

Is There Ever an Obligation to Commit Welfare Fraud?

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Let us suppose that a recipient of public assistance found that, given her meager income, she could not meet the needs of herself and her dependents. Why should a welfare recipient in that position not fraudulently supplement her income by earning, but not reporting, additional money under the table, for instance by babysitting or doing odd jobs? Are there any good reasons not to commit welfare fraud in such a situation? Indeed, might there not be an obligation to do so, at least for some recipients, in some circumstances? The discussion which follows draws attention to what seems to be an underappreciated truth: that, all things considered, there are many public assistance recipients for whom there are compelling moral reasons to engage in welfare fraud. For many people, failure to defraud the welfare system, should they find themselves in a position to do so with impunity, would constitute a serious moral offense. This conclusion seems to fly in the face of prevailing notions of common sense. But this is misleading, since it is at the same time implied by principles that are widely embraced, assuming a set of circumstances that can be readily shown to obtain in many cases. Under that set of circumstances, and given our affirmation of certain basic moral convictions, we cannot consistently blame the practitioner of welfare fraud, or excuse, without special justifications, the legal conformist.

None of this implies that welfare fraud is always obligatory. Plainly, it is not. To posit a universal obligation requiring all recipients to defraud the system would be absurd. After all, there may be some people who simply do not need the money. More likely, there may be recipients who cannot be confident that their fraudulent behavior would go undetected, or unpunished in the event of detection. Recipients without children or other dependents are much more likely to have a right to commit welfare fraud than a duty to do so. Still, there is a relevant obligation that is binding, not only for welfare recipients, but for all persons generally who find themselves responsible for the care of one or more dependents. This obligation may entail a duty to commit welfare fraud for many recipients,

depending on the details of their situation. The obligation in question may be stated as follows: all healthy and competent adults who serve as guardians for one or more children or other dependents must act to provide their dependents with the means to satisfy their basic needs, if there are permissible ways of doing so. This is a presumptive moral requirement, hereafter referred to as the provision principle. On the basis of this principle, we will see that some welfare recipients, some of the time, though not all recipients all the time, have a pressing moral duty to defraud the welfare system, gaining, contrary to the provisions of the relevant policies and legislation, an unauthorized income enhancement for themselves and their dependents.

1. The Provision Principle

What the provision principle enjoins is that anyone who serves as a guardian for children or other dependents must, as a matter of moral necessity, actively seek out and find some way of satisfying the basic needs of those dependents, as long as such ways exist that are morally permissible. This principle can be satisfied in more than one way. For instance, one can satisfy it by means of labor force participation, by relying on the income of a spouse or relative, by gaining public assistance, or by any of several other means. In one way or another, though, the provision principle demands of us that we avoid complicity, by inaction or insufficient effort, in the needless deprivation of our children or other dependents.

It might seem as though this claim must be uncontroversial. Whether this is so depends in large part on what we count as basic needs. A bare-minimum conception of basic needs will make of the provision principle an almost trivially true statement of one key aspect of what we demand of a child's guardian. An expansive conception of basic needs, perhaps one informed by egalitarian ideas about what is minimally required by the demands of justice, will risk making of the principle a dubious overstatement. There are certainly longstanding debates about what qualifies as a need in general, as well as about which needs should count as basic. There are no doubt strong arguments in favor of a relatively robust interpretation of basic needs, at least for some purposes, including attempts to theorize about egalitarian justice or to articulate the moral case for a universal basic income.¹ Such a robust interpretation might count as basic not only our need to maintain our physical well-being, but also our need for rest and relaxation, for entertainment and recreation, for social inclusion, and for the ability to participate in society in a non-stigmatizing, non-shameful way. However, whatever the merits of such a

relatively expansive account of basic needs, such reflections are of limited relevance to the question addressed here. After all, the greater the distance separating one's adopted standard of basic needs from some kind of bare subsistence standard of living, the harder it will be to justify fraud as a permissible remedy, to say nothing of fraud as an obligatory remedy, for any shortfalls in *de facto* provision. That, after all, is the burden of the discussion here. It is better, in this context, to err on the side of a more restrictive standard for when and why we may count a need as basic.

