Welfare Rights in the Welfare State

by Norman Furniss

The occasion to present the following discussion of the relationships between welfare rights and the welfare state has come from reading the challenging article by Freek Bruinsma, 'The (Non) Assertion of Welfare Rights' (1980). Bruinsma develops Hirschman's (1970) concepts 'exit' and 'voice' in relation to putative welfare claims. He posits four options open to the 'weaker party' which I translate back into Hirschman's terms: revenge (basically voice after exit); fight (basically voice); flight (basically exit); acquiescence (Hirschman is concerned mainly with active reactions to discontent). Bruinsma proposes that 'the welfare state is based upon the assumption of flight, whereas often from the consumer perspective flight is preferable and in fact preferred' (p. 362) reason is put directly somewhat earlier (p. 360): 'The argument to be presented here is that the power position of the stronger party prevents insistance on rights by the weaker party. If this true, . . . the strategy of the welfare state provide the weaker party with rights (is not) of much use'. The remainder of the article subtly develops this position.

My main point can be made with similar directness: Bruinsma's construction is not universally appropriate. The likelihood that an individual calculus will take the form presented above, I will argue, is restricted to the particular situation in which the 'stronger party' (in terms of market power) confronts the 'weaker party' in what is for the weaker party a socially atomized context and in the absence of purposeful government policies designed to provide a national minimum as of right. In brief, an individual calculus leading to non-assertion will tend to hold in *nonwelfare states*. And even in this case, before undertaking inferential reasoning one should be careful to consider the temporal dynamics of the relationship among all the actors involved.[1]

I begin my presentation by stepping back from the assumption that everyone in the 'first world' lives in a welfare state. This assumption can be challengd, I believe succesfully. Instead, I advance the less contentious proposition that 'the welfare aim of modern advanced industrial democracies is to provide some protection to the weak'. This acknowledged, we can now make a number of necessary distinctions. (I shall refer to the 'strong' as the aggrega-

tion of 'stronger parties', 'weak' 'of weaker parties'.)

First, we must distinguish between two different patterns of state protection; here the exit-voice terminology will become useful. Interacting in society, individuals may be classified 'stronger' or 'weaker' in terms of market power: employee-unskilled worker; landlord-tenant, etc. Government intervenes to give legal rights to the weaker party (but *not* to disrupt the asymmetrical power relation. Now we have three 'actors': Government (or 'bureaucrat' if one wants to adhere to some interpretations of 'methodological individualism') – stronger party-weaker party. Because it is often overlooked in critiques of the 'welfare state', it is important to stress that, regardless of how often it is used, the intervention of government for the first time gives the weaker party the option of voice (either fight or revenge). Previously the only course of action open to the weaker party was some form of exit. Moreover, and even less frequently noted, government intervention, as well giving rights to the weak, also imposes obligations on the strong. To continue our examples, the employer might be bound by occupational satefy laws, the landlord by rent control. In many instances legal action need not be instituted by the weaker party at all. The other actor, government, may request sanctions regardless of whether an affected individual complains.

The other pattern of protection concerns entitlements, or welfare as narrowly defined. For example, it may be legislated that disabled persons have a right to public support. In this pattern there are only two actors: government – the weaker party. (It remains appropriate to use the term 'weaker' if we assume that government makes the inevitable ambiguous decisions – what it means to be 'legally blind' etc.). This pattern is in effect created by government. In the absence of other delimiting factors one would expect asquiescence on the part of the weak — assertion would have to be taken against the actor giving rights in the first place; flight usually makes little sense.[2]

The second set of distinctions involves the organizational capacity of the weaker party. We will disregard the problems of making a dichotomy of what empirically is a continuum and characterize the weak as basically atomized or basically organized. It makes a tremendous difference in inferring the opportunity costs of the weaker party in which position he finds himself. The more organized the weak, the more we would expect assertion of welfare rights.[3]

Our final distinction involves the type of state we are describing. In pursuing this question more discrimination is required than is found in the statement that 'what differentiates the welfare state from other types of states is that dire personal circumstances are not seen as the result of personal failure but as an outcome of the social process' (Bruinsma, p. 358). Public realization

that the 'social process' was a more important determinant of social distress than personal failure was common in Western Europe by the 1880s (see Harris, 1972). It does not aid conceptual clarity to call these states 'welfare states'. Nor would I imagine that there exists today a single state in the world that would ascribe the social distress of its citizens to their personal failings. (Whether the state is willing or able to relieve this distress is, of course, a different matter. Social distress can also be explained or justified on ideological or other collective grounds.)

