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***Risks, rights, and needs:
compatible or contradictory
bases for social protection?***

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Abstract

Justifications for the welfare state in general, and for social protection in particular, have come from three sources: market failures, specifically the inability of commercial and community-based insurance mechanisms to provide cover against all forms of risk; doctrines of human rights, specifically economic and social rights; and needs-based doctrines which stress both the practical and the moral importance for poor and non-poor alike of eliminating (or at least alleviating) poverty. Perhaps because the three arise largely from distinct intellectual traditions, the three discourses tend to run in parallel, with remarkably few intersection points. In public policy debates, moreover, these three discourses tend to come into and fall out of fashion, only to come back again. Given these dynamics, those who support social protection and the goals of poverty reduction would do well to understand each of the three discourses, including the areas where they are mutually supportive and those where they are mutually contradictory. This paper explores those areas of mutual support and contradiction.

Keywords: social protection, human rights, economic rights, social rights, basic needs, risks, market failure

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Introduction¹

Justifications for the welfare state in general, and for social protection in particular, have traditionally come from three sources: an analysis of uninsurable risks and other market failures; doctrines of human rights, specifically economic and social rights; and needs-based doctrines. The risk school emphasises failures in insurance markets, specifically the inability of private and communal insurance mechanisms to provide cover against all forms of risk, often due to asymmetrical or incomplete information. These important failures in insurance markets are compounded by other failures in markets for labour, credit, and human capital. The social and economic rights school focuses on the obligations of the state derived from the assertion that citizens possess social and economic rights that legally are enforceable claims on the state. These rights are usually said to be defined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, amongst other sources of international law, and are frequently asserted to come from Natural Law. The needs-based doctrine stresses the practical and moral importance for poor and non-poor alike of eliminating (or at least alleviating or reducing) poverty, and asserts both moral and economic claims in favour of social protection measures.

Perhaps because the three discourses of risks, rights and needs arose from different academic disciplines, the three tend to run in parallel, with remarkably few intersection points. In public policy debates, the three discourses tend to come into and fall out of fashion, only to come back in again later. The rights-based argument, for example, is currently in the ascendancy, at least with certain UN agencies and many development-oriented NGOs. In the 1970s, the needs-based approach held sway, and it has enjoyed something of a revival recently in the form of the Millennium Development Goals. From the 1930s to the 1960s, market failures were used as the grounds for a considerable expansion of the state's economic roles, including the growth of the modern welfare state. The recent granting of the Nobel Prize to three leading figures in the economics of asymmetrical information (with its implications for insurance markets, amongst other things) attests to the continuing power of the risk-based tradition.

Given these political and intellectual dynamics, those who support social protection and reduction of poverty need to understand each of these three discourses, including the areas where they are mutually supportive and where they are mutually contradictory. Certainly, the critics of increased social protection will pick and choose their counter-arguments, and many of them will be tempted to pick apart arguments from one source to discredit the entire project of social protection and poverty reduction. This paper begins by outlining each of the three main sources of support for social protection and then explores those areas where the three discourses provide mutual support and mutual contradiction. The main purpose is to help proponents of social protection understand these areas of mutual support and contradiction better. A secondary objective is to suggest areas where members of the three traditions might usefully cooperate.

¹ The views expressed in this paper are personal, and should not be attributed to any organisation with which the author is or has been affiliated.

The three discourses explained

Uninsurable risks and market failures

In neo-classical economics, it is universally admitted that real world markets – as opposed to the perfectly competitive ones found in elementary textbooks – frequently suffer from market failure. The traditional list of market failures includes public goods, externalities, incomplete markets, imperfect competition, imperfect information, and (less frequently) merit goods. Variations on this list are found in every textbook of public economics (e.g. Barr, 1998: 78-85, Stiglitz, 2000: 76-88)

Nicholas Barr was the first to point out that the traditional list of market failures might explain many types of government intervention in the economy, but did little to explain or justify the emergence of a comprehensive welfare state. His ‘main conclusion is how thin, at least in utilitarian terms, is the traditional justification for large-scale, publicly organised welfare state services. To the extent that the traditional market failures support welfare state institutions at all, they justify only a residual welfare state.’ (Barr, 1992: 749). Extensive public provisioning in health care, education, and social security is justified in large part by ‘information failures’, i.e. incomplete and/or asymmetrical information between (would-be) parties to a transaction (Barr, 1998: 749):

‘Many parts of the welfare state are a response to pervasive technical problems in private markets, and therefore serve not only the distributional and other objectives (of) ...poverty relief, ...equity, dignity and social solidarity, but also efficiency objectives such as income smoothing and the protection of accustomed living standards in the face of uninsurable risks and capital market imperfections... (T)here is an *efficiency* case for a universal welfare state’ (Barr, 1998: 98 - emphasis in original).

