compulsion to participate and most thought the program would be better if it were voluntary.
- Most participants felt that the Government was not fulfilling its end of the mutual obligation bargain.
- Many commented that there was little point in forcing unemployed people to compete more intensively for jobs that were simply not available.
- Many participants felt that their WFD activities were irrelevant to the type of work that they were seeking.
- The large majority of participants had not only experienced paid employment, but many had kept a job for twelve months or more in the past. This calls into question the program's objectives of creating a work culture and teaching basic work habits.
- Despite holding high hopes that the program would increase their job prospects, there appeared to be little evidence of this, with 80 per cent of participants still unemployed five months after completion of the project. Although the DEWRSB evaluation had

much higher rates of post-program employment, for various methodological reasons, it is likely that their findings considerably overestimated employment outcomes.¹²

The public

The Minister for Workplace Relations and Small Business, Peter Reith, recently claimed that ‘the concept of mutual obligation has gained strong public acceptance through its aim of encouraging self-reliance and personal responsibility’ (Reith 1999). The Government relies heavily upon public support to justify its continued implementation of such programs, especially in the face of open criticism from the welfare sector. A number of studies are used to support the Government’s claims. However, these studies are of a very general character and do not identify the scope of such support or the levels of support for specific aspects of the policies.¹³

A more recent and comprehensive study designed to overcome these inadequacies demonstrated that public support for the concept of mutual obligation is, in fact, very mixed (Eardley, Saunders and Evans 2000). The authors found the following:

- Support for obligatory activities and requirements declined substantially as the perceived disadvantages associated with unemployment increased. A large majority of respondents considered that existing policies were appropriate when applied to the young unemployed, but support fell off substantially for other unemployed groups such as older unemployed people or those with young children.¹⁴
- Knowledge about unemployment is patchy and contradictory. Only half of the respondents could accurately estimate the current official level of unemployment.
- Despite this, most respondents believed that the causes of unemployment were located in structural rather than individual factors and the overwhelming majority did not expect a return to full employment.

The study also notes that the interpretation of positive support must also be qualified by the fact that people are unlikely to be well informed about the details of social security and unemployment policies. Moreover, they argue that ‘much of the discourse about ‘dole bludgers’ has been created or reinforced in media commentary and by some politicians. Thus, people may simply be reflecting back what they have heard from such sources’ (Eardley, Saunders and Evans 2000, p. 31).

¹² These results are consistent with similar research undertaken in the UK (Dwyer 1998).

¹³ For details of these studies see Eardley, Saunders and Evans (2000) p. 1. The authors point out that these studies cannot be read as providing generalised support for the whole activity testing regime under Mutual Obligation policies. This is because they do not probe what activities people consider to be appropriate, whether such activities should apply across the board or only to limited categories of recipients, or the extent of sanctions that should apply and to whom.

¹⁴ The assumption that the young unemployed are the least disadvantaged group of unemployed people is contradicted by research that demonstrates that young people are amongst the most marginalised groups in the labour market with very high levels of unemployment and disproportionate representation in insecure employment (Dusseldorp Skills Forum 1998; 1999).

2.4 Extending Mutual Obligation: The welfare reform process

In September 1999, in a speech entitled *The Future of Welfare in the 21st Century* the Minister for Family and Community Services, Senator Jocelyn Newman, announced a comprehensive review of Australia's social security arrangements.

Newman distanced herself from the previous emphasis on the need for recipients of income support to 'give something back' and instead stressed that Mutual Obligation should be understood more comprehensively as 'a broad set of policy initiatives established on the simple yet compelling premise that responsibility between the community and the individual flows both ways' (Newman 1999, p. 3). Rejecting the idea that the policy was about 'blaming the victim ... or punishing disadvantaged people', she argued instead that it was about self-help and increasing opportunities for social and economic participation (Newman 1999, p. 2). Recast as the pathway to social justice and the solution to 'welfare dependency' and its perceived consequences, Newman argued that the principle of mutual obligation should be extended beyond the unemployed to other categories of income support recipients.¹⁵

Despite this new focus, the speech also clearly restated the Government's belief in the existence of a 'destructive and self indulgent welfare mentality' which it was 'neither fair nor moral to expect the hard working men and women of this country to underwrite' (Newman 1999, p. 5). This position justified the consolidation and extension of the Mutual Obligation program and its accompanying penalty regime.

Shortly after the announcement, a Reference Group consisting of experts from the community, academic and government sectors was established. Among other tasks, the Reference Group was asked to consider the 'broader application of Mutual Obligation'¹⁶ (Department of Family and Community Services 1999). After releasing its interim report in March 2000 (Reference Group on Welfare Reform 2000), the Reference Group undertook a further round of consultations and has recently presented its final report to the Government for consideration.

¹⁵ In particular it was to be extended to include people on a Disability Support Pension (DSP) and sole parents (those receiving the Parenting Payment – Single allowance).

¹⁶ Other things for the Reference Group to consider were the sustainability of the current system, various incentive effects, options for the provision of services and changes to income support.

3. Mutual Obligation: Ethical and philosophical foundations

New welfare policies that are based on the principle of mutual obligation have popular appeal because they seem to draw on widely held social values, in particular the unacceptability of ‘free-riding’ and the importance of personal responsibility. However, focusing upon these values alone minimises the importance of equally widely held values of generosity, fairness and tolerance. The proper balance between these value clusters has been a fundamental question of political and moral philosophy for centuries.

In this section, we examine claims that the policies based on the concept of mutual obligation are justified by their origins in the philosophical tradition of Western liberal democratic societies, in particular, notions of the social contract and of the interconnectedness of rights and duties¹⁷.

3.1 Obligation, the state and society

The new obligations that certain income support recipients have under the policy of Mutual Obligation raise questions about the obligations citizens have to the state. In particular, it raises questions about the legitimacy of coercive authority to enforce such obligations.

Two interrelated strands of historical debate are present in current justifications of policies based upon mutual obligation – the idea of the ‘social contract’ and the idea that rights have correlative duties or obligations.

The ideas that rights have corresponding duties and that we are bound to each other by a social contract sound quite plausible; we are used to them whether we have studied them at university or not. Indeed, such ideas *are* foundational to Western liberal democratic traditions, although the interpretation and exact meaning of such ideas has been contested by various philosophers and at different times. The invocation of philosophical heritage to support policies of Mutual Obligation is often done rather loosely in public debates, and the relationship between mutual obligation-based social welfare policies and political-philosophical thought is rarely analysed rigorously. Once they *are* subject to more careful analysis, the surface plausibility disappears and they become complicated by questions about human nature and the nature of society that philosophers have been debating for centuries.

3.2 Rights, obligations and the social contract

One of the most pervasive and persuasive arguments to be launched in support of mutual obligation is that it restores the balance between the rights and responsibilities of citizens. Supporters of mutual obligation, both conservative and liberal alike, are concerned about the imbalance between rights and obligations brought about by the operation of post-war entitlement-based programs. As Giddens, an advocate of the Third Way, has noted: ‘One

¹⁷ This section draws on material prepared for the Australia Institute by Dr Jeremy Moss.

might suggest as a prime motto for the new politics, *no rights without responsibilities*' (Giddens 1998, p. 65 emphasis in original). The argument that rights presume responsibilities is a key feature in the call for a renewal of civic virtue and responsibility. In pursuit of this goal, it is argued that individuals are obliged, as much as possible, to live off their own (or their family's) labours, to be self-reliant rather than reliant on others and to avoid being a burden to fellow citizens.

Obligations on recipients of income support are frequently justified by the language of 'social contract' – that the government of a society is based on an actual or implied contract between citizens and the state. Indeed, the idea of a social contract has 'provided perhaps the single most influential image of societal government in the history of the modern West' (Hindess 1997, p. 15).

The OECD has noted that 'the principle of mutual obligation as it applies in Australia can be viewed as part of the implicit social contract that underlies the income support system' (cited in Curtin 1999, p. 4). Others have noted the contractual nature of the Mutual Obligation scheme and have argued that, as such, it constitutes a 'reworking of the idea of social contract' (Yeatman 1999, p. 255). Proponents of the Third Way approach to welfare also champion the idea of renewing the social contract and in Australia, Latham has placed heavy emphasis upon the principle of the social contract in justifying his new vision for the Australian Labor Party.¹⁸ Despite the rhetorical description of mutual obligation as a 'two-way street', the Howard Government has shifted the emphasis from what the government owes to the obligations of income support recipients if they are to fulfill their part of the social contract.

So, does a social contract exist between citizens and the state? If so, what are the obligations on the part of citizens, especially those who are disadvantaged? To answer these questions, we must return to the original social contract philosophers and their contemporary followers.