It is certainly possible to take this restrictiveness too far, as does Christopher Sarlo, an influential defender of an absolute definition of poverty in terms of a narrow notion of basic needs. Sarlo's definition, according to which a "basic need" is any "item required to maintain long-term physical well-being," is ill-suited to serve as a guide to sound judgments about the obligations of parents or guardians to attend to the needs of their dependents.² Sarlo's standard explicitly excludes the thought that basic needs might include such non-physical necessities as books, school supplies or toys.³ Yet, who would doubt the blameworthiness of a parent who rests content after meeting her child's physical needs, in Sarlo's sense, and also her emotional needs, but who attaches no great importance to attempting to provide her child with books, school supplies, or toys? Surely the parent shows either a notably incomplete understanding of her responsibilities or an insufficient concern to carry them out. Surely, too, we would fault her for this, unless she could offer an excuse for her neglectful guardianship.

This intuition is symptomatic of an important feature of our shared understanding of the concept of basic needs. Whereas Sarlo is tempted by the thought that this concept might gain a kind of objectivity by association with the physiology of health and survival, our quickness to blame the parent who attaches no importance whatsoever to securing school supplies and reading materials for a child indicates that the specifically moral importance of basic needs is tied to some conception of due care for the life-prospects of the child whose fate rests, for the time being, in the hands of a guardian. Ensuring long term physical well-being is by no means all we expect of a sufficiently vigilant protector of the most basic welfare interests of a child. Instead, when we assign to parents or guardians the role of securing for children their basic needs, what we expect from them is a duly vigilant pursuit, on behalf of their dependents, of goods that we deem to be morally, as opposed to physiologically, indispensable. We count a need for some resource as basic, therefore, if and only if we could reasonably blame a parent for neglecting to provide her children with it, when she had a practical and permissible way of doing so. Such recourse to the idea of reasonable objections properly

makes room for moral criticisms that make reference to neglect of needs beyond just those that facilitate physical well-being.

While these reflections clarify the reference to basic needs in the wording of the provision principle, they offer us something less than the kind of listing of basic necessities that Sarlo thinks he can provide. Sarlo counts as basic needs food, shelter, clothing, transportation, personal hygiene needs, health care, and household cleaning items.⁴ But we do not really need such a list, in the present context. What we need is a clear understanding that there are many public assistance recipients who, by the standard proposed above, which demands a more extensive level of provision than Sarlo does, will find themselves unable to meet the basic needs of their dependents solely by accessing public assistance. An assessment of just how many people find themselves in that position would demand both substantive judgments about how to specify exactly which needs are basic, and extensive empirical research to establish how many welfare recipients have an income too low to have a realistic prospect of satisfying the basic needs of their dependents. Both of these inquiries, important though they may be, lie beyond the scope of the present exercise in ethical inquiry.

2. The Presumptive Requirement

The provision principle sets out a presumptive moral requirement. Its binding force is defeasible, either in cases where certain conditions make it inapplicable, or in cases where it conflicts with other moral rules of overriding importance. Later, we will consider the matter of conflicting moral rules, but first we need to consider conditions under which the provision principle may become inapplicable. There are two defeating conditions, or circumstances in which the principle ceases to apply, that seem important and relevant. First, even a person motivated to comply with the provision principle may in practice lack any opportunity to satisfy it. She may be unable, by any available means, to secure an income sufficient to meet her needs or the needs of her dependents. Under these circumstances, she is clearly exempt, morally speaking, from the requirements of the principle. This is so for the familiar reason that “ought” implies “can.” But, in the context of the present discussion, there would seem to be a second, and perhaps more important sort of case. It seems clear that the requirement is also nullified if, even though she does have an opportunity to satisfy it, she can expect that availing herself of that opportunity will expose her to some especially serious negative consequences. A clear example would be shoplifting. Committing the

crime of shoplifting may enable one to satisfy the provision principle, by supplying one's family with much-needed food at no cost, but it would also entail a significant risk of detection, possible criminal conviction, and perhaps the imposition of financial or other penalties. Under those circumstances, the provision principle would again not apply, since acting on it here would be comparable to quenching one's thirst by knowingly consuming a poisonous drink: compliance in the short term could reasonably be expected to produce manifestly perverse outcomes, according to standards that are actually implicit in the principle itself, in the medium or long-term future. Nevertheless, though these considerations limit the application of the provision principle, they do still allow for its relevance to a substantial range of cases. Where the opportunity exists, and where taking advantage of the opportunity is not recklessly imprudent, the provision principle remains a presumptive requirement.