Commercial insurance will not cover a large number of risks, or will cover them only incompletely. These are due to principal-agent problems between the insurer and the insured, asymmetrical information about intentions and states of health, uncertainty about the future, and moral hazard problems. Together, these explain why the private sector is generally loath to insure against unemployment or pregnancy, or to cover certain types of health risks (Barr, 1998: 108-126, Stiglitz, 2000: 359-363). Paradoxically, commercial insurance may deny cover to low-risk cases while providing insurance cover to higher-risk cases, which violates the risk-sharing principle underlying insurance (Barr, 1998: 117, Stiglitz, 2000: 316-317).

Since the profitability of insurance companies depends on the independence of risks between insured parties, the existence of strong co-variant risks is a strong discouragement to the formation of insurance markets. If all (or many) of the insured parties make claims at the same time, the insurer may be bankrupted. Typical co-variant risks include many ‘natural’ disasters such as droughts, floods, and some pest infestations (e.g. locusts), and armed conflict. The private insurance company is unlikely to provide full cover in such areas without state guarantees, or without strict limitations on the type and level of liabilities². Commercial insurers do not provide unemployment insurance either, and again the reason is largely

² Witness the recent debates about insurance coverage against terrorist attacks, especially for airlines.

covariant risk; a recession resulting in widespread unemployment could bankrupt the insurer³.

Similar problems affect other markets. Uncertainty about future earnings means that banks will not generally lend money to students without state guarantees or collateral from parents⁴. This amounts to an imperfection in the market for human capital formation since children from poor households are too great a risk for most lenders. Uncertainty about future earnings and about the risk of operative failure also explains why banks do not lend money to help poor people pay for expensive, but life-saving, medical procedures.

These and many other, often overlapping, market failures help explain why the richer countries have built comprehensive welfare states. While developing countries do not have the comprehensive welfare systems of the west, they often do have free or subsidised education and health care, state pensions, food subsidies, various conditional and unconditional cash transfers and disaster relief, for similar reasons.

In the risk-based school, social protection measures are justified 'in utilitarian terms' (Barr, 1992: 749) on the basis of real or potential welfare losses arising from market failures and the ability of public action to prevent or compensate for these losses. Deciding on the appropriate nature and scope of social protection measures is a pragmatic exercise based on the costs and benefits, judged in utilitarian terms, of various possible government interventions (e.g. taxation, subsidisation, regulation or direct provisioning) vs. the costs of leaving the problem to the market.

There is little talk of rights or needs in this discourse. Indeed, the index to Stiglitz's major textbook (Stiglitz, 2000) contains no entries for 'rights', 'human rights', 'needs' or 'basic needs'. Barr, a leader in the risk-based literature on social protection, goes further than most, but he subsumes rights under statements of 'value judgement' and 'ideology'. '(T)he proper place of ideology is in the choice of aims, particularly in the definition of social justice and in its trade-off with economic efficiency; but, *once these aims have been agreed*, the choice of method should be regarded as a technical issue (Barr, 1998: 98). There is wide acceptance of the value judgement that people have a right to adequate nutrition and health care. These are *aims*; but the existence of these rights does not, *per se*, have any implications for the best method of achieving them' (Barr, 1998: 100).

The neo-classical risk-based literature is much concerned with poverty, though it defines poverty solely in terms of income; within the income poverty school, its concern is usually absolute poverty. There is an extensive literature on possible public policy interventions to alleviate inadequate incomes (e.g. Barr 1998 and Stiglitz 2000 and the sources they cite). The risk-based school has only just begun to grapple with chronic poverty. There is often the (reasonable) assumption that chronic poverty is linked to depth of poverty. To the extent that this is true, the very poor and/or the chronically poor may suffer from several overlapping and mutually reinforcing market failures that prevent them from using the market to manage risk. Social protection measures are particularly important for such people.

³ Asymmetrical information about the insured person's intentions is the other reason why the private sector does not provide insurance against unemployment (or pregnancy) (Cullis and Jones, 1998: 224).

⁴ An exception is commercial lending to students in professional and graduate schools like medicine, law and business administration. Here, future earnings are likely high and past high performance in undergraduate studies serves as an indicator of future performance.

Rights-based arguments for social protection

Since the Universal Declaration of Human Rights (UN, 1948) declared the existence of economic and social rights, the discourse on rights and social protection has taken root. In essence, this literature suggests that the state should provide social protection to its citizens⁵ as a matter of right.