Since we are limiting ourselves to advanced industrial democracies, we can (with some loss in precision)[4] depict two types of states – those that make *welfare provisions* through a series of ad hoc rights or entitlements; and those that pursue a *guaranteed national minimum* through intervention in market and property relations. We will call the latter 'welfare states'. The welfare policies of this type of state differ markedly from those of a state legislating ad hoc welfare provisions for particular groups. They are more likely to encompass the entire population. And they often have the consequence of altering market relations so that in social interaction the weak have less to fear from the strong.

With these distinctions in mind we can proceed toward an understanding of under what circumstances assertion or nonassertion of welfare rights might occur. We can see immediately that an individual calculus would tend to nonassertion when the weaker party is faced:

(a) with a three actor situation government-stronger party-weaker party in which the market power of the stronger party remains intact;
(b) with no immediate prospect for collective action;
(c) with an institutional structure (the state) oriented toward ad hoc welfare provision only.[5]

In other combinations the decision calcules becomes more complex. In particular, with effective organizational capacity and with an institutional structure committed to welfare state goals, we would expect to find fewer instances of nonassertion of welfare rights. And empirically we do in three different ways. First, and most directly, a far larger proportion of welfare policies are universal. The impact is significant. I quote from Leibfried's (1978) comparative study of welfare programs in the United States (by our distinction a nonwelfare state) and the Federal Republic of Germany (a welfare state): 'The German welfare system absorbs only one percent of GNP; the American system 2.8 percent. Even though the United States welfare system has 2.8 times the absorption rate of resources in GNP terms, it does not provide better lives for the poor because it has 4.2 times as many welfare recipients per 1000 inhabitants'. Why? Because 'social programs outside the welfare area (that is, universal benefits) absorb much less in GNP terms . . .

. . . Welfare transfers in the United States would have to be multiplied by only 2.75 to obtain an expenditure level equal to transfers from other social security programs. In West Germany the multiplier is at least 17.8' (p. 66. My emphasis). The message is clear: the weaker party will tend to gain to the extent that he has no unique 'welfare right' to assert. The implication for those wanting social 'reform', I wrote in 1975, is that 'a focus on poverty issues in a restrictive selectivity . . . The population becomes divided into a large majority which needs, apparently, no assistance, and a minority which does . . . This is an outcome from which the poor have little hope of gaining' (p. 305).

Second, in welfare states those targeted programs that remain tend to have less (but still some) problems with the 'take-up rate' because the bureaucratic orientation is more open to claims. (For the contrast between Britain and the United States see Furniss, 1975. A successful effort to reduce the take-up rate in the American AFDC program – that is, to *encourage* nonassertion – is described by Randall, 1979). Third, in the three actor pattern of welfare protection there can be an effort to reduce the market power of the stronger party. For example, land use planning in general and housing policy in particular can affect dramatically the position of rich and poor, landlord and tenant. I will discuss this point in more detail later.

These considerations lead to the conclusion that an understanding of the welfare context is essential in delineating the problem of nonassertion. We are also able to present two propositions concerning the role of law in articulating welfare rights. (I hasten to add that my use of examples will be illustrative. These propositions are derived logically not empirically. Neglected variables such as the role of law in political culture and the power of the legal profession as a pressure group will be more significant in explaining many particular cases). First, the establishment of special courts in three actor patterns of welfare protection signals a change in power relations that will lead to more assertion. To force claims through the regular judicial system reduces assertion because for the weaker party the role of organizations is usually circumscribed and (the two of course are connected but not the same) because the ad hoc claims that are made do not in practice fare well. (On the latter see Bruinsma, pp. 363-5). Special courts can be set up to overcome these disabilities. For example, during the New Deal an attempt was made, in the words of the Wagner Act (1935), to redress the 'inequality of bargaining power' between employers and employees by granting rights to workers to organize and bargain collectively. It was understood by those administering the law, however, that these rights would not be realized easily through the existing legal system because the federal district courts had shown themselves to be consistently anti-union. (In other words, non-

assertion might in practice be the norm). The reaction was to establish a new court and a new law for labor cases and to staff the court with judges generally sympathetic to the goals of the act. The new right to organize was soon asserted and was upheld in over 75% of the cases. Union membership doubled in five years, tripled in ten.