In the great majority of cases the principle is satisfied without any great difficulties or dilemmas arising. But the question addressed here pertains to the exceptional cases. For simplicity, we can assume that there are two standard ways of satisfying the provision principle: first, one can find paid employment and earn a sufficient wage or salary to meet the requirement; second, when the first option is unavailable, one can seek to access public assistance payments, in the hope that doing so will make compliance with the principle possible. Besides these two standard options, and the non-standard option of committing welfare fraud, which we will consider below, it is worth pointing out that two other notable non-standard options which may sometimes exist ought to be explicitly taken off the table in this discussion: living off of the avails of criminal activity in order to satisfy the provision principle must be excluded because it is recklessly imprudent; and seeking out charity for that purpose must also be excluded because the contingency of its availability suggests that only some families in need, but not all of them, can count on gaining and sustaining access to it. Thus it can at most bear on how often there is an obligation to commit welfare fraud, whereas the present question is whether there is ever such an obligation.

The first standard option, which is to seek paid employment at a living wage, is unproblematic, more or less. If one can satisfy the provision principle in that way, then one ought to do so, just as most people do. Let us turn to a consideration of the second standard option: public assistance. Ideally, one would be able to count on assistance levels sufficient to meet one's own basic needs and those of one's dependents. There is a broad, though not universal consensus among political philosophers as well as citizens in general that a just society must offer at least this to its least advantaged households. Indeed, many of the most influential

theorists of distributive justice, including John Rawls and Ronald Dworkin, would insist on much more than such a basic level of provision.⁵ But the discussion here is an exercise in what some call applied or practical ethics, or what Rawls calls “non-ideal theory.”⁶ The reality, unfortunately, disappoints expectations resting on ideal theories of justice. There is extensive research, easy to compile, showing clearly that assistance levels in practically all North American jurisdictions fail to meet the basic needs of many recipients and their dependents.⁷ A responsible parent or guardian, duly vigilant in her efforts to comply with the provision principle, will rightly be unsatisfied by these *de facto* provision levels. Moreover, in nearly all the jurisdictions there are shortages of available jobs, or structural unemployment, especially shortages of jobs for unskilled workers, which is the group most likely to have sustained difficulty satisfying the provision principle, or else there are shortages of full-time and well-paying work, as opposed to part-time and low-paying work. The reality is, therefore, that many recipients will inevitably find themselves in the uncomfortable position of having no standard way of satisfying the provision principle, the standard ways such as paid employment and public assistance being either unavailable to them or inadequate to meet their needs.

What options are available for persons in this predicament? There seem to be three. First, they can rely only on whatever paid employment they can find, even if it is inadequate to meet the basic needs of themselves and their families. But this would amount to non-compliance with the provision principle. It is true that since the provision principle does not apply where no opportunities to satisfy it exist, we cannot properly speak of non-compliance in those cases. But such opportunities do, in some cases, seem to exist. A second option would seem to be to rely entirely on public assistance, however insufficient. This again would involve non-compliance with the provision principle, making it is a morally suspect option, unless all permissible alternatives have been ruled out. This leaves a third option to combine income from paid employment, possibly part-time and low-paying employment that would be inadequate on its own, with income from public assistance which would also be inadequate on its own. This third course of action is the only option, by hypothesis, that allows the person in this predicament to satisfy the provision principle.

There are, however, obvious problems, since there are normally only two ways to combine income from both low-paid work and public assistance, and the first way is normally self-defeating, while the second way is normally fraudulent. We can call combinations of income sources self-defeating if the addition of a second income source has a sufficiently negative impact on an existing income source or a sufficiently inflationary

impact on existing expenses that the net gains in income are non-existent or insubstantial. This may happen because of policies requiring reductions in assistance payments that keep pace with, or almost keep pace with declared additional income, nullifying in whole or in large part the gains that would otherwise have been made. It may also happen because additional expenditures, for instance to place children in day care, may become necessary for a parent entering the paid workforce. In any such case, combining the two standard income sources will often fail to make significant progress toward satisfying the provision principle.

The other way of combining the two standard income sources is not self-defeating but fraudulent. Here we have mainly cases in which a recipient of public assistance payments supplements that income source with paid employment, typically of an informal or under-the-table nature, but declines to report that supplementary income to welfare administrators. This would allow substantial, albeit fraudulent, increases in income, and would presumably make living up to the obligation specified by the provision principle a realistic possibility.

3. A Case in Point

Let us make the picture more vivid by inventing an example. A single mother, Mary, with one young child, finds that she cannot find work that pays enough to cover the expense of childcare, and yet she cannot meet the needs of herself and her child on welfare. She is asked if she will babysit her brother's child two days a week, in exchange for a small sum of money, just enough of a supplement to her public assistance payments to ensure that the basic needs of herself and her child are met. If she takes the work and informs the public assistance administrators about her extra income, most or all of the money will be deducted from her welfare payments; but if she does not inform them, she will be guilty of welfare fraud. She has reason to be convinced that she can successfully keep her supplementary income secret if she is determined to do so. After prolonged reflection on the moral implications of doing so, and of refusing to do so, she feels a strong inclination to proceed with the fraudulent course of action. Would taking that course of action be wrong? Two things are immediately clear: first, it would be illegal; and second, under the circumstances it would be the only way to satisfy the provision principle.