But where do human rights come from? One can discern three traditions within the human rights school:

- natural law
- constitutional law and international law, especially international human rights law
- a theory of human needs as a basis for human rights.

Natural law has a quasi-theological character and is rooted in the Judeo-Christian tradition. Natural law is based on a few axioms or articles of faith. In this tradition, all humans have rights because of their inherent human dignity. The respect of that dignity implies a system of rights and obligations, or duties. One of the clearest expressions of the natural law tradition comes from the American Declaration of Independence: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights....' The natural law tradition is now widely (though not universally⁶) held to include economic and social rights, as well as the more traditional civil and political rights of classical liberalism.

The second source of human rights is constitutional and international law. Since World War II, there has developed a large corpus of international law, including international human rights law and international humanitarian law. For the purposes of this paper, the most important parts of the corpus are the Universal Declaration of Human Rights (UN, 1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN, 1966)⁷. National constitutions also frequently enshrine rights for their citizens. This 'legalistic' interpretation of rights⁸ says that human rights exist because the great majority of the world's states have ratified a certain number of human rights treaties or because national constitutions confer rights on their citizens.

Rights are not about charity or morality; rights are binding legal obligations, in this view. The UN High Commissioner for Human Rights put it this way: 'the power of human rights lies not just in the expression of an aspiration... but in the articulation of a legally binding framework' (Arbour, 2005: 5). This emphasis on rights being grounded in law is an attempt to give rights, especially economic, social and cultural rights, the political and policy traction that they might not otherwise have. Contrary to what some liberal critics of economic and social rights have argued in the past (e.g. Barry, 1990: 80), economic and social rights are justiciable. Courts in

⁵ And in some cases such as refugees, to the citizens of other states as well.

⁶ The United States government is one of the main proponents of the view that there are no economic, social and cultural rights. Of course, various stripes of economic liberals and social conservatives also support this view.

⁷ Among the other important elements of the corpus of international human rights law are the International Covenant on Civil and Political Rights, the Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

⁸ William O'Neill and Vegard Bye (2002: 17), consultants to the UN Office of the High Commissioner for Human Rights, refer to a 'legalistic approach to human rights (that relies) ...on legal jargon and obscure references to arcane procedures that no one has the time to remember'. Sarah Forti (2005) calls it the 'legal centralist approach to human rights'.

Canada, India and South Africa have ruled that economic and social rights are justiciable (e.g. Rights-and-Democracy, 2003).

The natural law and the legalistic traditions of human rights are often linked; for example, the preambles of the main human rights treaties allude to the natural law notion of the inherent dignity of the human person (UN, 1948: Preamble; UN, 1966a: Preamble and UN, 1966b: Preamble)⁹.

But the natural law and legalistic traditions can also contradict each other, for example on the question of whether laws give rise to rights, or whether rights exist prior to (and without) law. Jeremy Bentham believed the former, saying that '*Right*, the substantive *Right*, is the child of law... From '*law of nature*' (can come only) *imaginary* rights' (Bentham, 1792). The drafters of the American Declaration of Independence took the opposite view, saying that it is 'self-evident' that 'Governments are instituted among Men' to 'secure these rights'.

The third tradition within the human rights school is sceptical about both the faith-based character of natural law and the legalistic grounding of human rights. Since natural law is essentially faith-based, what can one do with non-believers? What does one say to the drafters of the American Declaration of Independence if one does not accept that these 'truths' are 'self-evident'? And to the legalists one could ask what would happen if enough states withdrew their ratifications of these human rights conventions. Would human rights then cease to exist? Indeed, if rights are based on the existence of conventions and constitutions, were there no rights before the conventions or constitutions came into force? This third tradition asserts that the notion of human rights can only be grounded on a theory of basic human needs (Doyal and Gough, 1991, Taylor-Gooby, 1991, Munro, 2000, Sen, 2004).

The needs-based theory of rights sees human rights as part of moral philosophy. To have any system of moral philosophy, one must have a moral agent. A moral agent is a person who is capable of making choices, specifically of choosing between good and bad. Going back to Thomas Hobbes (1651), the mere existence of human life is not enough to ensure a decent existence; for that, security of the person and his/her property are essential. Therefore, the survival and 'avoidance of serious harm' (Doyal and Gough, 1991:40) to the moral agent are the basis for any system of moral philosophy, whatever its ends may be. Human needs can be defined as those things that are required to avoid serious harm to the moral agent. Though the boundaries of this set of things may be fuzzy, the core set is clear enough: physical and psychological security, the ability to participate in decisions that affect oneself and one's community, health care, basic education, adequate nutrition, an adequate livelihood. To say that someone has a 'right' to any of these things¹⁰ is merely to say that she needs them in order to be and remain a moral agent. The realization of rights is thus essential to any moral philosophy, indeed to any system of law. In short, a convincing theory of rights can be built without recourse to natural law, constitutions or international treaties.