Social contract theory and political obligation

The idea that society is ordered on the basis of a social contract has its origins in seventeenth and eighteenth century philosophy. Traditional theorists of the social contract – mainly, Hobbes (1588-1679), Locke, (1632-1704) and Rousseau (1712-1778) – sought an alternative and more democratic basis for citizens' obligations to the state than the prevailing monarchical absolutism under which obligations were prescribed by divine decree.

Traditional social contract theory begins by imagining a dangerous and uncertain pre-political 'State of Nature' in which, Rousseau claimed, 'man is born free; and everywhere he is in chains' and in which Hobbes famously maintained that the life of 'man' was 'poor, solitary, nasty, brutish and short'.¹⁹ In order to escape the vagaries of the State of Nature, they posit that human beings entered into political society through individual and free exchange of certain liberties for the protection of the state – a social contract. The

¹⁸ Latham (1998); Latham (1999) pp. 151-157.

¹⁹ Hobbes (1968[1651]) p. 186; Rousseau (1983[1712]) p. 183

contract was thus held to indicate citizens' consent to political society and an acceptance of their obligation to obey the authority of the state. In return, citizens were entitled to the protection of the state for the security of their lives and property.

The appealing aspect of contract theory, especially for philosophers of the liberal tradition, is that political obedience is construed as an expression of free, uncoerced *individual* choice, rather than collective coercion. However, traditional social contract theory is widely acknowledged to have significant problems. Of most importance is the difficulty of specifying exactly how individuals express their consent, and what options are available to those who do not consent. Locke's attempt to resolve the problem that people rarely, if ever, give express and clear consent to the rule of the state, was to develop the idea of *tacit* consent. Tacit consent is indicated simply by the fact that people reside in, use the resources of the state and accept its benefits (Locke 1984 [1704], p. 177). Moreover, he argued, people were free to leave a given state if they did not agree to its authority.

However, as Hume (1711-1776) pointed out, this does not resolve the problem as consenting implies the possibility of doing otherwise, which is rarely available:

... such an implied consent [tacit consent] can only have place where a man imagines that the matter depends on his choice...[c]an we seriously say that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners and lives from day to day, by the small wages which he acquires? (Hume [1748] 1947, p. 155-56).

In its primary concern with the basis of political obligation, therefore, it appears that traditional social contract theory is entirely unrelated to contemporary policies such as Mutual Obligation that claim to be based upon the idea of the social contract. It addressed only very limited forms of obligation – principally, the obligation of citizens to obey the state and the obligation of the state to provide military and property security for its citizens.

However, in endeavouring to establish the basis of political obligation, theorists also addressed aspects of moral obligation – what each citizen owes to another. It is here that the idea of reciprocity or mutuality emerges. Philosophers argued that if individuals sacrifice certain individual freedoms in order to achieve political society, then others should do the same. In this sense the idea of a social contract did have, at its base, a very general notion of mutual obligation. But exactly how such obligations are to be expressed and to whom and to what extent such obligations apply has been the subject of complex moral debates over the ensuing centuries.

Social contract, moral obligation and inequality

There are two main schools of thought within contract theory about the moral obligations that arise from the social contract – one that derives from the theories of Thomas Hobbes and one derived from Immanuel Kant (1724-1804) (Hampton 1995). The two streams

mirror the classic divide in assumptions about human nature – that people are fundamentally self-interested (Hobbes) or fundamentally altruistic (Kant).

The Hobbesian position argues that morality, like political society, is a human-made institution justified by the extent to which it furthers human interests. Moral action, therefore, is that which advances the satisfaction of individual desires and preferences. This ‘instrumental individualism’ assumes that individual desires are paramount (Campbell 1981, p. 70-91). However, according to Hobbes, because achieving individual desires is not possible within the precarious and competitive ‘State of Nature’, individuals recognise that, in order to reliably obtain the things they desire, they must cooperate with each other.

Many contract theorists have serious reservations about the Hobbesian foundation of morality because of its emphasis upon the instrumental rather than the intrinsic value of morality. That is, concern for the value and well-being of others is justified in terms of the extent to which it may advance our own interests. Hampton summarises these concerns by saying, ‘the Hobbesian moral theory gives us no reason outside of contingent emotional sentiment to respect those with whom we have no need of cooperating, or those who we are strong enough to dominate’ (Hampton 1995, p. 386). In this way, she argues, the Hobbesian social contract ‘fails in a very serious way to capture the nature of morality ... our moral intuitions push us to assent to the idea that one owes a person respectful treatment ... (because) ... he or she is a *person*’ (Hampton 1995, p. 386).

If there is any connection between modern applications of mutual obligation and the moral obligations that may arise from a ‘social contract’, they look distinctly Hobbesian in character. In other words, it is not enough for citizens to know that their taxes are being used to help other citizens in need; rather, assistance for others will only be given if they receive something in return. As such, the criticism that they ‘fail to capture the nature of morality’ is an appropriate accusation and seriously undermines their claims to morality and fairness.

In recognition of these limitations, theorists of the Kantian tradition are keen to establish a moral framework that is properly respectful of the individual as an ‘end in him/herself’. To do so, Kant and followers of his tradition reject any notion that a social contract is founded upon express or tacit consent, preferring instead the idea of a *hypothetical* contract, that is, a contract people *would* agree to if they were untainted by prejudice or passion. Under such circumstances, it is argued, people would agree to policies that were respectful of individuals. In this guise, contract theory is a conceptual device to determine what is just and moral by attempting to isolate an ideal description of such values.

This solution also has problems, however. For, despite attempting to capture the ‘nature of morality’ in a more comprehensive fashion, Kantian solutions rely heavily upon ill-defined and implausible ideals, or, as Hampton describes them, ‘suspect intuitions’ of the existence of universal principles that can be isolated from the influences of culture or power (Hampton 1995, p. 389).

Nevertheless, Kantian theory introduced the problem of inequality and social disadvantage to the social contract debate. For traditional social contract theorists, the problem of inequality was largely irrelevant. They quite openly assumed that the principal parties to the ‘social contract’ were free, rational, property-owning men, for whom the motivation to enter political society was to ensure the protection of property from the ‘free-for-all’ of the State of Nature. Women, slaves, children (themselves considered property) and non-property-owning members of society were thus irrelevant to the philosophical debates. It was a long time before these members of society were granted full citizenship status under mass enfranchisement. Because it is predicated upon the assumption of equal parties, traditional social contract theory sheds no light upon the central concern of welfare policy – the nature of obligations in societies that recognise and attempt to correct inequality, disadvantage and social injustice.

In the Kantian tradition, and particularly contemporary variants of it manifested in the most influential modern contract theorist, John Rawls, the issue of social justice for disadvantaged members of society is prominent. Rather than assuming that the social contract is a free contract between equal parties, contemporary philosophy of Kantian origin asks instead: To what extent can those people who do not share equally in social benefits be said to participate in a ‘social contract’, and on what basis, and to what extent, can they be said to incur obligations?

In his principal work, *A Theory of Justice*, Rawls²⁰ invokes the idea of a hypothetical contract, arguing that people *would* agree to a social contract *if* they were able to deliberate about social arrangements in a free and fair way. In order to do this, Rawls adopts a Kantian starting point – an ‘original position’ where people attempt to reason about principles of justice in abstraction from their actual position in society (Rawls 1972, Chapter 3).

Through his theory of ‘justice as fairness’, and his more specific ‘principle of fairness’, Rawls addresses fundamental tenets of social contract theory. First, he argues that all members of society have obligations to sacrifice certain individual freedoms in the pursuit of collective advantage and mutual benefit:

when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission (Rawls 1972, p. 112).

Secondly, Rawls draws upon the Lockean position that political and moral obligations are generated by the acceptance or use of society’s benefits and resources. However, this is qualified by two conditions:

²⁰ In using Rawls’ arguments here, we do not intend to endorse his overall position. However, his analysis of the principle of fairness is particularly useful in understanding the philosophical basis of mutual obligation.

... a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair)...; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests (Rawls 1972, pp. 111-112).

Therefore, for individuals to incur obligations, two main qualifiers must apply: institutions are just, and individuals have accepted benefits provided by the institution. In the following discussion we examine the concept of mutual obligation as applied to welfare reform with reference to these basic qualifiers.

Institutional justice

The first qualifier – that the institution is just – relies upon Rawls' two core principles of social justice. These principles state first, that basic rights and duties should be assigned equally amongst citizens and second, that social and economic inequalities are acceptable only insofar as they are arranged to the 'greatest benefit of the least advantaged... (and ... attached to offices and positions open to all under conditions of fair equality of opportunity' (Rawls 1972, pp. 73, 302).