We may ask what the nature of the conflict thus revealed between the law and the provision principle is. Have we simply discovered an additional condition that could nullify the moral force of the provision principle, so that whenever the only available options for compliance with

the principle are illegal, the principle simply ceases to apply, or are we confronting here a more substantial sort of conflict, an irreducible dilemma that requires that we make judgments assigning relative importance to these contingently incompatible principles? The illegality of Mary's conduct cannot be of decisive importance in this case.⁸ If Mary's fraud were not morally wrong, all things considered, independently of its illegality, then whatever doubts about the permissibility of her conduct might be raised by reference to its illegality would be easily overridden by an appeal to considerations emphasized by Hobbes, the fact that the ascription of moral authority to a legal order by individuals subject to it is conditional on the capacity of the order to "secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly."⁹ Alternatively, as Mary might reformulate the point, relating it to her situation: no legal order can justly demand compliance with its rules prohibiting fraud unless it can in turn guarantee that, were one willing to work and to comply with the laws against fraud in particular and the laws of the land in general, one would be able to secure a living standard sufficient to satisfy the basic needs of oneself and one's family. This *quid pro quo* is just what Mary is being denied. The moral authority of the law as law, especially in cases where the law conflicts with the provision principle, is too dubious as applied to someone in Mary's situation to play any important role in deciding the question that confronts her. The real question is not "Is her conduct wrong, because it is illegal" but "Is her conduct wrong on independent moral grounds?"

Even so, although illegality *per se* is not the issue, the fact that the act is deceptive does seem pertinent. There are rules, which are supposed to apply to all recipients, that Mary intends to break, gaining an additional, unlawful income based on this activity, and then to conceal this information from people who are lawfully entitled to know about it, and who, as public officials, purport to represent the community at large. She is deceiving the community, one might even suggest. One might want to insist that this is relevant to the moral assessment of her conduct. It seems plausible to suggest that there is something presumptively wrong about that, since it combines deception with a unilateral exemption of oneself from a policy that others are forced to follow, notably individuals not able successfully to conceal their income-supplementing activities. But what is important to recognize, at this point, is that this conduct is responding to an important moral imperative, grounded in the pressing demands associated with guardianship over the fate of a child under one's care: the provision principle. Hence, this is not a plain case of wrongful conduct, but something that looks like a moral dilemma. Individuals who

would have her refrain from fraud are asking her to violate flagrantly the provision principle. They are asking her to set aside her duty to ensure that the basic needs of her child are adequately met. When we see that, we see how simple the structure of the problem really is: given a conflict of *prima facie* duties, one's actual duty is to comply with the more pressing of the two presumptive requirements. One need only identify which case of non-compliance would entail a more serious transgression.

That seems to give rise to a different question: Would it be worse for Mary to allow her child to go hungry because she declines babysitting work or performs it while letting the government claw back most of her additional income, or would it, on the contrary, be worse for Mary to babysit for her brother in order to supplement her income just enough to purchase basic necessities, and then to conceal that income from public assistance administrators? At this point, Mary's choice seems less like a moral dilemma than a cruel joke. We see at once that the fraud is a relatively trivial matter when what impels her to engage in it, and to keep the undeclared babysitting payment is not the kind of cynical greed that motivates the typical income tax cheat, corporate embezzler, or shady used car salesperson, but something quite different: a responsible parent's conscientious insistence on complying with the provision principle when it is within her power to do so. She deceives representatives of the political community, but only because she has been placed, by the basic structure of the community's system of resource allocation, in the position of being systematically denied access to resources which, in a just society, she would be more than able to secure for her family without deception or illegality, what we called above a morally indispensable minimum living standard for her child.

