Crime and justice: criteria for a social security system

Malcolm Torry asks whether our benefits system is just and what part it plays in crime creation

The most recent report by the National Audit Office about the Department for Work and Pensions contains this paragraph:

> *Fraud and error arising from benefit expenditure has been a challenge for the Department for a number of years. The Department's estimate of total overpayments due to fraud and error in 2011-12 is £3.2 billion, or 2.0 per cent of total benefit expenditure. ... The Comptroller and Auditor General gave a qualified audit opinion on the Department's 2011-12 Annual Report and Accounts due to the material level of fraud and error in benefit expenditure.*
> (National Audit Office, 2012)

This might suggest that the whole system is suffering from significant levels of fraud, but that is not the case. Fraud related to Jobseeker's Allowance costs £180 million per annum (4.1 per cent of the total budget), and fraud related to means-tested Pension Credit costs £190 million per annum (2.3 per cent of the budget), but fraud related to the State Pension is so low that it is listed in the table as £0 million (Department for Work and Pensions, 2011).

A similar pattern is found at Her Majesty's Revenue and Customs (HMRC). In 2010-2011, error and fraud relating to means-tested Tax Credits cost £2.27 billion (8.1 per cent of the total budget), causing the Comptroller and Auditor General to qualify HMRC's accounts for 2011-2012. The non-means-tested Child Benefit suffered from irrecoverable overpayments of £28.7m in 2011-2012, amounting to approximately one per cent of the cost of error and fraud relating to Tax Credits. (In 2011-2012, £30 billion was paid out as Tax Credits and £12 billion as Child Benefit, suggesting that Tax Credits suffer from 40 times the fraud and error suffered by Child Benefit). 'Fraud' and 'Child Benefit' do not appear together in the HMRC annual accounts, whereas 'fraud' and 'Tax Credits' appear together frequently (HMRC, 2012).

Does our benefits system encourage or discourage crime?

The message is clear. Means-tested benefits attract high levels of error and fraud, whereas non-means-tested benefits do not. Claimants of both types of benefit are members of the same communities and of the same society, and often they are the same people, which rather suggests that it is means-testing, and not the claimants, that is the cause of fraud in the benefits system.

A clue to the mechanism was discovered over 20 years on an Exeter Local Authority housing estate. Researchers found that each household had developed a financial strategy consisting of employments and self-employments, with casual cash earnings not being declared to benefits authorities if those earnings remained below a certain community-agreed level. Someone on means-tested Jobseeker's Allowance who declares varying small earnings can find themselves without benefits for several weeks while they are recalculated. Similarly with Tax Credits: to declare casual earnings can result in demands for repayment of money that has already been spent. Consistent net income is important for someone with dependents, so it is responsible and rational not to report small casual earnings (Jordan et al., 1992). Criminal activity had become a community norm. For crime to be both rational and socially acceptable in this way is to bring the law into disrepute, and will make it easier for a community to conceptualise other similar criminal activity in the same way.

It is means-testing, and not the claimants, that is the cause of fraud in the benefits system

An important question emerges: who should be held responsible for such criminal activity? Clearly, the immediate perpetrator must be held responsible; but if a community's moral sense finds the activity acceptable, then the law that declares rational and responsible activity to be criminal must share some of the responsibility. The question therefore becomes: How should responsibility for criminal activity be divided between these different players?

Child Benefit does not vary with earnings, so no declaration of earnings is required, so no criminality is involved. It *is* possible to claim Child Benefit fraudulently – for instance, by pretending that a child is still in full-time education when they are not: but such fraud is rare – as we have seen, such fraud costs proportionally one fortieth of the cost of fraud relating to means-tested benefits. This rather suggests that in the absence of the benefits regulations that make fraud related to means-tested benefits both rational and responsible, very little criminal activity would occur; which in turn suggests that we should hold means-tested benefits largely responsible for the criminal activity. This raises the obvious question: if benefits fraud is largely the fault of the system, to what extent should the fraudulent claimant be held responsible for the criminal fraud?

10.1080/09627251.2013.865504

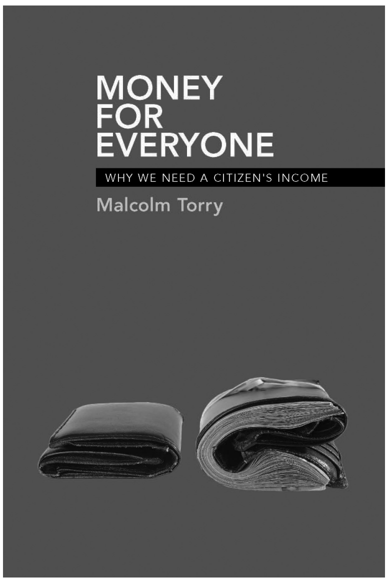
Is our benefits system just?