In short, the principle of fairness requires that some basic form of equality of advantage, opportunity and fair treatment is a pre-condition for obligation. According to Rawls, the less advantaged *only* incur obligations if they have been treated fairly. In other words, their disadvantage is adequately compensated and that they have equal opportunity to compete for social advantages.

The idea of adequate compensation for disadvantage implies that the distribution of social and economic resources must meet some general agreed standard of fairness. The key issue for the welfare debate, therefore, is whether the current social security system distributes social benefits in sufficient proportion to satisfy requirements of fairness. A recent survey of 1200 Australians commissioned by a national newspaper has shown that the majority of respondents believe that the distribution of economic advantage in Australian society is increasingly unfair (*The Weekend Australian*, June 17-18, 2000). This belief is supported by figures from the National Centre for Social and Economic Modelling which demonstrate a sharp rise in inequality over the past decade (Harding 2000). Other research by the Brotherhood of St Laurence has shown similar results, with over 80 per cent of the 400 respondents concerned at the growing disparity between the 'haves and have-nots' in Australian society (Brotherhood of St Laurence 2000). Given that welfare recipients have a disproportionately small share of society's wealth and a large share of the disadvantages, the Government's consistent assertion that Mutual Obligation is a fair policy must be questioned. Rather, if Rawls' criteria are to be met, society must first publicly assess whether welfare recipients' advantages are sufficient to generate demanding obligations of the sort required by the Mutual Obligation policy.

Similarly, it is by no means clear that systems of 'equal opportunity' exist by which the disadvantaged sectors of society may increase their share of social advantages. Mutual Obligation policies claim to redress such inequity through the provision to all

unemployed people of opportunities to improve their chances in the labour market. It is argued that this generates obligations which, if not undertaken, can justify the withdrawal of social support. However, the emphasis of Mutual Obligation policies upon individual behavioural modification rather than upon the limitations of structural unemployment and other systemic impediments means that these claims are seriously limited, as equal opportunities are not available for all.²¹

The second qualifier in Rawls' principle of fairness is that the acceptance of benefits is sufficient to indicate consent and thus generate obligations. This is obviously very relevant to discussions about welfare receipt. It begs the question: does the acceptance of welfare benefits impose an obligation on welfare recipients to do something in return? This brings us back to Hume's objection to the Lockean idea of tacit consent. In a modern economy, what realistic alternatives do citizens have but to use the resources of the State, and to what extent can they thus be said to have voluntarily accepted the benefits?

Accepting benefits and the issue of choice

'Accepting' a benefit implies an explicit, active and willing consent to an offer. For example, if there are free homes being given out to those who agree to go to a remote area to work, then those who take up the offer might be said to accept it. In such a situation something is clearly expected (living and working in a remote area) in return for the benefit (free accommodation). On the other hand, there are situations where individual citizens passively 'receive' a general benefit and are unable to avoid it other than by physical withdrawal from society. Some philosophers including the libertarian Robert Nozick argue that few or no obligations arise from benefits such as this. Many public goods are of this type – including public roads, hospitals, street lights and national defence. Their benefits are difficult, or impossible to avoid and few realistic alternatives to such services exist.²²

Therefore, for people to voluntarily accept benefits and thereby to acquire obligations, they must actively exercise *choice* within a context of meaningful alternatives. Certain groups of income support recipients – for example, the profoundly disabled – are believed to have no choice but to accept public benefits and no obligation is imposed.

²¹When Rawls' principle of fairness is combined with the work of T.M. Scanlon, another influential contemporary contract theorist of the Kantian tradition, the obligations of welfare recipients become even less clear. Scanlon is concerned about the limitations of the idea of a morally pure starting point, adopting instead a test of reasonableness in which 'an act is wrong if its performance ... would be disallowed by any system of rules for the general regulation of behaviour which no one could reasonably reject as a basis for informed, unforced, general agreement' (Scanlon, 1982, p. 110). According to Scanlon's 'test of reasonableness', policies or acts are deemed to be just only when no one could reasonably reject them as a basis for 'informed, unforced, general agreement' (Scanlon 1998, p. 195). Reasonableness is decided by weighing up the relative impact of the imposition of burdens upon those wishing to impose burdens and those subject to such burdens. If the objections to prohibiting the imposition are not significant in comparison with the objections to permitting the imposition, then it is reasonable to reject any principle that would permit a policy or action and vice versa (Scanlon 1998, p. 195).

²² Nozick (1990, p. 90-96) This point is used for illustrative value only. We do not mean to imply any sympathy with libertarian philosophy of the type advocated by Nozick.

The fact that unemployed people are selected for Mutual Obligation activities is based upon the belief that they can exercise a degree of control over their situation and must therefore, actively choose to accept benefits. Despite this, the reality of structural unemployment means that unemployed people have only a limited degree of choice. For them to ‘accept’ the benefits would be to freely accept the payments in the context of meaningful alternatives. However, for economically marginalised people, including the unemployed, few meaningful alternatives to welfare benefits exist in contemporary societies.

Moreover, the category of the ‘unemployed’ is not homogeneous. Rather, it consists of a diverse range of people with considerable variety of skills, disabilities, capacities and life circumstances. As well as these individual characteristics, job seekers also have variable prospects depending upon their proximity to local labour market opportunities and the existence of direct or indirect discrimination (for example on the basis of race, age and gender).

Table 1 presents in schematic form the circumstances that might characterise unemployed people faced with Mutual Obligation conditions. Three situations are distinguished: that in which unemployed people have no choice about their employment status, that in which they have some incapacity that prevents them from being employed (itself divided into circumstances in which this incapacity may or may not be overcome through participation in government programs), and that in which unemployed people can choose to work but do not. According to the principle of fairness outlined above, the choice status carries different types of obligation on the part of both the unemployed person and society. These obligations are contrasted with the current justifications for the Mutual Obligation program, shown in the table in parentheses.

Although the table uses clear-cut categories, in reality, situations are often not so clearly defined. For example, in Situation 2a, where the welfare beneficiary believes s/he has no choice other than to accept benefits, but the government believes otherwise, by what method would we determine the provability or otherwise of people’s beliefs about their ability to overcome incapacities? Under the current Mutual Obligation scheme, the method is to assume that most people’s incapacities are not insurmountable.

Table 1* Choice situations and their implications for obligations

Reason for not working	Obligation of individual to society	Obligation of society to individual	Qualifier
Situation 1: No choice			
a) Willing but unable due to lack of jobs	No (yes)**	Yes	Current policy side-steps this issue
b) Willing but clearly unable due to insurmountable disability	No (no)	Yes	Widespread consensus on the insurmountability of the disability
Situation 2: No choice but could change Has an identified physical, mental or social incapacity about which there is little widespread consensus (eg: illiteracy, chronic fatigue syndrome, domestic violence and family responsibilities)			
a) society believes it can be overcome, person does not	Minimal (yes)	Yes (yes)	Policy should err in favour of individual's assessment of their capacity in their given situation
(i) society proven right	Yes, but limited	Yes	Individual requires considerable assistance, flexibility and understanding to overcome
(ii) person proven right	No	Yes	Society should provide basic life needs and opportunities to minimise social exclusion.
(iii) not provable	Uncertain (yes)	Yes (limited)	Policy should err on the side of fairness to the individual
b) person agrees it can be overcome	Yes	Yes	Individual requires considerable assistance, flexibility and understanding to overcome
Situation 3: Choice			
Unwilling to work despite availability of jobs and absence of any inhibitor	Yes	Limited	

* Thanks are due to Clive Hamilton for helping to develop this table and its accompanying text.

**Bracketed responses are included where the answer according to current policy differs from the suggested answer.

The principal objection to the Mutual Obligation program as it currently operates is that it tends to assume that most unemployed people have choices. Indeed, the assumption is that most fall into Situation 3 – they are unwilling to work – or, at the very least, Situation 2a(i) – that the barriers to work will be overcome if people are compelled to overcome them. The imposition of specific obligations and heavy penalties upon the significant proportion of unemployed people who fall into Situation 1 is thus unreasonable and unjust. Citizens who have obligations imposed upon them in circumstances where institutions are unjust and there is no realistic choice but to accept benefits are likely to feel that they are being treated unfairly and to become resentful of society. Doing so is highly likely to foster bitterness, erode trust and exacerbate social divisions. Although the Mutual Obligation program is said to promote social cohesion through restoring the proper balance between rights and responsibilities, the application of the scheme may well have the opposite effect.

