Rejoinder

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Rejoinder

by Freek Bruinsma

As far as Furniss' article is meant to be critical, I agree with his main comment that my 'construction is not universally appropriate'. This holds true for most theories in social sciences. We disagree, however, in the assessment of the welfare state, and this disagreement can partly be explained by our different approaches to welfare law.

In the usual aprpoach – exemplified by the detailed description Furniss provides us with, and which I followed in a previous article ('Het recht van de zwakste', in XXVII *Ars Aequi* (1978) 1-13, and in *De Gids* (1978) 2: 101-109) – welfare law consists of welfare rights of the weaker party, welfare duties of the stronger party, and welfare policies of the state. Furniss, despite the title of his article, focusses more on *law* than on *rights*. His definition of the welfare state even suggests that welfare rights emanate from the positive state, in a non-welfare context. His description of the welfare rights in terms of 'ad-hoc provisions, especially for the poor' is not adequate. Welfare rights are better perceived as a systematic part of the welfare state, and as a kind of protection of the weaker party (see for this distinction between the law of the poor and welfare law, my text ftn. 8). In this approach to welfare law the shortcomings of the welfare state, if any, appear in non-assertion of welfare rights, law-breaking and evasion of welfare duties, and ultimately in failures of welfare programs. The welfare state comes across as Santa Claus, who takes fatherly care of his children; through his largesse rights are provided, duties are imposed, and policies are formulated. Thus, in Furniss' view, if somebody has not received his rightful share, the welfare state is at fault and it should just try harder.

Since the evidence about the successes and the failures of welfare states is contradictory[1], there is room for disagreement. Some of us continue to believe in the welfare state, as Furniss seems to do. For others serious questions about the impact of the welfare state on society have been raised and for them the verdict is still out – that is the position I take. As a sceptic of the welfare state I wonder whether it is effective in helping people solve their problems, and how its consumers decide on their own mix of voice and exit.

My analysis was not as an advocate of exit, rather I was examining the sensible reactions by the less powerful, in particular the assertion or non-assertion of welfare rights. The peculiarity of a right is that it is best viewed from the perspective of the consumer:

> 'A right provides the agent who holds it with a warrant for taking or refusing to take an action or range of actions that he conceives to be in his interest or otherwise to advantage him. Once accorded or otherwise obtained, what we will call the administration of the right (and hence the acting) is in large measure at the direction of the person who holds it. It is for that person to decide whether, when, and how to exercise it, whether to alienate it, how vigorously to defend it, and so forth'.
> (from: Richard E. Flathman, *The practise of rights* (1976) 1-2).

In the western hemisphere rights are formulated in terms of individual, not collective assertion. In other words, the legal formula of individual rights to welfare, such as a right to public assistance, to decent housing, and to medical care, permits the freedom of choice for the individual. Even in those welfare situations in which the costs of collective assertion are low the individual, knowing 'the logic of collective action' by heart, could decide to wait and see how others do the job for him (Furniss, ftn. 3 and 6). In sum, the notion of a right implies the adoption of the consumer perspective of the individual calculus.

The distinctions Furniss so neatly made in his introductory comments collapse when we adopt the consumer perspective of the weaker party. The duties of the stronger party are assessed as factors by the weaker party in determining his own actions. The assessment would include the rule conforming tendency of the stronger party and the rule enforcement tendency of public authorities. Moreover, in the eyes of the average consumer it does not make much difference – as it does for political scientists and lawyers – whether he is dependent on a public or a private entity. In every conflict situation the weaker party can look for allies, regardless of whether they may be found in the private sphere (consumers' organizations, tenants' committees, organizations of ex-inmates of total institutions, etc.) or in the public sphere (enforcement agencies, publicly financed legal aid, parajudicial dispute settlement, etc.). The welfare state subsidizes its own legal criticism. Thus, the distinction between private and public opponents is of minor importance for the problem of (non-)assertion. The presence of the many private and public organizations, on the other hand, diminishes the costs of individual assertions (p. 373-4).

And last but not least, the existence of the welfare state does not necessarily affect the asymmetrical need distribution and the corresponding power

distribution (e.g. the Dutch slogan: 'Housing is a must, every day!' could result in squatting as a last resource). Living in a welfare state with a 'national minimum as of right' does not guarantee a job, a house, a decent living, or an equal chance to education and medical care. The welfare context might be less decisive, after all, than the conditions of advanced capitalism, or 'advanced industrial democracies', if you like.

