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Conditionality and Human Rights

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Conditionality and human rights

Across the world, states have made binding commitments under international human rights law to do what they can to ensure all their population attains its basic material needs. And yet, governments in numerous countries have been introducing so-called conditional cash transfer schemes (CCTs) based on the imposition of forms of *behavioural conditionality*.

This means they offer to overcome people's poverty if, and only if, they meet certain conditions, acting in ways that policy makers, or those designing policies, regard as desirable. Implicit in that judgment are several presumptions.

First, it presumes one can divide people into a deserving group (defined by behaviour stipulated in the condition or conditions) and an undeserving one (defined as those who do not behave in the desired way). Second, it presumes the condition is the relevant one in determining the person's poverty.

In the past decade, CCTs have become enormously popular, with the World Bank pouring billions of dollars into loans to start and scale-up CCT schemes in developing countries. The Bank has defined them narrowly:

"Conditional cash transfers are programmes that transfer cash, generally to poor households, on the condition that those households make pre-specified investments in the human capital of their children." (Fiszbein and Schady et al., 2009, p.1)

However, CCTs often have other motives and apply conditions that have little to do with "human capital". Sometimes the various objectives have been in conflict.

There are several types of condition: (i) those that must be satisfied prior to receipt of a benefit; (ii) those that must be satisfied during receipt; and (iii) those that must be satisfied afterwards. The most common are behavioural conditions imposed on families *during* receipt of transfers, such as entitlement to the cash conditional on a child's attending school for at least 85% of the time, and/or on sending a child to a health clinic once a month.

Conditionality blurs into selectivity (types of people chosen for benefits) and targeting (based on determining who is poor, who is not).

Comforting presumptions

The main underlying claims made by proponents of conditional schemes are that:

(i) they break the intergenerational transfer of poverty;

(ii) they help to legitimize redistributive social transfers among middle-class voters; and

(iii) they make use of scarce public funds (or donor funds) in the most efficient way.

It should be said straight away that, in spite of frequent re-statements of these claims, there is little evidence that any are actually correct. They have just become comforting presumptions by the CCT community. In particular, all evaluations have focused on short-term impacts (for reviews, see Fizbein and Schady et al., 2009; Cecchini and Madariaga, 2011), and most have focused on the impact on the indicator of the condition (such as attendance in school). None of the econometric evaluations of CCT schemes have shown that they have broken the intergenerational transfer of poverty, simply because they are based on short-term experiments and impact data over several years, rather than intergenerational data.

Nudges for better decisions?

Conditionality is penetrating social policy in industrialized as well as developing countries. Behind it is an influential school of thinking emanating from the USA. So-called behavioural economics has fed into a perspective known as *libertarian paternalism*, most associated with a book called *Nudge* by Thaler and Sunstein (2009), Chicago-based social scientists who have been advisors to Barack Obama and David Cameron.

Essentially, the view is that incentives and penalties should be used to steer people to behave in economically rational ways for their own good and for the good of society (Ariely, 2008). Libertarian paternalists believe that as people often act in ways that are not in their own best interests (or in the best interests of their children), they should be nudged to make better decisions through the creation of what they call an architecture of choice.

This school of thinking has led to 'second-generation' conditional schemes (for example, for teenage labour force entrants, not just schoolchildren) and to a global proliferation of workfare (welfare-to-work) schemes. The latter promise short-term relief from poverty only if someone performs labour, either manual, as in building roads in the heat, or doing menial boring, stigmatizing tasks, for example in warehouses or supermarkets. Implicit is the moralistic judgment that society does not owe the poor relief from distress and that they, rather than economic or social structures, are responsible for their poverty, due to deficiencies or laziness.

Ethical objections

The objections to this reasoning can be divided into moral/philosophical, political and economic arguments. It is the moral or ethical aspects that contravene human rights and jeopardize the development of a rights-based social protection system.

In India, a UNICEF-SEWA team designing basic income pilots had extensive discussions on conditionality, which led to a consensus against conditions (Jhabvala et al, 2014). The main reason was moral—it was presumptuous to think people needed to be steered to make decisions in their own interest. As adults they could make decisions for themselves. Moreover, freedom was felt to derive from having security in which to make decisions, rather than have them made by outsiders. Cash is a way of learning to make decisions which cannot occur if people are told how to behave.

Rights are universal, unconditional and individual. The imposition of conditions, however well-intentioned, must contravene the right to basic income security. And conditional schemes offend three fundamental principles of social and distributive justice.