The concept of justice is a complex one, and one with a complex history, so in an article of this length an adequate treatment of the question 'Is our benefits system just?' is clearly impossible and the reader will need to look elsewhere (Torry, 2013, and associated website appendices); but we do have space to study one particular aspect of justice, and that is equity, or equal treatment.

The government no longer publishes the Tax Benefit Model Tables that show how many household types suffer marginal deduction rates greater than 85 per cent across substantial earnings ranges: that is, how many household types receive less than 15p for each extra £1 they earn. When the tables were last published about five years ago the graphs showed substantial numbers of household types suffering such marginal deduction rates when they were earning up to £400 per week. We can only assume that the situation is the same today, because the reasons will be the same: as earnings rise, Income Tax and National Insurance Contributions become payable, and means-tested benefits, including Housing Benefit and Council Tax Benefit, are withdrawn. Iain Duncan Smith, Secretary of State for Work and Pensions, is aware of this problem, which is why he proposed that the existing bundle of means-tested benefits should be combined into a single means-tested benefit, Universal Credit, with a single withdrawal rate (the original proposal was for 55 per cent, but on implementation it will be 65 per cent) (Department for Work and Pensions, 2010). For a household paying Income Tax and National Insurance Contributions, the combined marginal deduction rate will be 76 per cent; and for many households it will be higher because Council Tax Benefit is now being localised and each Local Authority is able to set its own withdrawal rate. Many households will therefore find themselves with marginal deduction rates not dissimilar from those imposed by today's benefits system.

Those already worse off are being treated worse than those better off. This is as far from equity as it is possible to get

Someone earning £200,000 a year will receive 53p out of every extra £1 that they earn (because their top rate of Income Tax will be 45 per cent and they will be paying a 2 per cent National Insurance Contribution above the upper threshold). Someone on Tax Credits, Housing Benefit and Council Tax Benefit – or, in the future, on Universal Credit and Council Tax Benefit – if they are also paying Income Tax and National Insurance Contributions, will receive 24p out of each extra £1 they earn if their Local Authority does not withdraw Council Tax Benefit at the same time as other benefits are withdrawn, and less if it does.



This means that those already worse off are being treated worse than those better off. This is as far from equity as it is possible to get.

Why we need a Citizen's Income

The UK's benefits system shares responsibility for criminal activity, and it is unjust. We expect legislation in this country to be just and not to encourage criminal activity. It rather looks as if the legislation that governs our benefits system fails this test.

As we saw when we studied the levels of benefits fraud, it is means-tested benefits that are partially responsible for criminal activity, whereas non-means-tested benefits are not. Similarly, it is means-tested benefits that are responsible for high marginal deduction rates, whereas universal benefits such as Child Benefit are not because they are not withdrawn as earnings rise.

We have lived with means-tested benefits for so long that we find it difficult to conceive that an alternative might be possible. In my recent *Money for Everyone: Why we need a Citizen's Income* (Torry, 2013) I show that it is possible to pay to every individual a Citizen's Income: an unconditional and nonwithdrawable income as a right of citizenship: the same amount for everyone of the same age, with that amount completely unaffected by earnings or any other personal circumstances. In relation to a Citizen's Income fraud would be almost impossible, so no longer would the benefits system be responsible for so much criminal activity; and because low earnings would normally experience marginal deduction rates lower than those experienced by high earners, the benefits system would be a great deal more just.

It is time to give the idea of a Citizen's Income some serious consideration. ■

Dr Malcolm Torry is Director of the Citizen's Income Trust and a Senior Visiting Fellow, London School of Economics

References

Department for Work and Pensions (2010), *Universal Credit: Welfare that works*, London: Department for Work and Pensions.

Department for Work and Pensions (2011), *Fraud and Error in the Benefit System: Preliminary 2010/11 Estimates*, London: Department for Work and Pensions.

HM Revenue and Customs (2012), *Annual Report and Accounts 2011-2012*, London: The Stationery Office.

Jordan, B., James, S., Kay, H. and Redley, M. (1992), *Trapped in Poverty? Labour-market decisions in low-income households*, London: Routledge.

National Audit Office (2012), *A summary of the NAO's work on the Department for Work and Pensions 2011-12*, London: National Audit Office.

Torry, M. (2013), *Money for Everyone: Why we need a Citizen's Income*, Bristol: Policy Press.