In fact, we should not stop with this thought, but should go even further, in this case and in other relevantly similar cases. Let us suppose that Mary were to regard her decision as a true moral dilemma, and that she were to decline the babysitting work, or take it but report the income, notwithstanding her certainty that she could have committed the fraud with impunity, and thereby complied with the provision principle. Could we not ask, "How dare she?" Would it not be appropriate to blame her for passing up the chance to satisfy the provision principle simply because she was unwilling to commit an essentially harmless illegality? With a few very important qualifications, the answer is that we could blame her for that. Her supposed dilemma is like that of a strict legal conformist, reluctant to offer immediate assistance to an endangered neighbor on the grounds that doing so would require him to commit the harmless but illegal act of cautiously jaywalking on an otherwise deserted street. Legal conformism, in such a case, is no excuse for refusing to prevent an

unnecessary harm, though there are important qualifications that do need to be emphasized. First, Mary is no doubt in the unfortunate position of being, as it were, down on her moral luck. Due to a form of social injustice that she has played no significant role in creating, she has to make choices about whether to allow her child to undergo preventable deprivation, or to violate the law and commit fraud. Most of her fellow citizens do not face choices like that, especially not the wealthiest beneficiaries of the injustice in question. For that reason the spectacle of her being denounced as irresponsible by other, luckier people, is in poor taste, if nothing else. Second, her confidence that she could evade detection is a relative thing: something close to, but less than one hundred percent. The prospect of detection, prosecution and punishment would be an ever-present, if remote possibility, always hanging over her head. These two qualifications are indeed important, but they bear not on our assessment of what she did, but only on our willingness to condemn her for doing it. They should affect, not our judgments about what her obligations are, but how judgmental we are when, for various reasons, she does not satisfy them in full.

From the fact that recipients like Mary have an obligation to commit welfare fraud, it might seem to follow that others would have an obligation to aid and abet her in her efforts, were she to go ahead with the fraud. For example, we might suppose that it would be wrong for a neighbor to report her, or for a welfare administrator to expose her to prosecution or other penalties upon discovering her fraudulent activities. This, however, would be going too far. Such third parties would certainly be mistaken if they blamed her for committing welfare fraud. But the constraints on what she may do, as the guardian of her child's interests, do not similarly constrain her neighbor or her welfare administrator. Their obligations to Mary's child are real, but they are indirect. What is required of them is to oppose injustice, in their capacity as citizens.¹⁰ They have no obligation to intervene personally in order to assist in an extra-legal or manifestly illegal attempt to rectify a wrong that the legal system protects, the deprived state of Mary's family. At best, they have a civic duty to join with other citizens in demanding social change that would address Mary's problem, by means of appropriate legal, institutional, or policy reforms. But cooperating with the enforcement of the law is also a civic duty, unless the law in question is unjust, which in this case it is not, since laws prohibiting welfare fraud are entirely consistent with social justice. A morally permissible or morally obligatory case of welfare fraud should be processed in the usual way by the appropriate administrative and legal authorities, except that the outcome of the process should be guided by a clear recognition by all individuals concerned that the

perpetrator of the fraud took the only action that she permissibly could have taken under the circumstances. Like the jaywalker on the deserted street who rescues an endangered neighbor, her conscientious conduct should be acknowledged as a model of moral propriety, not penalized or labeled as criminal.

Nothing here should be taken to imply that we should single out for special praise or admiration people who commit welfare fraud in order to satisfy the provision principle. They are simply doing what they must do, and we should expect no less from them. Parents who, when the opportunity presents itself, defraud the welfare system in order to meet the basic needs of their children are simply answering the call of duty, not going beyond it. But, to the extent that this duty is not yet widely understood to be a duty at all, it is certainly worth emphasizing that committing welfare fraud, for some people, some of the time, really is a moral obligation.¹¹

Notes

1. See John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), p. 130; see also Philippe Van Parijs, *Real Freedom for All* (Oxford: Oxford University Press, 1995).
2. Christopher Sarlo, *Poverty in Canada*, 2nd ed. (Vancouver: Fraser Institute, 1996), p. 49.
3. See *ibid.*, pp. 98-107.
4. See *ibid.*, p. 98.
5. See John Rawls, *op. cit.*, p. 130; see also Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000).
6. John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass. Harvard University Press, 1999), p. 216.
7. See National Council of Welfare, *Income for Living?* (Ottawa: National Council of Welfare, 2004); see also Mark Robert Rank, *One Nation, Underprivileged: Why American Poverty Affects Us All* (New York: Oxford University Press, 2004).
8. See M.B.E. Smith, "Is There a Prima Facie Obligation to Obey the Law?" *The Yale Law Journal*, Vol. 82, No. 5. (Apr., 1973).
9. Thomas Hobbes, *Leviathan*, ed. C.B. Macpherson (Harmondsworth, England: Penguin Books, 1968), prt. II, ch. 17, p. 227.
10. See John Rawls, *A Theory of Justice*, p. 319.
11. I would like to thank David Conter, Jan Narveson, an anonymous reviewer for this journal, and Thomas Magnell, Editor-in-Chief of the *Journal of Value Inquiry*, for their invaluable help with the paper, including comments on an earlier draft.