In relation to social protection, the International Labour Office got close to this theory in 1942, when it defined a social safety net as 'a form of social security which provides assistance to persons of small earnings granted as of right in amounts (that should be) sufficient to meet a minimum standard of need (ILO, 1942: 84).

⁹ The religious origins of the natural law tradition are obvious in the naming of two of the main UN human rights treaties, which are called 'covenants' (UN, 1966a; UN 1966b).

¹⁰ And all of these things are found, albeit under different names, in the Universal Declaration of Human Rights.

In all three versions, human rights theory holds that rights are binding obligations. This means that someone is obligated. For every rights holder there must then be a duty bearer. Sometimes the duty is simply to forebear from acting; for example, I must abstain from hitting you unless you attack me. But this is merely respecting your rights, and, to be meaningful, rights must be respected, protected and fulfilled. There are therefore also duties to protect rights; for example, a policewoman is duty-bound to protect a person who is being hit. And there are duties to fulfil rights; the state is obliged to help people who have been hit, for example by providing medical care and counselling.

But not all rights are claims against the state. Sometimes the claims may be against other citizens. Take the case of a girl's right to an education (UN, 1948: Article 28, 1966: Article 13, 1989: Article 28). This right implies that the state has a duty to 'take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the (girl's) right' (UN, 1966a: Article 2) to schooling of adequate quality near the girl's home. The girl has claims against the state in that sense. But the girl also has claims against her family and her community. The girl's parents are obliged to allow the girl to go to school. They must not put any obstacles in her way. Similarly, members of the girl's community are constrained from taking any steps to prevent the girl attending school, for example by harassing her on the way to and from school.

All rights, including civil and political rights, have resource implications; elections cost money, as do police forces and judicial systems. But many economic and social rights (e.g. education, health care, social security) are particularly resource-intensive. Rights-based thinkers acknowledge the fact of the scarcity of resources in the face of an unlimited number of possible demands; all rights cannot be realised immediately for all people everywhere. Hence, the international human rights instruments incorporate the doctrine of the progressive realisation of rights. They accept that scarcity is a problem, but insist that governments and other duty bearers must make a concerted effort over time to allocate resources to the fulfilment of their duties to rights holders. The ICESCR requires that 'Each State Party to the present Covenant undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant' (UN, 1966a: Article 2). But how much effort is enough? What are 'the standards and processes for monitoring... (the) core minimum obligations of State parties and the progressive steps required' (O'Neill and Bye, 2002: 29)? Neither the statute law nor the subsequent case law clarifies the issue much (Robertson, 1994, O'Neill and Bye, 2002: 31-32).

A rights-based approach to development is now the official policy of many development organisations. Several United Nations agencies have developed a 'Common Understanding' of the human rights-based approach to programming (UNDG, 2003). Amongst the NGOs, BRAC, Oxfam, Save the Children Alliance and World Vision are the leaders in the rights-based approach to development. All these organisations are trying, with varying degrees of difficulty and success, to understand the implications of incorporating human rights into the daily business of project and programme planning in general (Brouwer, 2005, Courdesse and Hemingway, 2005, Goulden *et al.*, 2005, Ljungman and Forti, 2005, Munro, forthcoming) and into concrete domains like social protection in particular. UNICEF took the lead in designing a 'rights-based approach to programming' (UNICEF, 1998) including in situations of social protection. It includes a sophisticated rights-based situation analysis for identifying when and how violations of rights occur and, hence who is responsible (UNICEF, 2000b, 2004). The UNICEF tool and other project-level tools like it (e.g. NORAD, 2001) are useful in designing individual interventions, including in social protection. Since the doctrine of human rights is loath to create a hierarchy of rights, however, such project-level tools are of little use in deciding which violation(s) of rights are the most serious. It is unclear what their role should

be in broader public policy debates, i.e. at programme and policy levels (Munro, forthcoming). The risk-based thinkers, with their concepts of welfare losses and opportunity costs, have much less difficulty.

Needs-based arguments for social protection

The concept of human needs stretches back at least as far as Thomas Hobbes (1651), who insisted that security of the person and of property was necessary for any kind of decent life. The poverty studies of the 19th and 20th centuries described the poor diet and insecure and unhealthy living conditions of the poor (e.g. Engels, 1892, Riis, 1890, Rowntree, 1901). These authors used words such as ‘necessity’ to describe such things as a basic diet, adequate shelter, sanitary living conditions and simple clothing. At the same time, they used words like ‘insufficiency’ and ‘lack’ to describe their absence.