It is also important to stress that in recognising that disadvantaged members of society have only limited obligations because of limited choice, governments are not absolved from the responsibility to assist such people towards improving their circumstances. This is discussed further in Section 4.

Summary of social contract

The discussion thus far has not sought to dispute or support social contract theory as a philosophical construct or idea. Rather, the discussion has questioned the uncritical use of the idea of a ‘social contract’ to justify and underpin the policy of Mutual Obligation. Although the theory that society is founded upon a social contract has a long history in Western liberal democratic thought, it has been a highly contested idea and there is little consensus about how the concept should operate in practice. Once the principle of mutual obligation is translated into specific policy formulations, vital questions arise about equity and the proportionality of obligations. Philosophers who have seriously sought to develop principles of social justice from the idea of the social contract have placed important qualifiers and limitations upon the types of obligations that apply to disadvantaged people in an unequal society.

In the light of these, we need to seriously question the extent to which disadvantaged people who are dependent upon the community for basic provisions should have significant obligations in return. These questions require extensive public debate that goes well beyond the shibboleths of the popular media. As a general principle, the idea that members of society should cooperate to secure the mutual advantage of all is reasonable, compelling and vital to social justice. But to single out certain groups, especially disadvantaged groups, for special and mandatory obligations is a distortion of this principle, especially in circumstances where the disadvantaged groups have limited or no choice. Indeed, as Hindess has pointed out, the notion of the social contract has a peculiarly *general* character – it ‘singles out no person or persons for special treatment [and] the obligations to which it gives rise will have a general and impersonal character’ (Hindess 1997, p. 18). Even devotees of the social contract tradition admit that ‘no fully satisfactory prescriptive form of contractarianism has been generated’ that is immune from the problems associated with determining what is moral, fair and reasonable

(Hampton 1995, p. 389). Until it is able to develop the theory beyond an ‘appeal to ill-defined and possibly suspect intuitions’ (Hampton 1995, p. 389), the idea of the social contract holds more promise than practical usefulness as the basis of social policy in a complex world. Because of this, the argument that the impositions of obligations on welfare recipients can be justified by reference to the social contract tradition is weak and far from being as ‘simple’ or ‘compelling’ as we are led to believe.

Despite this, at the most practical level, whether justified by reference to an historical tradition of ‘the social contract’ or not, contemporary societies are increasingly reliant upon contractual arrangements for the governance of economic and social affairs. Neo-liberalism has indeed heralded a ‘generalised commitment to the development of contractual relationships’ as a new tool of governance (Hindess 1997, p. 22). This is true of welfare policy where contractual arrangements are being used to regulate the behaviour of income-support recipients. The Australian Mutual Obligation scheme is based upon a direct contract wherein the government agrees to provide income support and job-search assistance in return for which the unemployed person agrees to undertake a series of activities designed to maximise their employment chances.

With this in mind, we leave behind more abstract philosophical discussions and evaluate the moral and philosophical basis of the Mutual Obligation contract in practice.

3.3 Contemporary contractualism

A fundamental requirement of a contract is that the potential for exploitation is checked by a broadly equal balance of duties and obligations. Parties entering a contract are usually strongly encouraged by legal advisers and others to protect themselves from exploitation by ensuring an approximate equality of power and symmetry of dependence and vulnerability. Thus, for true mutuality to exist, dependency and vulnerability must be approximately equally shared between contracting parties and each must have the option to withdraw from, or not to enter, a contract if the possibility for exploitation is present. Under these conditions, contracts are morally unobjectionable. However, a contractual relationship in which one party is dependent upon the other for the provision of basic needs, and does not have the realistic option to withdraw from the relationship because of this dependence, is one of exploitation. Goodin argues that exploitation can be defined by a relationship in which the relations of power are ‘asymmetrical’ and the dependence is ‘unilateral’ (Goodin 1985, p. 196). He argues ‘the most morally objectionable dependency or vulnerability relationship would exist where one party has discretionary control over resources that the other needs and cannot obtain elsewhere, yet no such dependency exists on the part of the first party to the second’ (Goodin 1985, p. 201). Indeed, it is possible that in a court of law, the Mutual Obligation contract may not be upheld on the basis that one party had entered the contract under duress or that it imposes manifestly unreasonable terms on one party.

There is little doubt that the situation in which most welfare recipients find themselves in relation to the Mutual Obligation contract is of the exploitative type. The Mutual Obligation contract is at once asymmetrical – dependent upon the government to supply basic needs – and unilateral – the government has no corresponding dependency.

In addition to the nature of the contractual relationship, contractualism relies heavily upon ‘an internalised, subjective sense of obligation undertaken by those who are *in a position to act* upon this sense’ (Hindess 1997, p. 18). In order to participate in a contract, people must be able to make rational choices about their own interests and have the capacity to adhere to contracts. In Yeatman’s words, they must be ‘free to choose in self-regarding and socially responsible ways’ (Yeatman 1999, p. 257). But where long-term ‘welfare dependency’ and poverty entrapment has allegedly reduced these capacities, advocates of mutual obligation argue that intensive case management and strict conditionality will assist people to overcome these deficits.²³ It is to this end that governments justify the imposition of Mutual Obligation requirements.

There are two problems with the idea that governments must actively assist people to overcome the incapacities allegedly induced by welfare dependency by imposing strict contractual arrangements upon them. First, it has all the hallmarks of a ‘sink or swim’ approach, i.e., people learn how to be contractual partners by participating in a contract. At the same time as acknowledging that people do not possess the characteristics necessary to freely enter a contract, advocates of mutual obligation argue that people will attain these characteristics if compelled to enter a contract that prescribes socially responsible behaviour. Those who do not adhere to the terms of the contract are penalized. Penalties are applied despite the fact that their difficulty in complying may be directly due to their acknowledged incapacities. In other words, in the full knowledge that they cannot swim, they are thrown in the ‘deep end’ and told they must learn. If they sink, they are then penalised by being thrown in again. Instead, in a fair arrangement, the existence of incapacity should, in fact, negate the basis of the original contract.

Secondly, this approach simply does not recognise the asymmetrical and unilateral nature of the contract because people are ‘assisted’ through an inappropriate exercise of power (i.e., withholding of the means to satisfy basic needs) in an unequal relationship. In this sense, the welfare contract is a ‘somewhat forced bargain’ and a ‘manifestly unequal contractual relationship’ (Hindess 1997, pp. 24-25).

Yeatman argues that the mutual obligation contract, although unequal, is defensible. This is because the marriage between paternalism and contractualism distinguishes new paternalism from older styles. In the mutual obligation contract, the function of the imbalance is for the benefit of the less powerful party, even though he or she may not yet be conscious of what constitutes their best interest. Moreover, the contract really is reciprocal, since the service provider must provide the service:

It is a contract between unequals, because it is oriented in terms of a paternalism that functions on behalf of the welfare of the client. In this case, this paternalism is authorised by public policy and thus, government agency steps into sanction non-performance on the part of the service provider (Yeatman 1999, p. 264).

²³ See Giddens (1998); Latham (1998); Mead (1997a); Yeatman (1999).

Without addressing the structural inhibitors to the realisation of their ‘deeper preference’, the contract with income support recipients, despite its intentions, remains coercive and inconsistent with principles of justice. Thus, it is not clear that new paternalism is sufficiently different in practice to older forms of paternalism.

In summing up a discussion of the ‘contractual society’, Davis argues that to ‘participate in a contractual society, people need voice, the capacity to use it and the persistence to insist continually on their choices’. For those who cannot, such as the ‘very young, the sick, the disadvantaged and the ignorant’,

...paths to ‘personhood’ must be found. Assisting people to contracthood is essential in many cases, *but must avoid a return to an older paternalism under a new guise* (Davis 1997, p. 232 emphasis added).

As long as compelling people under threat of the withdrawal of their means of support remains the strategy by which disadvantaged people are to find the path to ‘contracthood’, the likelihood of a return to older styles of paternalism is strong.

3.4 Re-thinking rights and obligations

Despite the difficulties with the idea of the social contract or with contemporary contractual welfare arrangements, it is difficult to disagree with the argument that society needs to maintain a careful balance between rights and responsibilities. Allan argues that, however unpalatable it may be for those of liberal persuasions, the conservative critics have:

been right ... in detecting something amiss in the moral culture of the West ... some unbalancing of rights and entitlements to the neglect of social obligations and civic virtues...(T)he dominant social morality is of taking and allowing others to take, rather than contributing or giving (Allan 1997, p. 15).