I present the second proposition even mode tentatively: In a welfare state the role of law defined as the legal resolution of policy issues is reduced. We should not conflate this reduced role of law with a threat to what is often called the rule of law defined as constitutional guarantees to freedom of expression and so on. We are concerned only with policy formation and implementation. In these areas there will be more mutual adjustment and group bargaining during implementation. Neither fits easily the traditional contours of the legal process. Aubert (1977) describes the impact of this 'changing mode of conflict resolution' in Norway. He finds a stagnation in the case load of the regular courts and a relative decline in the number of members of the legal profession compared to others (pp. 855, 856). He concludes that 'one is struck by the extent to which the lawyer, and especially the judge, is oriented toward the past . . . The lawyer is not primarily concerned with cause and effect but with normatively prescribed relationships . . . Instead of estimates in terms of probabilities, the lawyer operates with dichotomies . . .' (p. 858). None of these attributes increases sensitivity in dealing with either three or two actor patterns of welfare rights protection.

With the context within which the nonassertion of welfare rights would be markedly attenuated now elaborated, we can return to the particular case in which nonassertion is likely to be present. 'Likely' is an ambiguous word, and the ambiguities need to be spelled out. They are of two major types. First, a decision by the weaker party to choose fight, revenge, flight, or acquiescence is not taken in a vacuum but in teraction with other relevant actors. As we have seen, giving rights to the weaker party also involves the imposition of obligations on the stronger party. The extent to which these obligations issue in a structured dialogue between the stronger and weaker party will influence the individual calculus of both. So will the extent to which government actively seeks out nonperformance of obligations and acts as a *surrogate* for the weaker party.

Turning to the government-weaker party pattern of welfare protection, this interaction is at least as influenced by calculations on the government side. These usually tend (notoriously so for conservative critics of the 'welfare state') toward encouragement of more assertion. The individuals who staff welfare agencies generally favor declared institutional goals. And the dynamics of bureaucratic incrementalism (or 'aggrandizement' – for a classic exposition see Niskanen, 1971) fosters a concern to develop new rights per-

haps not originally forseen. Case studies of this process in action in America are the food stamp program (1965 on) and AFDC (1965-1975). The tremendous surge in enrollment and assertion cannot be understood by atempting to construct what in isolation the decision calculus of the typical weaker party might have been. It was interaction with the evolving position of the government actor that impelled more assertion that became self-sustaining.

The second type of ambiguity arises from the methodology employed to understand the phenomenon of nonassertion. The method of 'interpretative sociology' ('verstehen' might be tranlated as 'understanding') has significant strengths, and I feel it is the most appropriate for the investigation of this kind of social interaction. The aim is not just to comprehend what others do but to increase total (including self) awareness. This is all fine. But as Giddens (1976) develops in a powerful discussion of the perspective (esp. pp. 52-58), one must not forget that social norms and rules are capable of differential interpretation – 'differential interpretation of the "same" idea system lies at the heart of struggles based upon division of interest' (p. 53). From this insight I raise at item of immediate relevance to our discussion. Divisions among the weak will lead to different reactions to what objectively might appear the same legal issue. In time 1, while most weaker parties might choose flight, some will choose fight. The resolution of this assertion will 'feed back' to influence the calculations of weaker parties *and the other actor(s)* in time 2.[6]

This temporal dimension involved in the assertion of legal rights is of some importance. Compared to other modes of social change, the development and imposition of legal rules are slow to produce results. A static look at what is after all an on-going process can seriously underestimate (or less obviously overestimate) the potential for temporal development. Legal impact studies are particularly prone to this problem. In a valuable synthetic interpretation Browh and Crowley (1979) give the example of the sudden (and belated) desegregation of public schools in Georgia in 1969 (p. 272):

> According to the conventional wisdom in 1969, a court could not have accomplished the desegragation of a southern state's public schools so promptly. This assumption was fed by the finding of legal impact studies emphasizing the limited tools courts possess to increase compliance with their decisions, especially when they try to alter the behavior of large numbers of prople. A major problem with this judgment was that it failed to account for the cumulative impact on school boards and the public of legal directive after legal directive, protest after protest, debate after debate on school desegragation.