The establishment of consumer-oriented organizations, such as special courts and governmental agencies, has not always resulted in more assertions by weaker parties. For example, small claims courts have, despite their rethoric of sensitivity to the weaker parties, served more for creditors to enforce debt claims rather than for ordinary individuals to vindicate their rights (see B. Yngvesson and P. Hennessey, 'Small claims, complex disputes: a review of the small claims literature', in (1975) 9 *Law and Society Rev.* 219 ff.). Similarly, there is little evidence that client organizations, such as labour offices and welfare agencies, actively seek to register as many clients as they can; on the contrary, they often are much more concerned about their caseloads.

Political scientists often seem to have a somewhat narrow concept of law. At worst the legal process is seen as a rather simplistic process of issuance of rules by the state, of enforcement by public authorities, and interpretation by judges. Furniss seemingly slips into such misconceptions. In several places he speaks of the state *giving* rights to the people. Public intervention, however, does not generally create rights; at best it makes rights more secure, but quite often it increases the insecurity risk.[2] Moreover, the idealized concepts of the liberal state with its judge-centered rule of law are no longer central. In the welfare state the ideal of substantive justice is intended to be achieved mainly through administrative agencies. The relative reduction in importance of the judicial branch has not precluded, however, a search for a new model of judicial action, more attuned to the resolution of social issues (see Abram Chayes, 'The role of the judge in public law litigation', in (1976) 89 *Harvard Law Rev.* 1281 ff.).

It would also be a mistake to confuse the role of the judge with the role of the law. In recent legal theory there is a remarkable attention given to the legal character of policies, such as full employment, environmental pollution, urban planning, discrimination and emancipation (see Philippe Nonet and Philip Selznick, *Law and Society in Transition: toward Responsive Law* (1978) 73-113). Some kind of law continues to play a central role, also in the welfare state and even if only at a symbolic level.

Notes

1. It is perhaps a sign of Dutch political culture that there even exists an academic journal, which is to a large extent devoted to the crisis of the welfare state: *Beleid & Maatschappij;* see also the reader, edited by J. A. A. van Doorn and C. J. M. Schuyt, *De stagnerende verzorgingsstaat* (1978).

2. Because of the fact that welfare expenses were thought to be too high certain welfare states, including the Netherlands, restricted the right to welfare benefits, for example the recently extended meaning of what constitutes a suitable job ('passende arbeid').

Literatuur

Politieke wetenschap en ruimtelijk beleid: ruimtelijk-beleidsonderzoek

door W. Derksen

Naar aanleiding van: – Glasbergen, P. en J. B. D. Simonis (1977), **Verstedelijkingsbeleid in Nederland,** Utrecht;
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– Apotheker, H. H. (1978), **Theorierapport planproces,** Groningen;
– Werkgroep Beleidsanalyse Stadsvernieuwing (1978), Interimrapport 'Horizontale doelstellingenstructuur van het Stadsvernieuwingsbeleid op rijksniveau', **Beleidsanalyse,** 7, 4: 4-48.

Om meerdere redenen is het ruimtelijke beleid een interessant onderzoeksterrein voor de politieke wetenschap. Politicologen die geïnteresseerd zijn in participatie, vinden in de inspraak waarmee ruimtelijke ordening vaak gepaard gaat, veel van hun gading. Vooral de afgelopen tien jaar is er met betrekking tot de ruimtelijke ordening een levendige inspraak ontstaan, mede omdat het juridisch kader van de ruimtelijke ordening de gelegenheid voor bestuurden om in te spreken formaliseert. Bestemmingsplannen en streekplannen mogen niet eerder door Gemeenteraden en Provinciale Staten worden vastgesteld dan nadat de bestuurden de mogelijkheid hebben gehad bezwaarschriften in te dienen. Aan een wettelijke verplichting voor Raden en Staten om een uitgebreidere inspraak te organiseren alvorens tot besluitvorming te komen, wordt zelfs gewerkt.

Ook anderszins is het ruimtelijk beleid een interessant onderzoeksterrein voor politicologen, met name voor degenen onder hen die zich met beleidsanalyse bezighouden. Het ruimtelijk beleid, beleid met betrekking tot de ruimtelijke ordening, kan relatief eenvoudig worden onderzocht, te meer daar de rijksoverheid de laatste vijftien jaar een aantal belangrijke aanzetten voor een dergelijk beleid heeft gegeven in de vorm van enkele Nota's over de Ruimtelijke Ordening. Wat is er van de goede voornemens in de praktijk terechtgekomen, welke (bindende) besluiten zijn genomen en welke effecten hebben deze besluiten in de samenleving gehad?

In dit artikel wil ik enkele kanttekeningen plaatsen bij een viertal studies die het ruimtelijk beleid van de overheid als onderwerp hebben. Dat ik me daarbij voornamelijk zal richten op de twee studies van Glasbergen en Simo-