Moreover, the father of modern communitarianism, Amitai Etzioni has claimed that ‘to take and not to give is an amoral, self-centred predisposition that no society can tolerate...those most concerned about rights ought to be the first ones to argue for the resumption of responsibilities’ (Etzioni 1995, p. 10).

These ideas go to the heart of our morality, whether secular or religious, and are a foundation stone of political philosophy. Indeed, it is difficult to imagine wishing to live in a society in which these qualities and commitments were absent. They speak of a just, caring and responsible society where self-interest is not the driving force, where people behave in ways that consider their own individual interests and desires in the context of the well-being of others and the collective good.

However, most people believe that the spread of a culture of taking without giving is a product of changes to the social system, including the pre-eminence of economic considerations. Mutual Obligation programs seek to force people to ‘give something

back', yet the ones being so compelled are the victims of the dominant social morality rather than those who have profited from it.

It is difficult to see that the policy of Mutual Obligation extends these principles or generates a social environment in which such ideals can find fulfillment. This is especially true in the current mood of welfare reform which was generated from a broad and increasingly vocal public intolerance of unemployed people who, as the Working Nation White paper maintained, 'were making insufficient effort to find employment' or, put in more colloquial terms, were 'dole bludging'.²⁴ It is also difficult to recognise these higher values in calls for the unemployed and other disadvantaged members of society to be compelled to 'give something back' to the more advantaged members of society who are in the fortunate position of being able to assist. Instead, the policy of Mutual Obligation is a distortion and a reversal of the basic values of reciprocity. It could even be argued that the call of those in a position of advantage for those less advantaged to nevertheless make social repayments under threat of the withdrawal of their only means of support is itself evidence of the moral crisis of 'taking without giving'.

²⁴ Commonwealth of Australia (1994a), p. 125

4. Mutual Obligation and Social Structure

There are a number of other assumptions underpinning policies of mutual obligation that are not so directly related to traditional philosophical arguments, but are equally influential in the public debate. They are equally loosely argued. In this section we analyse these assumptions, beginning by examining perhaps the most essential idea – the concept of mutuality itself.

4.1 Can Mutual Obligation ever be truly mutual?

Many critics of Mutual Obligation policies and practices argue that they are defensible only insofar as they are truly mutual, that is, where the government makes meaningful and substantial commitments to processes and outcomes that make a measurable difference to people's life chances. Indeed, ACOSS is on record saying that they would 'support a properly crafted and well-balanced policy of mutual obligation ... (as long as the Government) ... meets its side of the bargain'.²⁵

But to what extent can the relationship between welfare recipients and the state or the community be truly mutual?

To begin, the idea of mutual obligation implies a dichotomy between 'givers' and the 'receivers'. Givers are conceptualised as working tax payers and the receivers as non-working, non-tax payers. As Senator Newman has said, the 'hard working men and women of this country' cannot be expected to underwrite the dependence of the non-working ones (Newman 1999, p. 5). However, this is a false distinction. It assumes that the income support recipients have not been, are not and will not be taxpayers or contribute in other ways to society. In fact, through various forms of indirect taxation, and especially under the new goods and services tax, the unemployed are taxpayers. Moreover, many have paid income tax in the past, and will also do so in the future when they return to paid employment.

Mutual obligation and structural unemployment

In an environment of structural unemployment, the government's mandate to manage the economy – part of which includes controlling the rate of employment growth – conflicts with its obligation to individual unemployed people.

Since the downturn in the global economy that began in the 1970s, governments have experienced difficulty in living up to the goal of full employment. Indeed, in practice Australian governments essentially abandoned the commitment to full employment in the mid-1970s (Langmore and Quiggin 1994). Over the past three decades, unemployment, especially long-term unemployment has remained stubbornly high (Chapman and

²⁵ Raper (1997) p. 2. ACOSS was also closely involved with the development of the Keating Labor Government's Job Compact and was supportive of the idea because of the inclusion of a job guarantee and a heavy commitment to labour market programs.

Kapuscinski 2000). Since the 1970s, government policy has favoured low inflation in the trade-off between price stability and unemployment (Argy 1998). As a result, during the 1980s and 1990s, Australian governments accepted quite high levels of unemployment for the sake of what they considered to be 'good economic management'. Moreover with higher levels of unemployment, the level of long-term unemployment rises.

Consequently, increasing numbers of unemployed lose work skills, at least in the eyes of potential employers. This causes structural unemployment, or a situation in which many of the unemployed do not possess the skills that employers are seeking. In other words, the policy of deliberately slowing employment growth, when the economy is at risk of overheating is based on the belief that pursuing full employment can be poor economic management.²⁶ In this situation, any contract that the government makes with unemployed people requiring them to search for work when work is, by deliberate policy design, not available to all, is questionable.

Moreover, it is precisely under conditions of structural unemployment that entitlement-based benefits are more reasonable than conditional benefits. It is rather ironic that the entitlement-based unemployment benefit was at its uncontested height when it was least needed, that is, when the economy was never very far from full employment, while conditions have been placed on benefits when unemployment is high and jobs are not available for all. Under full-employment conditions, expecting unemployed people to improve their chances of obtaining jobs that really existed would be much less controversial and a truly 'mutual' exchange. Although this contradiction may be partly due to affordability (i.e., entitlement based welfare was affordable when few were claiming it), it is also explained by the fact that the state 'must be seen to be fulfilling its part of the work/welfare bargain' even though it acknowledges its inability to do so (Kerr and Savelsberg 1999, p. 239).

The recognition of the macroeconomic function of unemployment (i.e., unemployment is used strategically to control inflation) gives rise to a further irony of special relevance to the mutual obligation debate. Unemployed people are making a contribution to economic stability in Australia by the very fact of their unemployment. When viewed from this perspective, the obligations are completely reversed – it is the community who should feel gratefully obliged to the unemployed person for their considerable and involuntary contribution to the well-being of their more advantaged fellow Australians.

Employment-assistance and structural unemployment

The existence of structural unemployment may be taken to mean that governments can be absolved from any responsibility for assisting unemployed people to find jobs.

Unemployed people may thus be left to languish with little hope of improving their personal situation. However, individuals must still be assisted to compete in a limited market through better skills, closer connection to opportunities and greater self-confidence. Indeed, active government assistance for unemployed people is all the more important in the face of a mismatch between the skills that employers are seeking and the skills possessed by the unemployed. Labour market programs can increase the supply of

²⁶ There are other ways than slowing growth to counter inflation (see Nevile 2000, pp. 165-174)

workers from the pool of unemployed with the skills desired by employers (Chapman 1999). This gives demand management policies the opportunity to reduce unemployment further before inflationary pressure increases.

However, it must be recognised that mandatory programs offered by the Mutual Obligation scheme concentrate heavily upon supply and tend to ignore demand side conditions. Without adequate attention to demand, many unemployed people, despite their best efforts, will miss out on jobs no matter how much more job-ready they become. This result from a phenomenon often described as ‘credential creep’ or ‘queue shuffling’ – when unemployment is high employers raise the standard and become more demanding in their selection of applicants (Theodore and Peck 2000, p. 221). By definition, not all unemployed people can be better than the others. In contrast, well designed labour market programs planned specifically with employment outcomes in mind not only make people more employable but may also increase the demand for labour.

In addition, over the past two decades the labour market has become much more fragmented with increasing levels of casual, part-time and temporary employment. We can no longer assume that a first job is a stepping stone to bigger and better employment possibilities.²⁷ The insecure nature of this type of employment means that people who leave the unemployment pool may do so only for a short period of time. The result is a ‘churning’ effect in which low-paid workers circulate between the labour market and unemployment (Theodore and Peck 2000).

4.2 Compulsion and paternalism

Advocates of mutual obligation argue that far from leaving the unemployed to languish in involuntarily idleness and isolation, governments actively assist unemployed people by making it compulsory for them take the opportunities provided. The central feature of new welfare regimes in Australia and abroad is the proposition that compulsion is a reasonable strategy to ensure that people take up the available opportunities and that sanctions are a reasonable consequence of breaching the participation requirements. Without such compulsion, it is argued, welfare recipients would not voluntarily take up the opportunities provided. Voluntarism is no longer considered a viable strategy because of the belief that welfare dependency sets up a situation of ‘moral hazard’ that reduces an individual’s capacity to act in his or her own best interests (Giddens 1998, p. 122).

The most influential justification for this can be found in what has become known as ‘new paternalism’, most clearly and formally articulated by US academic Lawrence Mead. Mead provides a succinct summary:

People who live without limits soon sacrifice their own interests to immediate gratifications. To live effectively, people need personal restraint to achieve their own long-run goals. In this sense, obligation is

²⁷ This is especially true for young unemployed people who are over-represented in the contingent labour market.

the precondition of freedom. Those who would be free must first be bound. And if people have not been effectively bound by functioning families and neighbourhoods in their formative years, government must attempt to provide the limits later, imperfect though they must be (Mead 1997a, p. 23).