Such studies laid the foundation for the now established tradition of poverty surveys based on poverty lines. These surveys establish and cost out a list of basic needs, including the minimum diet, defined by the level of caloric intake, needed to remain alive and economically active and usually some other necessities like clothing and shelter. Often health care and education costs are included as well. People whose income is below the level required to purchase this set of commodities are deemed to be ‘poor’.

The 1970s saw the ascendancy of the ‘basic human needs’¹¹ school of development policy (Afxentiou, 1990). The basic needs school set itself up in contrast to the earlier fixation of development economics with the growth of income *per capita*. The basic needs school redefined development in a more humanistic fashion, as the extent to which people’s basic needs for health, nutrition, literacy, shelter, clothing, employment and security were met. The list of basic human needs that they used has its roots in the 19th and early 20th century poverty studies and to the later poverty line studies; people below the poverty line are unable to meet their basic needs.

The basic needs school relied, usually implicitly, on Maslov’s hierarchy of human needs (Maslov, 1943), which was popular throughout the social sciences in the 1960s and 1970s. The usual 1970s list of basic needs corresponded closely with the bottom two levels of Maslov’s hierarchy, namely ‘physiological’ needs (health, nutrition, clothing, shelter) and ‘safety’ needs (adequate income, security).

The seminal article in the basic needs school was Dudley Seers’ ‘The meaning of development’ (Seers, 1969), which questioned whether the growth of GNP per capita was an adequate measure of development. Seers suggested not that GNP per capita is irrelevant, but that distributional issues are important too. Most importantly, growth is possible, he asserted, without any improvement – and possibly with a deterioration – in the levels of things that really matter for the quality of human life: the basic needs of health, nutrition, literacy, shelter, clothing, employment, and security. The job of social protection is to ensure that these needs are met if they cannot be met through individual or community effort. Indeed, the objective of public policy generally should be to ensure that basic human needs are met.

There are three arguments in favour of basic needs: a moral or intrinsic argument for the satisfaction of basic needs, an instrumental argument for the satisfaction of basic needs, and a political argument (Streeten *et al.*, 1981). The moral case asserts that the satisfaction of basic needs is a good thing in and of itself. The mental and physical suffering caused by the lack of satisfaction of basic needs is largely avoidable, given modern wealth and technology.

¹¹ Also frequently known simply as ‘basic needs’.

The obstacles to the universal satisfaction of basic needs are mostly social, political and economic, and thus amenable to public policy, not technical or scarcity-based. Continuing to allow current levels of unsatisfied basic needs when they can be satisfied is morally repugnant.

The original proponents of the basic needs school in the 1970s were mostly economists, agronomists, nutritionists and medical professionals (e.g. McHale and Cordell-McHale, 1977). The moral and political theory underlying the basic needs school was not very sophisticated and the legal arguments were conspicuous by their absence. Some leading lights of the basic needs school even argued that basic needs could *not* be seen as human rights (Streeten *et al.*, 1981: 184-192). The basic needs school relied on an intuitive approach to morality based on a sense of human solidarity and compassion in the face of unnecessary suffering. Social protection, at least in the sense of providing basic human needs to all, especially to those who are least able to support themselves, is thus a moral imperative.

The second argument is that the satisfaction of basic needs is good not only intrinsically, but instrumentally as well. Expenditure on primary health care, basic education, sanitation, and nutrition is not consumption, but investment with high rates of private and social returns. Healthy, well-nourished and well-educated people are more productive, can support themselves, can thus pay more taxes, and are less likely to spread disease or engage in socially undesirable behaviours. In the 1970s and early 1980s, it was widely believed that the satisfaction of basic needs on a mass scale might even promote faster economic growth¹².

It is no accident that the basic needs school flourished in the decade after economists discovered 'human capital'. The evidence of high rates of return to investments in human capital (especially in education) helped the basic needs school appeal both to mainstream economists as well as to the moralists. Prominent proponents of basic needs pitched their arguments to both camps simultaneously (e.g. Streeten *et al.*, 1981). Proponents of basic needs sometimes bolstered their arguments on the affordability of basic needs by linking them to the then popular appropriate (or intermediate) technology movement. Many basic needs in sanitation, shelter, clothing, energy and health care can be met using low-cost appropriate technology (McHale and McHale, 1977: 148-154, 163-164). The affordability and high rates of return to investments in basic needs meant that satisfying basic needs was both economically rational in the short run, and likely to reduce the demand for social protection in the future.

