

Justitiële verkenningen

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Social rights after the welfare state

Summaries

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Rule of law and economic risk community

J.Th.J. van den Berg

In this article the author argues that when there is an increase of prosperity and an increase of citizens' consumer sovereignty (their ability to take decisions autonomously), in principle the need for collective welfare provisions diminishes. It is for that reason that part of the social provisions could well be transferred from the sphere of redistributive justice to the sphere of exchange justice. This last term means that the right to make use of a certain provision is directly linked to a financial contribution for that same provision. The author is of the opinion that this transfer has certain advantages: citizens get more possibilities of choice, democracy will be less burdened with decision taking processes and, finally, economic risks that must be carried will diminish. For a minority of citizens though, another solution must be found. This goes especially for those who stay well below a certain level of knowledge and welfare, and therefore do not have the power to 'exchange sovereignly with the providers of social security'. For this minority of citizens certain minimal arrangements must be upheld, arrangements for which the principle of redistributive justice ought to be indicative.

Risk and the rule of law

D.J. Wolfson

Modern governance is faced by changes in the nature of risk and information in important areas of life. Job security is affected by rapid shifts in the demand for specific qualifications, as competition is increased and production made footloose by the globalisation of capital and expertise. In private life, shifting involvements and the pressures of aligning careers also affect economic and social security. In health insurance, the combined effect of double ageing and the prospect of genetic scanning increase the risk of adverse selection. The traditional response is to legislate social rights and services in categories of entitlement, based on notions of redistributive justice. Yet, multiculturalism and differences in life styles increasingly defy categorization, leaving scope for moral hazard on the part of clients, and rent seeking by self-seeking delivery systems. In social security, this calls for an enabling government which: warrants entitlements; provides public gate keepers to establish eligibility; and provides actual access to either work or benefits on the basis of casework agreements specifying tailor-made rights and obligations, and protecting the client by managing competition amongst delivery systems, leaving individuals the freedom to choose intermediation. This implies recasting the Rule of Law in terms of checks and balances and *iustum pretium*. In health insurance, however, the danger of adverse selection leaves little scope for market mechanisms.

The fiction of exchange-justice

J. Bussemaker

Social, cultural and economical developments urge for a rethinking of the assumptions upon which the postwar welfare state has been built. In this respect, questions concerning social justice and economic risks are extremely important. However, due to principal and practical reasons the concept of consumer sovereignty proposed by Van den Berg, is not an accurate concept to lay out a new

legitimation for welfare state provisions. For, it is built upon an individualist notion of human beings in which citizens try to maximize their own happiness, upon a rational planning of life-careers, and it neglects the value of unpaid care and voluntary work. Besides, it does not solve some of the main problems in contemporary welfare states, such as variations in paid work and other activities during the life course; the organization of solidarity with new (ethnic) groups and the protection of flexible workers. An alternative should be to start from the concept of modern solidarity, rather than consumer sovereignty, and universal individualized entitlements.

Social rights of freedom

A. Klink

The author argues that discussions on fundamental rights are, as in the contribution by Van den Berg, often narrowed down to the relationship between state and individual. In this way the fact that freedom is also (partly) expressed in social contexts (family, schools etcetera), is pushed to the background. The author stresses that initiatives of social non profit organisations have come under enormous pressure due to the ongoing commercialisation of service industries and, on the other hand, due to the increase in scale of the institutions of care and education. In this way the social basis of solidarity has been eroded considerably. The author finally argues that the proposal by Van den Berg to protect a minority of underprivileged from justice of exchange, does not offer a way out. For, if Van den Berg's 'minimal consumer sovereignty' is taken as a guiding principle, this minority will have to fall back on poor public basic provisions.

Exchange in stead of distribution?

M. Westerveld

Van den Berg argues that the principle of distributive justice which underlies the system of care arrangements has to give way - above the minimum provisions - for the principle of exchange justice: more justice would then be given to the needs and requirements of the modern, responsible citizen. But a catch-net must remain for those whose possibilities and capabilities do not meet the requirements of consumer sovereignty. The first objection to this contention holds that, although knowledge and earnings levels have increased, various other inequalities still exist. Most - such as those in health and life expectancy - are structural and will always remain so. The principle of exchange justice oversees the fact that account is duly taken of these differences: by different treatment where this is required on account of a socially disadvantaged position; by ignoring certain differences as regards persons, where otherwise to take account thereof would lead to neglect and exclusion. The second objection concerns the suggestion that the elements of 'redistributing' and 'exchanging' are two qualities of equal value, in between which, and moreover without hindrance, one can shuffle to and fro. This supposition is incorrect. As components of justice, 'redistributing' and 'exchanging' are incomparable because 'redistributing' implies a certain action (aimed at justice) on the part of the government while 'exchanging' suggests non-movement (in the expectation that justice will emerge of itself). Practice has revealed that a government which leaves social insurances to the market, thereby removes the possibility to counteract socially undesirable phenomena. This argument is illustrated by means of two examples of situations: the reform of the pension scheme in the United Kingdom in 1986 and the implementation in the Netherlands of Article 2b of the Pension and Savings Funds Act.

Solidarity and selection

P.C. Ippel

The Dutch healthcare- and insurancesystem is based on a broad concept of risk-solidarity. The Dutch Constitution formulates clearly the equality principle and stresses the task of the government in guaranteeing the access to and equality of health care. There are many regulations that specify the legal rights of patients and insured. There are developments that may threaten the actual solidarity. First there is the necessity of making choices in the growing supply of medical treatments. A renovation of the Dutch insurance-system is necessary, but the implementation of new legislation met and meets serious difficulties. But in the next decade the issue of such a system, that meets the moral demands of social justice and solidarity, will be back on the political agenda. In the practice of hospitals and other institutions there is - secondly - the problem of patient selection. Several criteria are suggested, but in general the distribution takes place on the basis of waiting lists. Giving priority to

workers over jobless people conflicts with the principles of equality and solidarity. To guarantee a fair health-care system in the future a central role had to be played by public authorities, although in a limited sense market mechanisms can be incorporated. The development of predictive medicine and the growing medical consumption of older people accentuates the necessity of the responsibility of the government.