These ideas are gaining ground in Australia. In his recent defense of Mutual Obligation, the Minister for Employment Services, Tony Abbott, talked of passive welfare as a 'kindness that kills'. He went on to say:

The changes are designed to make it harder for demoralised job seekers to give up... As every parent knows, really caring often means rejecting soft options (Abbott 2000).

In a more academic frame of mind, Australian sociologist Anna Yeatman draws upon Goodin's defense of paternalism in public policy in situations where people must be saved from self-destructive behaviour (such as smoking, leaving school early without marketable credentials and 'problem gambling'). Welfare recipients are in a similar category because, whilst the desire to work is the deeper preference of most welfare recipients, 'their lack of positive work experience together with the non-orienting structuring of their everyday existence mean that they find it hard to act on their deeper preference' (Yeatman 1999, p. 266). Whilst it is fairly uncontentious that government does have a responsibility to discourage self-destructive behaviour, especially of the kind that also affects society as a whole, unless the activity is of a criminal nature, it is less clear that compulsion is a reasonable method of securing this goal. People who smoke are discouraged from smoking but are not fined because they do. Young people who leave school before it would otherwise be advisable are not penalised directly for doing so.

Does compulsion work?

Advocates of the 'tough love' of new paternalism argue that compulsion is justified by the fact that it 'works' in ways that voluntary programs do not. Mead argues in his review of a number of mandatory welfare-to-work programs operating in the United States that the programs result in higher employment and a substantial decline in numbers on welfare rolls (Mead 1997b, p. 70). The approximate halving of the welfare rolls in the United States in recent years has indeed been an important development and one that warrants serious investigation. Although a large share of this is due to other factors (eg. falling unemployment, the introduction of Earned Tax Credit schemes and increased public spending on childcare), some 31 per cent of the reduction is officially attributed to welfare-to-work programs (Breuer 1998, pp. 136-7).

Mead qualifies his claims about the success of the programs by conceding that a statistical reduction in the welfare roll tells us little about why this has occurred. There is no way of knowing whether people have found other ways to support themselves or whether they have left welfare rolls due to the imposition of time limits or because they did not comply with the requirements. Moreover, the limited amount of research that has

been conducted demonstrates highly variable outcomes for welfare-leavers, and little analysis of the non-economic impact of such programs has yet been undertaken (Mead 1997b, p. 70).

There is also some evidence to suggest that the most successful mandatory programs are located in areas that have existing high rates of economic and job growth. Theodore and Peck have warned against the temptation to rely upon localised ‘success stories’ in the search for ‘what works’ because such success stories are ‘strongly dependent upon the state of local labour markets’ (Theodore and Peck 1999, p. 503). Moreover, they argue in subsequent research that the results of such programs are ‘mixed and modest’ (Theodore and Peck 2000, p. 125).

Similarly, many (including Mead himself) have warned that American programs may not translate to other contexts. This is a particularly important point for Australian policy makers to understand, as the Australian social security system is very different to the US ‘welfare system’, as is its wage structure and labour market policies.

Unlike Australia, the US makes a clear distinction between ‘the unemployed’ and ‘welfare recipients’. In the US and other OECD countries, social security for unemployment has traditionally taken the form of a ‘social insurance’ program, financed by wage-based contributions and in which benefits are earnings-related and payable regardless of other income (ILO 1984). No specific entitlement is available for single people who are unemployed, but who do not have their own insurance. Welfare payments, on the other hand, are available to out-of-work families with dependent children, but these payments do not distinguish between unemployment, sole parent or disability payments (Raper 1997, p. 9).

In contrast, Australia’s social security system caters specifically for unemployed people, resting on the ‘social assistance’ method in which benefits are financed through public revenue²⁸ (Kewley, 1973). The social security system more generally also highly targeted according to type of need (ie, unemployment, sole parenthood and disability). Indeed, the Australian system has recently been described as ‘the most tightly targeted in the industrialised world’ (Beer and Harding 1999, p. 1). These different systems have resulted in differences of magnitude and type. The US system of unemployment insurance has experienced problems of cost control and disincentives for workforce participation and self-insurance through savings. These problems are more muted in the Australian system of flat-rate means-tested benefits conditional on meeting a work test. In Australia, incentive issues mainly arise through the high effective marginal tax rates which come about as a result of highly targeted payments to fund families with children. Also, in the US, mandatory ‘workfare’ programs apply to the undifferentiated group of ‘welfare recipients’, of which the largest group is sole parent families. Thus, the focus has largely been upon getting single parents – predominantly young, female and black – into the workforce.

²⁸ This was a rejection of the social insurance approach derived from industrialising Europe, the haphazard and discretionary relief giving which characterised the poor law in the UK. It is also different from the ad hoc ‘welfare’ schemes which have emerged at state and federal level in the US in response to gaps in the contributory schemes for unemployment, health and old age insurance in the last several decades.

In Australia, although consideration is being given to activity-testing recipients who are sole parents and who have disabilities, until now, the target group for Mutual Obligation requirements has been unemployed people, mainly the young. Because of the substantially different characteristics of these target groups and the differences in the cause and consequence of their reliance upon 'welfare' or 'income support', it is unwise to assume that policies and results can be generalised.

In addition, it is not clear that people will not take up opportunities voluntarily as little analysis is available of the diversity of voluntary schemes or of the conditions that aid or their obstruct success. Instead, the claims that people will not voluntarily take up opportunities are heavily reliant upon a very general observation that voluntary programs have failed in the past (Bozic and Ritchie 1997, pp. 119-120).

Why are welfare recipients demoralised?

It is regularly asserted that long term poverty and 'welfare dependence' have a 'demoralising' effect.²⁹ However, these assertions are rarely supported by reference to systematic research on the existence and dynamics of demoralisation. This is not to imply that no research exists. In fact, the effect on psychological well-being and morale, especially of long-term unemployment, has been well documented in the research literature.³⁰ Despite the absence of a strong consensus about the exact causes of 'demoralisation', the literature has focused on the psychological impact of constantly frustrated job-searching efforts and the hopelessness that unemployment creates. As Allan suggests, this 'drains energy and initiative [and] makes effort seem pointless' so that eventually lack of effort becomes a rational response (Allan 1997, p. 8).

However, advocates of Mutual Obligation policies explain unemployment in terms of a failure of individual motivation rather than structural factors. As such, they are designed to 'make it harder for people to give up' (Abbott 2000). This is justified on the basis that it sends a positive message to unemployed people. That is, telling people that they can control their situation counteracts the stifling hopelessness of being told that the problem is beyond their control. Minister for Employment Services, Tony Abbott has recently claimed:

The trouble with telling people that the government, capitalism, or globalisation is to blame for their problems is the inevitable corollary that there is nothing they can do to help themselves. The necessary implication of having no responsibility for one's own life is having no power to change it... What Australia's unemployed now need is more stress on self-help (Abbott 2000).

²⁹ The word 'demoralisation' is quite ambiguous. On the one hand, it may be taken to mean a sense of frustration and disappointment to the point of a lack of desire to persevere; on the other hand, it may mean a degeneration of moral values. Current political rhetoric as well as some academic writing on the subject appears to play on the ambiguity, attributing both meanings, in undefined ways, to the term.

³⁰ See for example, Schlozman 1979; Jahoda 1982; Feather 1982; Fineman 1987.

However, research on unemployed people has quite consistently found that depression and ‘demoralisation’ sets in after a considerable period of unsuccessful job-searching. People may begin their period of unemployment believing that their personal efforts will eventually succeed, but this optimism fades with repeated failure.³¹ Although some may continue to believe that this is due to their own personal deficit, others attribute the cause to factors outside themselves. The research literature has yet to settle on whether internal or externalisation of blame has greater effect.³² Either way, damage is initiated by the personal experience of frustrated hopes and efforts.

‘Making it harder for them to give up’ the demoralising, frustrating and depressing search under threat of the reduction or withdrawal of basic income support is clearly an ethical question worthy of serious public debate. Although compelling people to participate in government programs under threat of severe sanctions may appear to be the obvious solution when voluntarism appears to fail, it is by no means evident that it is the only strategy worth considering. At the very least, doing so ignores and dismisses the very real frustrations that unemployed people face and shows a distinct lack of targeted or creative policy-making.