There was a third, more overtly political, argument put forward for basic needs. Proponents argued that satisfying basic needs could benefit rich and poor alike, at least in the medium - to long-term¹³. For example, both rich and the poor benefit from the control of epidemic diseases. The entrepreneurial upper classes benefit from having access to a more educated, skilled and healthy labour force. With proper political management, basic needs could thus form a viable political platform.

The basic human needs school ran out of intellectual steam by the late 1970s, making no new intellectual contributions until the launch of UNDP's human development index in 1990 (UNDP, 1990), but its political influence continued. UNICEF, under the leadership of James Grant from 1980 to 1995, used the basic needs literature as a jumping off point for a powerful moral and political narrative on the need for the world to invest more in its children (Cornia *et al.*, 1987, Jolly and Cornia, 1984, UNICEF, 1987, Vandemoortele, 2000). UNDP's human

¹² Subsequent research has shown that the relationship between growth and the satisfaction of needs is varied and complex (Afxentiou, 1990; Mehrotra and Jolly, 1997)

¹³ In the short-term, some redistribution might be needed via the fiscal system.

development index draws much on the basic needs literature; the index can be read as a measure of the satisfaction of basic needs in a society, combining income (a proxy for command over commodities necessary to satisfy basic needs), literacy (a basic need in itself) and longevity (as a proxy for health and nutrition needs). The Millennium Development Goals (MDGs) are founded on basic needs-like thinking. Indeed, the MDGs are merely the 1970s basic needs literature writ large.

One blind spot of the basic human needs literature is the lack of a specific analysis of social protection. Social protection is seldom dealt with explicitly in the basic needs literature. Implicitly or explicitly, the basic needs school assumed a strong role for the state in assuring basic needs, either as regulator, facilitator or direct provider, especially for the poorest and those chronically in need. Equally, however, there was an assumption that the role of the state must be to step in only where the market and individual or community effort were insufficient to satisfy basic needs, and where public action could improve the situation in welfare terms. In this sense, there was a strong residualist tendency in the basic needs school, especially in the branch affiliated to the World Bank in the 1970s. The risk-based school, also residualist in its approach, was, however, much more rigorous in spelling out how and where social protection measures would be appropriate. Given the economics background of members of both the basic needs and risk-based schools, though, it is unlikely that they would come to radically different answers on how and where the state should intervene.

Interactions between the risks, rights and needs schools

Risks

As mentioned above, there is surprisingly little interaction between the risks, rights and needs schools. The economists who drive the risk-based set of justifications for social protection rarely concern themselves with rights or needs. When they are confronted with a rights-based discourse demanding social security, health care, adequate nutrition, etc, their reaction is similar to that of the economists in the needs-based school (see below). Being firmly rooted in neo-classical economics, the risk-based thinkers on social protection prefer to avoid all talk of needs; using standard utilitarian terminology, they prefer to speak of 'preferences'. Since preferences are based on expected utility, and since interpersonal comparisons of utility are impossible, their concern is not unmet needs, but rather 'welfare losses' measured in terms of potential utility that cannot be realised due to the market failures. To speak of 'needs' is to imply a hierarchy. Neo-classical economists are loath to introduce such a hierarchy, since it implies interpersonal comparisons of utility.

The risk-based economists see claims of rights as one of several possible value judgements or statements regarding the proper aims of public policy. Once these aims are agreed upon, the determination of the best method to achieve these aims is a technical exercise, not an ideological one. This implies a separation of means and ends. Rights-based theorists reject such a separation, since any method for achieving a public policy aim (even one intended to promote human rights) cannot violate human rights.

One interesting, and unexplored, avenue for collaboration between the utilitarian risk-based school and the rights-based school comes from Jacob Viner (1948). Bentham (1789) tried to build a new social science without any basis in the preceding tradition of natural law by insisting on 'the principle of utility' as the primary objective of public policy. The question, asked by Viner but not by Bentham, was why anyone should expect utility to be the primary objective of public policy. One possible answer is that people have a right to utility and that it

is the duty of the state to uphold rights. If this is the case, then the welfare losses, measured in utilitarian terms by the risk-based school of economists, also become rights violations.

Rights

The rights-based supporters of social protection think of poverty as a violation of human rights. Chronic poverty is then an ongoing violation of rights. One can infer that, if poverty is a violation of rights, then there must be a right to get out of poverty. Indeed, in 1986, the UN General Assembly declared that human beings have 'a right to development', and this right has been reiterated in numerous UN declarations since. Poverty reduction is thus not a policy option that a state might take on or not as it sees fit, but is a duty of states to their citizens, since rights are binding legal obligations.