In sum, any methodological outlook applied to a complex social phenomenon like the nonassertion of welfare rights must deal with interactions among all

the relevant actors over time.

The relationships between welfare rights and the welfare state have now been outlined. I conclude by raising two more general issues. First, a component of the neo-conservative intellectual fashion, there seems an almost irrestible temptation to link a discussion of welfare rights and policy impelmentation generally to observations about the broad 'failure' of the welfare state. Bruinsma's article is not an exception. Because of the way in which the comments are presented, in particular because of the use of the passive voice ('it is said to be more a promise than a reality . . .' etc.), one cannot know whether the sentiments should be attributed to Bruinsma himself. In any event, I must note that in so far as contentions about the 'failure' of the welfare state are offered in empirically testable form, there is precious little evidence to support any of them.

Specifically, it may be that the welfare state 'cannot fulfill its pledge to create a human society' (Bruinsma, p. 358). Whether it can depends on one's definition of 'human society', an essentially contested concept. But there is no evidence that 'welfare politics impair the workings of traditional and highly regarded political institutions'. Leaving aside the question whether traditional institutions are highly regarded, it is remarkable the extent to which programmatic welfare reforms have been first discussed in parliaments and then made issues in election campaigns (Britain with the 'Beveridge Plan', Sweden with pension reform). Where welfare policies often seem unconnected with the deliberations of representative bodies are in states like the United States that provide ad hoc welfare protection only.

Similarly, there is no evidence that 'nobody cares individually'. Charities flourish in welfare states. There may be a shift from support for general maintenance (dependence) charities like the Salvation Army. If so, thank God for that. 'It is said that it does not work'. Yet redistributive social policies have had a major, observable impact on the way people live. For a case study on housing conditions in Sweden, Britain and the United States see Heady, 1978.[7] 'It is said . . . that it is too expensive for what it does do'. Yet Cameron (1978) has found a *positive correlation* between the level of welfare spending and the openness of the economy. In brief, and this presentation obviously could be extended, from the evidence one can assemble we derive a picture at odds from that posited by many critics. Welfare states are associated with strong democratic institutions and active political participation. With higher welfare pending and successful redistributive social policies, we find more internationally effective economies.

The second major issue concerns the insights the use of exit-voice terminology in general and Bruinsma's article in particular can give in furthering an understanding of why firm legal guarantees alone are not sufficient to

confirm actual welfare rights. There seem to be three major ways out of this dilemma. The first (developed by Bruinsma, pp. 374-6) is to increase opportunities for exit. The second assumes on the contrary that guarantees do not work because there are too few of them. Voice, it is maintained, can be achieved but only through the articulation of more rights, for example a property right in a job. (This position has been taken by institutional economists as early as Commons.) The third option, presented by Marx and others, is to mobilize the weak. One becomes liberated, that is rights become reality, through and during collective struggle. The theoretical and empirical contrasts among these three alternatives have not been sufficiently delineated.

An application of the exit-voice perspective also aids our interpretation of how welfare institutions function. We have adhered to the definition of a welfare state as the provision of a national minimum as of right. 'Voice' is government-weaker party interactions will be facilitated for reasons previously described. But the provision of a national minimum is less significant in influencing the propensity to voice in three actor interactions: stronger party-weaker party-government. To provide security 'from cradle to grave' is to affect only marginally the market and property power of the strong. To encourage voice among the weak in this type of welfare protection there must be purposeful steps toward more social equality.

Notes

1. I have tried to construct this article so that it can be read either in conjunction with Bruinsma's or on its own. I make no effort to summarize all of Bruinsma's valuable insights.

2. Hirschman (1978) has recently developed 'the possible role of exit in the analysis of political behavior' (p. 90). In our terms, exit (physical migration or transfer of assets) is found, not surprisingly, an option primarily available to the strong. Opportunities for the weak do, however, exist with potentially important unanticipated consequences. Hirschman gives a fascinating description of the out-migration from Europe in the 19th and early 20th century which he suggests may have made it 'comparably safe to open up the system to a larger number of people who stayed on' (p. 102). More directly, today in 'first world' countries there are a rather small number of recorded instances of individuals unable to pay for medical treatment in the United States returning to Europe (see Schorr, 1970). Within the United States itself, the federal institutional structure opens more occasions for exit. For an effort to minimize this potential, see note six.