The current proposals to extend the application of mutual obligation beyond the unemployed to other groups of income support recipients in particular, sole parents and people receiving disability pensions are also based upon the recognition that these groups experience demoralisation. The Interim report of the Reference Group on Welfare Reform justified the extension of mutual obligation to these categories of recipients on the basis that people on these forms of income support often want the opportunity to participate in the economic life of the community but are prevented from doing so because of various structural impediments (Reference Group on Welfare Reform 2000, p. 13). The current absence of activity testing for these groups leaves many with little to do and only limited support in the form of labour market programs, training or other forms of social or economic participation. As a result, people in these categories experience isolation and a feeling that they are not valued members of society. Once again, therefore, the ‘demoralisation’ experienced by recipients of income support – in this case sole parents and people with disabilities – is a product of poor policies and structural impediments to participation rather than the dependence upon income support *per se*.

4.3 Discriminatory application

The selection of income support recipients as the group of citizens who are compelled to meet specific obligations requires attention. The selection of the ‘stick’ rather than the ‘carrot’ as a regulatory device in welfare or unemployment policy contrasts with neo-liberal regulatory philosophy applied elsewhere. Self-regulation through persuasion and incentive (the ‘carrot’) rather than punishment (‘the stick’) is the strategy of choice for most governments in many contemporary situations. For example, employers have an obligation to provide a safe, hazard-free work environment to workers. Although this

³¹ See especially, Jahoda 1982, pp. 92, 97; Turner 1983; Lane 1991, p. 170.

³² (Furnham 1988, pp. 170, 629). Furnham also provides a useful discussion of the literature relating to the internal/external attribution of blame and social psychological responses to unemployment.

obligation is enshrined in legislation as a general ‘duty of care’ and has significant and specific penalties for non-compliance, strict adherence to punitive enforcement measures is rare. In occupational health and safety, as in a large range of social and economic arenas such as aged care services, environmental hazard control and public health, governments have strongly favoured persuasion and negotiation as the regulatory device of first resort.³³ Regulatory theory has developed sophisticated ‘enforcement pyramids’ which move through a large number of steps, beginning with persuasion and ending, as a last and reluctant resort, with the full enforcement of penalties (Braithwaite and Ayres 1992). Moreover, voluntary schemes are increasingly relied upon in environmental regulation and in proposals to replace corporate tax with corporate philanthropy.

The Interim Report of the Reference Group on Welfare Reform has called for the extension of the concept of mutual obligation from a two-way street between income support recipients and the Government, to a four-way street between individual income support recipients, Government, the business sector and the community (Reference Group on Welfare Reform 2000, p. 51-57). In this new interpretation of mutual obligation, not only are individual recipients and governments obligated to each other, but obligations are also placed upon other sectors to enhance opportunities for social and economic participation of marginalised people in Australian society. By extending the concept in this way, the report recognises that mutual obligation is a broad-based concept that applies in a general sense to all members of society. However, the discussion of the extension of the concept does not address how, if at all, the obligations of the other parties – Government, business or the community – should be enforced and what, if any penalties should apply to breaches of their obligations. If the application of the principle of mutual obligation is extended to other groups in the Government’s ‘social coalition’, the notion that breaches of such obligations can attract penalties must also be applied consistently. This would require each party having designated responsibilities, breaches of which would be subject to penalty or sanction.

There are also many other sectors in society that, whilst not bound by legislative obligations, may be said to have moral obligations towards society, based upon the fact that they have benefited from the provision of public funds.³⁴ For example, in the 2000-01 budget, the Howard Government announced incentive measures for undergraduate doctors to persuade them to work, on graduation, in rural areas experiencing shortages of doctors and health care services. Doctors in training will be encouraged to sign contracts which oblige them to work for at least six years in rural areas after their graduation. In return, they will be exempted from the Higher Education Contribution Scheme (HECS) and receive \$20,000 per year of study. Nowhere in this complex and important area of rural health care has the suggestion been made that doctors should be compelled to work where they are most needed because of an obligation that they owe to the taxpayers who provided their expensive education (and from which doctors can expect to receive high financial returns). Instead, acknowledging the desperate need of some rural communities

³³ See for example, a recent media release by the Chair of the National Occupational Health and Safety Commission entitled ‘Regulating Workplace Safety without using a Big Stick’, in Else (1999)

³⁴ For a useful discussion of this point, see Jordan 1998, p. 82

for adequate health care, the Government has adopted an incentive-based system, because it believes that it is inappropriate to compel doctors to fulfill their obligation.³⁵

Recently, a recommendation has been made for the concept of mutual obligation to be extended beyond welfare policy to environmental management. In July 2000, the architects of Australia's Landcare program argued³⁶

surely the concept of 'mutual obligation must be extended beyond the welfare system to the much greater personal financial benefits to be received in future by landholders. If a land manager is to receive a private benefit from public expenditure on the scale required, he or she must accept the goal of sustainable land use and accept independent verification of progress towards it (Toyne and Farley, 2000, p. viii)

In calling for the extension of the application of mutual obligation in this way, the authors are implicitly accepting the use of the concept in welfare policy, but recognising that it could be legitimately applied to other areas of important social policy in which obligations could be identified. However, it is by no means evident that environment management and welfare are the only two areas of policy to which the concept should be applied. Indeed, it is likely that similar recommendations will be made to address other issues of pressing social or economic need.

It is also not clear why unemployed people are singled out as the group required to 'give something back' whilst others who rely upon the community for assistance in times of need do not. For example, accident victims who require emergency treatment in a hospital are unconditionally granted assistance. Moreover, treatment is offered without incurring a debt to society – emergency medical care is a 'no fault' benefit open to all. The idea that a safety net public health system should provide for the care of those who cannot afford private cover does not generate calls for those who rely upon public health to give something back in return for their assistance. Perhaps more pertinently, the right of adventurers to expensive, publicly funded rescue operations is rarely questioned. This is despite the fact that in such cases, although the vagaries of nature are blamed, the decision of individuals to place themselves at risk is a particularly personal one. Nevertheless, there seems to be an acceptance on the part of society that the cost of rescue operations is worth paying, within reason, to support the human quest for adventure.

³⁵ In response to a question at a recent seminar in Australia, Professor Lawrence Mead answered this concern by saying that the difference between welfare recipients and others who receive public benefits is that the latter group are 'functioning' members of society and are making their contribution through working and self-reliance, whereas welfare recipients are not. In making this argument, Mead equates a 'functioning' citizen with a 'working' citizen – that is, a citizen in paid employment. Indeed, he asserts that 'work' in this sense, is a 'common obligation' of all citizens. However, asserting the primacy of paid employment as a defining obligation of citizenship is highly contestable. Moreover, it is at odds with the interim report of the Reference Group on Welfare Reform which emphasised the value of non-economic social participation (Reference Group on Welfare Reform 2000).

³⁶ Landcare is a program that provides Federal assistance to encourage farmers, through Landcare groups, to re-generate their land and adopt sustainable land-use practices.

In the light of these comparisons, it is difficult to avoid the conclusion that the motivation behind imposing mandatory conditions upon unemployed people is the assumption that they are disproportionately irresponsible and liable to abuse the benefit system. This assumption is not likely to generate in income support recipients a strong sense of connection to wider society. In summary, the argument that specific obligations enforceable by compulsion should apply to certain categories of welfare recipients but not to others who have benefited from the provision of collective resources can be seen as hypocritical and discriminatory.

4.4 Dependency or Poverty?

The main reason for the Government's welfare reform initiative was the apparent problem of 'welfare dependency'. The Minister for Family and Community Services, Senator Jocelyn Newman claimed, 'no nation can afford to leave unchecked the waste, economic and social isolation that is the consequence of welfare dependency' (Newman 1999).

However, the use of the term 'welfare dependency' is not universally accepted in Australia, with many preferring to discuss the problem of social exclusion and intergenerational disadvantage in terms of poverty rather than dependency (Mendes 2000; Raper 1999b; National Welfare Rights Network 1999). Mendes summarises the position saying:

... the problem is not welfare dependency, but poverty. The use of the term welfare dependency suggests both that individuals are responsible for being poor, and that the government's only agenda is to reduce welfare spending. Instead, the government should talk about the challenge of providing people with alternative forms of income principally through increased employment opportunities (Mendes 2000).

The term welfare dependency is used to describe a particular concern – long-term reliance upon income support payments which is transferred from one generation to another. It is not generally used to refer to situations where people receive income support for short periods of time. As Esping-Andersen noted,

... if people's experience of marginality and want is only temporary, life chances will probably not be seriously impaired. We face a crisis of polarisation only if the losers of today are losers for life and if they pass their underprivilege on to the next generation (Esping-Andersen quoted in Pech and McCoull 1998, p. 169).