When they are confronted with rights-based arguments, the economists – either from the risk-driven school or the basic needs school¹⁴ – view the rights-based claims with great scepticism. They point out that no amount of legal obligation can get around the tough questions of trade-offs in economic and social policy-making in a world characterised by material scarcity and infinite wants. More of one thing means less of another, and more of one thing today may mean less of everything tomorrow. The absolutist language of the rights discourse – e.g. 'there are no small rights' (UNICEF, 2000b: 9-10), 'all rights for all children' (UNICEF, 2005) – is unconvincing to those reared on the doctrine of scarcity, the production possibility curve and associated opportunity costs. When economists point these things out, the rights-based thinkers can only respond with the doctrine of the progressive realisation of rights, which has its own problems, as seen above.

The legalistic tradition in human rights thinking views the binding legal obligations implied by rights as its trump card. The legalistic rights-based thinkers thus tend to denigrate needs-based arguments as paternalistic, based on charity and moralism, soft ground compared to legal obligations. 'Benevolent and charitable actions, while good in themselves, are insufficient from a human rights perspective' (UNICEF, 2000a). (See also UNICEF, 2004: 11-12) The legalistic rights-based thinkers tend to ignore the risk-based economic arguments of neo-classical economics or dismiss them as 'welfarist' and thus, again, weaker than arguments based on law.

The only ones who address systematically the link between rights and needs are those who think that rights must be based, not in natural law or the whims of nation states when they make international law, but on a theory of human needs. Like the risk-based economists, they also address the problem of moral hazard in social protection. Economists and moralists have often stressed moral hazard as a potential problem in social protection. The existence of a social safety net may distort patterns of work and levels of savings and effort, and social protection schemes incorporate mechanisms intended to avoid such problems. Many of these mechanisms, however, have the effect of denying coverage to those who should be getting benefits from the social protection scheme (Munro, 2002). Economists have explored the welfare losses involved in both failing to cover the whole target group of a social protection scheme and in providing benefits to too many (ineligible) people (Cornia and Stewart, 1993). Rights-based thinkers usually ignore the moral hazard issue in discussions of the design of social protection measures. A few, however, have grappled with the issue, most notably Peter Taylor-Gooby (1991: Ch. 8). Admitting that moral hazard is a problem, Taylor-Gooby insists that a rights-based framework can cope with moral hazard. Since rights come with correlative duties, one of the duties of the rights holder is not to abuse his/her rights. This implies not only the usual injunction not to invoke one's own rights to the

¹⁴ Or from just about any other school of modern economics, for that matter.

detriment of others' rights, but also the injunction to invoke one's right to social protection (and hence invoke the state's duty to provide it) if and only if one has made a good faith effort to support one's self to the best of one's ability. By implication, it is reasonable for the state to design social protection measures with this in mind. Taylor-Gooby's argument opens a terrain for fruitful conversations between the three schools on how social protection mechanisms should be designed.

Needs

The needs-based group is the least theoretically sophisticated of the three schools considered here. The definition of 'needs' is largely intuitive, or bio-medical. The satisfaction of needs is taken as a strong moral imperative, albeit one that also has the benefit of being useful for instrumental purposes as well. Initially seen as a progressive and humanistic approach to development in general and to economics in particular, the needs-based school is now denigrated as paternalistic or welfarist by the rights-based thinkers. The needs-based approach has been called 'the cattle rearing approach to development': make sure they are adequately nourished, fully vaccinated and well housed, and everything will be all right¹⁵. Somewhat unfairly, the basic needs school has been accused of ignoring the rights and dignity of the poor and of avoiding issues of agency and participation¹⁶.

Often coming from economics, albeit from a somewhat heterodox end of the profession, the needs-based thinkers speak a common language with the risk-based neo-classical economists, at least up to a point. Both can talk of returns to investment in human capital, for example, and both see that welfare losses due to market failures can have both static and long-term effects. Both schools acknowledge the problem of scarcity in the face of unlimited wants, and so both are comfortable addressing issues such as trade-offs, rates of return to various types of investment, and the long-term effects of resource allocations.

The two schools may diverge, however, over the issue of Pareto optimality. Pareto optimality is politically conservative in that it suggests that welfare improvements should be sought (or can only be proven to have taken place if) the welfare of one party can be increased without reducing the welfare of another. Risk-based thinking on social protection tends to rely heavily on Pareto optimality as a benchmark. The needs-based thinkers have often had a strong bent in favour of redistributionist policies to increase the welfare of the many, even if it is to the (temporary) detriment of the few. Furthermore, some close allies of the basic needs school have shown that, under certain plausible assumptions of unemployment and landlessness, a Pareto optimal equilibrium can reduce some citizens to below starvation levels (Coles and Hammond, 1995).