3. Bruinsma recognizes the importance of organization (p. 366 in particular). But he does not trace its impact back into the individual calculus. If because of the logic of collective action the costs of revenge become low, why would revenge not be the norm?

4. In our book (1977) Tilton and I distinguish two types of welfare states – the 'social security state' which aims at a national minimum and the 'social welfare state' which aspires to a broadening of market power and greater equality of condition. We term a state which attempts neither a 'positive state'. Bruinsma's article has led me to see that the positive state is well formulated in terms of ad hoc welfare protection.

5. Bruinsma's examples are mostly of this sort – e.g., p. 370-1, 'the poor tenant cannot escape the city slums' etc. The empirical evidence cited in his article that sustains this supposition has been accumulating for some time. It is not irrelevant to my argument that the data are drawn primarily from the American experience. For a useful early compilation see Ten Broek (1966).

6. I give an example. In the late 1960s many northern states in America passed laws requiring residence for a certain length of time before one could receive welfare benefits. The aim was to stop the migration (exit) of poor people from the South for the supposed intention of getting more welfare benefits. Faced with this law the typical weaker party would choose flight (going to New Jersey) or some form of accommodation (waiting it out, fudging one's arrival date, etc.). Some chose fight. The instance of note issued in the Supreme Court decision *Shapiro v. Thompson* which held the residency requirement unconstitutional on the grounds that it interfered with the civil right to travel. The decision was implemented fairly rapidly; those who had chosen accommodation were now the beneficiaries of an assertion of a welfare right by another weaker party.

7. This book warrants considerable attention. I quote some of Headey's conclusions on Sweden (p. 229): 'Housing conditions and costs have been steadily modified in favor of working-class families, so that now the position has been reached in which the dwellings and neighborhoods of most working class families are of comparable quality to those of most middle class families. Furthermore, due to state subsidies and housing allowances, working class people pay less for their housing than middle class people.' This result was not through some form of "levelling down": 'Sweden now leads the Western world in the ratio of dwelling units to population, the amenities of units, and the proportion of units built since the war' (p. 47).

Citations

Aubert, Vilhelm (1977). 'Coercion, Resources, and the Right to Participate in Legal Decisions: Some Trends in Legal Development'. In *Equality and Freedom: International and Comparative Jurisprudence*. Oceana/Sijthoff. Vol. 111.

Broek, Jacobus ten, ed. (1966). *The Law of the Poor*. Scranton, Pa.: Chandler Publishing Company.

Brown, Don and Donald Crowley (1979). 'The Societal Impact of Law', *Law and Policy Quarterly* 1: 3.

Bruinsma, Freek (1980). 'The (Non)Assertion of Welfare Rights', *Acta Politica*.

Cameron, David (1978). 'The Expansion of the Public Economy: A Comparative Analysis', *American Political Science Review* 72: 4.

Furniss, Norman (1975). 'The Welfare Debate in Great Britain: Implications for *Social Security to Social Equality*. Bloomington, In: Indiana University Press.

Giddens, Anthony (1976). *New Rules of the Sociological Method*. New York: Basic Books.

Harris, José (1972). *Unemployment and Politics*. London: Oxford University Press.

Heady, Bruce (1978). *Housing in the Developed Economy*. New York: St. Martin's Press.
Hirschman, Albert O. (1979). *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. Cambridge, Mass.: Harvard University Press.
Hirschman, Albert O. (1978). 'Exit, Voice, and the State', *World Politics* 31: 1.
Leibfried, Stephan (1978). 'Public Assistance in the United States and the Federal Republic of Germany: Does Social Democracy Make a Difference?' *Comparative Politics* 11: 1.
Niskanen, William (1971). *Bureaucracy and Representative Government*. Chicago: University of Chicago Press.
Randall, Raymond (1979). 'Presidential Power vs. Bureaucratic Intransigence: The Influence of the Nixon Administration on Welfare Policy', *American Political Science Review* 73: 3.
Schorr, Daniel (1979). *Don't Get Sick in America*. New York: Aurora.

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.