Most of the research about 'welfare dependency' has emerged from the USA. There, research has begun to converge on the idea that *some* welfare-based poverty can be explained by intergenerational transfer of welfare support. However, the results of this

research have, to date, not supported welfare reliance as the *cause* of intergenerational transfer of disadvantage.³⁷

Largely due to the lack of information available about the extent of long-term reliance on social security in Australia, much of the Australian Government's rhetoric about 'welfare dependency' tends to be directed at the apparently increasing numbers of people receiving income support, rather than at evidence of long-term, or intergenerational reliance. For example, the Minister for Family and Community Services, Jocelyn Newman cited rises in welfare receipt (and corresponding budgetary outlays) as the primary evidence of Australia's problem with 'welfare dependency' (Newman 1999). Newman did, however, also refer to the emerging evidence of intergenerational transfer on the basis of research conducted by her Department. This research set out to document the extent to which receipt of income support by young people was associated with their parents' income support receipt' (Pech and McCoull 1999). However, the findings were somewhat mixed, containing 'both good news and bad news' (Pech and McCoull 1999, p. 185). Whilst most young people whose parents relied heavily upon income support were found to be more likely than other young people to spend periods of time on income support and that this tendency increased with the level of parents' receipt of income support, they relied upon income support for only short periods of time. Despite the fact that this piece of research is used as evidence that 'we must ... stem the tide of growing dependence on welfare' (Newman 1999, p. 4), it actually provides little basis to confidently conclude that Australia has a significant problem with 'welfare dependency'.

Indeed, further research recently conducted by the same researchers in the Department of Family and Community Services challenges the view that there is a 'growing tide' of welfare dependency. Rather, they argue that the long-term unemployed person entirely dependent on welfare is 'relatively rare' in Australia and that most income support recipients, including sole parents, do some paid work either by alternating between employment and benefits, or by earning a low wage and part-benefits (Pech and Landt 2000).

The distinction between welfare dependency and poverty is by no means purely semantic. Rather, there are serious policy implications that flow from the use of one term or the other. If Australia faces a 'crisis' of increasing numbers of individuals who are trapped in cycles of demoralised welfare dependency, this may justify a hard-line response of conditional benefits and mandatory individual mobilisation. If, on the other hand, the problem is one of increasing inequality, structural poverty and entrenched disadvantage then the solutions should focus on the reduction of inequality and the redistribution of wealth.

In summary, although some research does suggest a degree of intergenerational transfer of welfare dependency, the levels found are hard to reconcile with the widespread perception that the problem is endemic or reaching crisis proportions. This does not mean that we should not be concerned about the possibility of intergenerational transfer

³⁷ See summaries of this research in Pech and McCoull (1998; 1999) and Travers (1998).

of disadvantage, rather than we should be careful about attributing the cause to welfare reliance rather than to increasing inequality and poverty.

Summary

This section has raised a number of inconsistencies in the arguments supporting compulsory programs for welfare recipients based on the idea of mutual obligation. The concept is founded on a false distinction between tax-paying and non-taxpaying citizens; it does not take account of structural component of unemployment; it is applied in highly selective and discriminatory ways to welfare recipients; and it uncritically relies on compulsion as a regulatory device without considering other strategies that may be more creative, more just and more in keeping with broader principles of democratic freedom. It also points to a significant absence of persuasive empirical evidence to support many of the central claims made by advocates of Mutual Obligation policies.

Far from being a simple and compelling idea based on shared values of personal responsibility and fairness, the principle of mutual obligation applied to welfare is a complex idea that requires substantially more informed debate in the public arena before the concept is extended. Despite these problems, the idea is becoming increasingly popular with policy makers and is poised for significant extension in Australian welfare policy.

5. Towards a Fair Welfare Policy

On the surface, the idea of mutual obligation appears to be reasonable and uncontroversial. 'Tax payers' want to see their taxes being spent well. Although unimpressed by reports that some people may take advantage of the provision of unemployment benefit, Australians are also concerned that those who want jobs should be helped to find them. However, people are also concerned at reports that the provision of welfare may create the very poverty that it is designed to alleviate through the production of a 'dependence mentality' which may be transferred to subsequent generations. The concept of mutual obligation – a 'two-way street' between the community and recipients of welfare benefits – appears to address these concerns. The 'undeserving' recipients are forced to take responsibility for themselves and stop free-riding on the efforts of others whilst the 'deserving' recipients are given opportunities for self-improvement. And those who are psychologically demoralised by the long-term effects of poverty and welfare reliance are led firmly by the arm out of dependence and along the road to self-reliance.

This paper has argued that despite the immediate appeal of mutual obligation, closer inspection reveals that the application of the idea is anything but 'fundamentally fair' or 'simple and compelling'. Although the idea that all citizens should contribute to society in pursuit of mutual advantage has strong social, ethical and philosophical roots, the principle has been distorted in current Mutual Obligation policies.

Although proponents of Mutual Obligation policies rely upon the idea of the 'social contract' for intellectual and moral justification, it is fraught with difficulty. The widespread assertion that society is founded upon a 'social contract' pays little heed to the fact that the idea has never enjoyed consensus amongst political philosophers and has generated more debate than agreement. Even if we accept the premise, the traditional expression of the 'social contract' is of a highly general character and provides little guidance about how it should be applied in specific policy formulations. Moreover, in its more contemporary expressions, contract theorists have suggested that any obligations that arise from a hypothetical 'social contract' must be qualified by consideration of the distribution of obligations amongst citizens with unequal social power in unequal societies. Because the selective application of the idea in practice tends to ignore the structural realities of disadvantage and impediments to the exercise of choice, the policy does not meet accepted standards of fairness.

What are the policy implications of a more careful analysis of the idea of mutual obligation? The purpose of this paper has been to examine the ethical and philosophical basis of the idea of mutual obligation and to stimulate debate rather than to propose detailed alternative models. However, the analysis suggests some guiding principles that should frame the development of policies that are fair and based upon an ethic of support and compassion rather than punishment and the desire to extract a return from the vulnerable. These guidelines are:

- Policies should assume that income support recipients are honest and deserving citizens, even if a few (as in society generally) may abuse the system.
- Policies should explicitly acknowledge that the need for support arises from the failure of society to provide opportunities for all, rather than the personal failings of recipients.
- Policies should acknowledge that those in work have benefited from the disadvantaged situation of the unemployed because unemployment results mainly from the failure of the economy and economic management.
- Mutuality should be balanced. Governments have an obligation to undertake, on behalf of society, programs and policies designed to overcome structural disadvantage and unemployment.
- Consent to any ‘contract’ between income support recipients and the Government can only be assumed where realistic alternatives to income support are widely available and accessible.
- Systems of monitoring income support recipients should focus on non-punitive methods of compliance management, and penalties should be an option of last resort.
- Certain vulnerable groups should not be singled out for compulsory obligations. Similar standards should be applied to other recipients of government funds and accountability measures should be consistently applied to all those considered to have obligations.

Rather than making it harder for people to give up the search for employment, policies based on these guidelines would shift the focus to making it easier for people to continue their search and to find success. Such policies would require, at least, a recommitment to the goal of full employment, fairer distribution of wealth, restoration of active labour market and training programs and a job guarantee in the public and private sectors. In addition, recipients’ compliance with activity tests should be monitored according to a graduated, regulatory system that give priority to innovative methods of persuasion and self-regulation with sanctions as a last resort. These principles can also be applied to policies that can accommodate the needs of sole parents and people with disabilities in order that they can participate as much as they are able in economic and non-economic ways in society without fear of losing their basic means of support.

The concept of mutual obligation as the basis for social security policy in Australia is currently receiving too much uncritical acceptance. The social consequences may be severe and long-lasting. This paper has described a range of difficulties and inconsistencies inherent in the idea and application of mutual obligation that give cause for caution and point to the need for a more sophisticated debate. The proposal, likely to become a recommendation in the final report of the Reference Group on Welfare Reform, to extend enforceable obligations to other groups of income support recipients is likely to

compound and multiply the unfairness of the Mutual Obligation policy. Therefore, proposals to further extend and embed the concept deeper into Australian social policy prior to the resolution of these difficulties, are unwise and premature.

It is hoped that this paper will stimulate more critical public debate in order that better and fairer welfare policy can be made. New policies need to acknowledge the general principle that all citizens have a responsibility to contribute to the mutual advantage of all. However, policy also needs to be balanced by a serious commitment to reduce the disadvantages faced by many who are forced by circumstance to depend upon income support payments. In short, new policies must be consistent with principles of fairness and social justice.

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