The needs-based thinkers can also communicate with the rights-based thinkers. For example, both the needs-based and the rights-based approaches call attention to the links between those in need and those who already have. The needs-based thinkers assert, for example, that even the materially well off in developing countries would be still better off in several ways if their fellow citizens were better educated, healthier, and more secure. Rights-based thinkers too sometimes stress the common interest that rights holders and duty bearers have in realising everyone's rights (e.g. UNICEF, 2004: 11-12), though many think this is politically naïve.

¹⁵ David Hulme, anecdote told at the opening of the Conference on 'Winners and Losers from Rights-Based Approaches to Development', University of Manchester, 21 February 2005.

¹⁶ This is actually a caricature of the basic needs school. The 1970s basic needs school (e.g. Streeten *et al.* 1981) dealt systematically with dignity, security, agency and participation.

Table 1 - Compatibility and contradiction between the risks, rights and needs schools

	Areas of Compatibility	Areas of Contradiction
Risks and Rights	Everyone has the right to utility.	1) Market failures provide no legal grounding for social protection. 2) Risk-based economists separate the ends from the means of policy; rights-based theorists find this ends-means separation unacceptable.
Rights and Needs	1) Development is about people, not commodities. 2) Both rights and needs involve social relations. 3) One theory of human rights is based on human needs, not international or natural law. 4) Rights and needs both have a strong moral dimension.	1) Natural law and legalistic theories of rights reject needs-based arguments as charity, paternalism, welfarism and/or moralism. 2) The rights-based school's doctrine of "progressive realization" of rights is poorly specified compared to the economists' language of scarcity, trade-offs and opportunity costs.
Risks and Needs	1) Market failures lead to sub-optimal levels of human welfare. 2) Needs-based arguments often use economic and utilitarian language, e.g. rates of return to investments in education and health care.	1) Should one speak of "needs" or "preferences"? 2) The moral view inherent in "basic needs" contrasts with the welfarist view inherent in neo-classical view of risks. 3) The risks and needs schools diverge over the usefulness of Pareto optimality as a benchmark. Is Pareto optimality too politically conservative? A Pareto optimum can mean mass starvation.

Conclusions

It is important to understand why we support what we support. The fact that the ends are the same (or very similar) does not mean the paths taken to get there were the same. The three paths to social protection and poverty eradication – risks, rights and needs – twist and turn. At times they approach each other, occasionally they intersect, but then they diverge again. Opponents of social protection may wish to take advantage of the diverse paths taken by its proponents to sow confusion and to paint a portrait of intellectual confusion surrounding social protection. Those who believe in social protection need to know how to defend it. To do so, they need to understand how risks, rights and needs support and contradict each other as justifications for social protection. This has been the main objective of this paper.

Another objective of this paper has been to point out how and where the proponents of these three views of the bases of social protection might begin to talk with each other. A striking

feature of the three schools is the different levels at which they operate. The risk-based school is highly technical and operational; the rights-based school is highly theoretical and little concerned with the details of design and implementation of social protection schemes¹⁷. Debate on the design of social protection schemes has traditionally been dominated by the risk-based school, i.e. by economists concerned with moral hazard, or by the needs-based school, who have looked at how needs go met or unmet under various schemes. The human rights element has been missing. Advocates of the rights-based approach to social protection need to leave the ivory tower, roll up their sleeves, and contribute ideas on a rights-based design of social protection schemes.

Second, the underlying basis of utility, essential to the risk-based analysis, is philosophically underdeveloped, as is the underlying basis of the basic human needs school. The rights-based school has a comparative advantage here, though its tendency to get hyper legalistic, literalist and pedantic should not be underestimated¹⁸. A needs-based theory of human rights seems to offer a fruitful basis for dialogue. Any takers?

Thirdly, the needs - and rights-based schools need to develop (better) analytical and design tools. The needs - and rights-based schools do a good job of proving the desirability for social protection in principle, but do a much less convincing job in analysing individual social protection situations. Where they do provide tools for the analysis of such situations, they are usually in the form of a needs - or rights-based critique. Furthermore, the two schools provide little if any concrete guidance on, for example, the role of social protection in public policy more generally.

¹⁷ Or of any other public policy mechanism outside of the realm of judicial and quasi-judicial institutions.

¹⁸ See footnote 7.

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