The first is what should be called the *Security Difference Principle*, drawing on John Rawls' liberal theory of justice. This states that a policy or institutional change is socially just only if it improves the security of the least secure groups in society. But the nature of CCTs demands behaviour from some of the least secure—most vulnerable—members of society that it does not demand of others. It is thus unfair and likely to increase the insecurity of the most insecure because satisfying conditions is harder for them.

Latin American, African and Asian CCTs have been associated with a high rate of exclusion, as people entitled to the cash withdraw when they cannot comply with conditions or find it hard to do so. In Mexico, for instance, those excluded were mainly the poorest, as the burden of compliance was excessive (Alvarez, Devoto and Winters, 2006). In Indonesia, a proxy means test combined with conditions incorrectly excluded 52% of poor households from the beneficiaries (Alatas et al, 2012). In Malawi, girls denied cash because they dropped out of school tended to become pregnant earlier than those who received cash unconditionally.

Another inequity is that CCTs usually impose demands on women that are not imposed on men, intensifying the feminization of obligations. Conditions tend to erode gender empowerment, by bolstering traditional divisions of labour and responsibility (Molyneux, 2006). They also risk creating intrafamily tensions, especially if punitive sanctions such as loss of benefits are imposed, since that hits the whole family.

Conditions may also create barriers of suspicion and resentment among recipients. Conditions may look the same for all recipients and potential recipients. But actually really resource-poor families will have greater difficulty in satisfying conditions, and therefore will be more likely to lose entitlement or not even try to obtain it.

Another source of inequity arises because schemes cannot be adjusted quickly to fluctuations in the incomes of actual and potential recipients. They are unable to help when families are hit by sudden economic downturns.

Paternalistic and patronizing

By definition, conditions are paternalistic and patronizing, and thus contrary to human rights and freedom. In this regard, they offend two further principles of distributive justice. The first is the *Paternalism Test Principle*: A policy is just only if does not impose controls on some groups in society that are not imposed on the most free. If a poor person is only assisted if he/she fulfils a condition not imposed on others in the community, that limits the person's freedom. And the policy presumes the designers know what is best for the individual or family and that there is a single best way of behaving.¹

Social justice also requires policy makers to respect what might be called the *Rights-not-Charity Principle*: A policy or institutional change is just only if it extends the freedom, or rights, of the citizen while curbing the discretionary power of administrators, bureaucrats or officials. It is impossible to imagine a conditional scheme that does not give discretionary power to those required to put into effect the conditions.

To meet minimal requirements of fairness, policy makers must be required to ensure those covered by the conditions are fully informed of them and their rationale. Mostly, as the policy stems from a view that people are ignorant and unable to understand what is best for them, little attention is given to public education. What no evaluation seems to have done is test out a combination of unconditional cash transfers and public education on the virtues of particular behaviour *without a threat of conditionality*.

Another objection stems from the fact that conditions are usually difficult and costly to apply. The cost of informing potential recipients why and how the conditions are to be applied is only the first cost. It is followed by the cost of monitoring behaviour, the cost of regular recertification of beneficiary records, the cost of determining whether the condition has been fulfilled, the cost of enforcing the behaviour, the cost of remedial action, and the cost of suspending entitlement if it is determined that a condition has not been met.

At every stage bureaucratic decisions are made. At each point there is an arbitrary element. For instance, did the person make enough effort to meet the condition? Was an excuse adequate to justify not meeting the condition? Was the obstacle cited really an obstacle and a sufficient one to be a reasonable barrier? Is ignorance of the implications justifiable or not?

Moral dilemmas for social justice

This raises many moral dilemmas. Suppose an impoverished mother is told she can receive the payment only if her children go to school every day; if she cannot force her 12-year-old son to go, will the policy maker take away the money, leaving the woman and son in dire poverty? If not, what happens if somebody does not send her child to school? Too much discretion is given to bureaucrats, which is unfair. The only morally defensible condition is that people should adhere to the law, which should be equal for all. A condition that deviates from the law is unfair; one that reiterates the law should be redundant.

Conditions must imply sanctions of some kind; otherwise they are not conditions. But what penalty should be applied if a scheme is to be socially just? It is unfair if just one incident of deemed failure to fulfil a condition should lead to permanent deprivation. But on what justice principle would the authorities decide on an appropriate duration of suspension? Policy makers seem drawn to longer periods and the "three-strikes-and-you-are-out" mentality.

Many economists who evaluate CCTs seem unconcerned about the volume of decisions that have to be taken in reality. They would probably react to having them pointed out by saying that this is not their concern, since all they are doing is measuring the impact.

Another problem is that evaluations focus on the impact on the condition, giving much lower priority to other outcomes. Thus, for example, an oft-cited evaluation of an experimental scheme for teenage girls in Malawi found that the conditional part of the scheme showed a greater increase in school attendance, whereas those who received the cash unconditionally were less likely to become pregnant as teenagers and more likely to marry at a later age (Baird et al, 2013).

Nevertheless, there is political pressure in favour of conditionality, as in India (Prabhu, 2009).² It must be hoped that critics will turn their hostility toward conditionality rather than the idea that low-income people should have more to spend to improve their lives.

Asymmetrical costs

Conditions imply there are no constraints to meeting them, such as available, affordable schools. Proponents of CCTs say this has led to what they rather euphemistically call ‘co-responsibilities’, suggesting that whereas cash recipients are obliged to comply with conditions, public authorities are pressured to improve public amenities. But this is asymmetrical. Costs of compliance and non-compliance are huge for low-income families; the costs for the bureaucracies not performing are scarcely so severe.

In addition, there is no legitimate point in imposing conditions if the services recipients are meant to use are defective or absent. Schools, for instance, may suffer from high rates of teacher absenteeism. Obliging children to go to schools that have no teachers would scarcely be rational.

Conditions also beget conditions, as they lurch toward social engineering, in which transfers are used as ‘carrots-and-sticks’, to be given or taken away depending on whether entitlement criteria accord with state-determined norms (Standing, 2011). Bureaucrats tend to reason that if one condition does not work, or does not work well enough, tougher conditions are needed. Ethical principles are easily forgotten.

Rational action without conditions

In our SEWA-UNICEF pilot unconditional basic income schemes in India, people acted rationally by spending on their own priorities, such as food for their children and medicines for them and themselves (Jhabvala et al, 2014). Initially, some did not send teenagers to school more, but saved and pooled from the basic incomes so as to afford to send daughters to schools outside the villages. Many bought their children shoes so that they could attend school more regularly. They did not need to be told what to do, and had they had to satisfy rigid conditions, some would have lost their entitlement.

What we have found in India, and in Namibia in another unconditional scheme, is that with universal payments, moral pressure grows from neighbours and relatives to send children to school or for medical attention. Such moral persuasion may be more effective in securing the right combination of responses and is more emancipatory.

A variant is emerging known as “labelled cash transfers” (for example, Benhassine et al, 2013). The difference between them and CCTs may become an exercise in sophistry. The idea of labelling is that when a scheme is launched, recipients are told it will coincide with a school enrolment programme. But intended recipients should be informed about any social policy change.

Conditions presume that a person’s poverty is produced by the non-performance of the behaviour required to meet the condition. This reasoning goes on probabilities, rather than certainties. For instance, economists know schooling is correlated with incomes, and that the more educated a person, the higher the income *on average*. But that does not mean it is lack of schooling that is the root of poverty.

Conditions imply *sanctions*. If not, there would be no condition, merely guidance, to which one could have no moral objection. Would a policy maker take away the cash if a person breached the condition with young children to feed?

Conditionality violates human rights

The only morally defensible conditionality is adherence to the law, which should be equal for all, rich and poor. If a law requires every parent to send their children to school for 85% of the time then that is just. If there is not, it is unethical to apply that requirement only to those deemed to be poor. And if there are any conditions—and it is not recommended that there should be—they should be minimal (for example, registration of pregnancy) and costless to comply with, in terms of time, financial cost and social embarrassment or stigma.

In sum, conditions are neither desirable in themselves nor an acceptable or effective way of reducing poverty. The international trend to more, tighter and punitive conditionality violates the human rights of beneficiaries and their communities, and should be reversed.

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FOOTNOTES

1In order to be fair, those obliged to comply with conditions should be offered insurance in case the presumed beneficial effect is unfounded, to compensate them should the outcome show that the condition was wrong.

2Prabhu (2009) praised the *Dhanalakshmi* schemes in some Indian States, which are classic 'second-generation' schemes, providing girls with financial incentives and conditions from an early age up into adulthood, including a huge bonus if they remain unmarried at age 18. This may sound innocuous, but it is moralistic. Whatever one's views about early marriage, that should be a matter for the law and not be subject to selective bribery. In practice, the tiers of conditions penalize young women from low-income families or communities, particularly those who do not do well at school and drop out.

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