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Toward a Right to Redundancy Compensation

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In *Brighouse Ltd v Bilderbeck* (1995) the Court of Appeal held that in some circumstances a worker might be entitled to compensation for redundancy, even though his or her contract of employment did not provide for it.[1] The decision has attracted sustained and vociferous criticism. In the opinion of its detractors, if the decision is not actually contrary to the terms of the Employment Contracts Act then it is certainly inconsistent with "the clear intentions of the Government . . . " (Kerr, 1995: 97, 99).

The source of this criticism lies in the contractual analysis which under pins the Employment Contracts Act.[2] Classical contract doctrine maintains that the contract contains all the rights, duties and interests of the parties. As such it represents a voluntary allocation of the risks associated with the bargain, the terms of which define each parties' expectations in regard to performance and compensation for failure to perform.[3] The contractual allocation of risk also operates to exclude the possibility of entitlements that are not specified in the contract.

Against this background the criticism of *Bilderbeck* is understandable. The Court of Appeal's apparent willingness to find rights to redundancy compensation outside the terms of the contract seems wholly at odds with the contractual analysis. There are, however, grounds to

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1 While increasingly employment contracts will make specific provision for redundancy, in the recent survey conducted for the law firm *Russell McVeagh McKenzie Bartleet & Co.* (1995) only half of the employment contracts made any provision for redundancy compensation. In this light, the establishment of a right to compensation that is outside the contractual arrangement is vitally important to both employer and worker.

2 See Russell, A. (1995) and Harbridge, R. (ed.) (1993).

3 Thus to take a simple example, when I agree to sell my car, by agreeing on a particular price I accept the risk that in the near future the car will not greatly appreciate in value and that an alternative investment will be as profitable, while the buyer accepts the risks associated with the condition of the car.

question whether the classical nineteenth century model accurately reflects the modern conception of contracting. Whether through legislative direction or judicial intervention, the stated terms of a contract will not always be an exhaustive statement of the rights and duties of the parties.

The purpose of this paper is twofold. First, to demonstrate that it is possible for a party to a contract to have entitlements or interests beyond those specified in the contract. Second, to consider whether, in the context of the employment contract, a worker may have interests apart from those recognised in the contract that justify protection. The central argument presented here is that, at least in the context of redundancy, the very same philosophical considerations that have lead to the criticism of *Bilderbeck*, may justify a right to redundancy irrespective of the actual terms of the contract. Once it is accepted that the contract is no longer an exclusive source of rights and that a worker's interests are not reflected wholly by the contract, then the respect for private rights that so heavily imbues the policies of the "New Right",[4] demands equal respect for these extra-contractual rights.

Extra-contractual interests

In recent years there has been a move to provide protection for the parties to a contract either by modifying the contract or by introducing new terms. This protection is irrespective of the actual bargain struck by the parties involved. These developments have lead some to suggest that the fundamental nature of contract has changed. In particular, that a bargain no longer exclusively reflects the voluntarily assumed obligations of the parties, but in fact comprises rights and duties imposed by law to serve broader social concerns (McLauchlan, 1992).

The analysis of contract as a purely voluntary phenomenon reached its high point in the nineteenth century. The rights and duties of the parties were conceived of as arising from the parties' voluntary acts and the law merely gave effect to those obligations without either supplementation or, except in extreme cases,[5] limitation.[6] While such a model of contract served Victorian England and early colonial New Zealand well enough it became increasingly trained in the latter part of the twentieth century. As the Oxford jurist and contract scholar Atiyah (1979) convincingly demonstrated in the 1970s, the contract could no longer be explained purely by virtue of voluntarily assumed obligations. Rather, rights and duties were

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4 Particularly the work of libertarians such as Hayek, F. (1944) and Nozick, R. (1974). The application of libertarian philosophy to the labour market is explicit in the seminal work of Epstein, R. (1984). See also, Russell, A. (1995), Wallis, P. (1992) and Haworth, N. in Sharp, A. (ed.) (1994). Haworth characterises the philosophy of the "New Right" as liberal. However, the emphasis on a reduced role for the state, individual rights and responsibilities and the explicit reliance placed on theorists such as Hayek and Epstein suggest that the "New Right" is more appropriately characterised as libertarian: see Ogus, P. (1994).

5 For example, where the contract was for the commission of an illegal or immoral act.

6 This is usually referred to as the "will theory" of contract: Generally see, Burrows, et al. (1988).

the product of a range of principles, some of which were informed by the parties' voluntary acts while others by considerations of public policy, reasonable expectation and fair dealing.[7]

Perhaps because of our size[8] or national character these insights have had a significant impact on contract doctrine in New Zealand. As McLauchlan (1992: 436) has noted the:

> doctrines of the general law of contract in this part of the world have been transformed as a result of major judicial initiatives, particularly by the High Court of Australia, and, most notably in New Zealand, legislative reforms. Those elements of the so-called classical law of contract that survived the judicial and legislative inroads of the first 70 years of this century are gradually being supplemented and overtaken by a body of law which, *inter alia*, enforces some previously unenforceable promises and grants relief from some previously enforceable promises, often in accordance with a variety of broad standards such as fairness and fair dealing, reasonable expectations, legitimate commercial expectations, unconscionability, good faith, and even "the confident assumptions of the commercial parties".

Whether it is correct to infer a sea-change, or whether, less radically, we are merely seeing contract knocked from its pedestal as the exclusive regulator of voluntary relationships[9] is perhaps a matter best left to jurists. For present purposes, it is enough to establish, on whatever doctrinal basis, that a party to a contract may have entitlements that go beyond those expressly stated in the contract. The illustrations of such extra-contractual interests are not hard to find.

One important area in which society, both by statute and through the courts, has recognised interests beyond existing legal entitlements is that of claims by spouses, whether legal or de facto, to a share in assets on the ending of the relationship. Currently, on the termination of a marriage the husband and the wife are entitled to share equally in the matrimonial property, irrespective of which partner is the legal owner of the particular asset.[10] In the context of de facto marriages the courts have made it clear that there may be expectations created that go well beyond strict legal entitlements.[11] These expectations, where reasonable, are given effect to by the law because of judgments made about the nature of society and what social justice requires.

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7 Signs of this reality are apparent in Lord Wilberforce's comment in *National Carriers Ltd v Panalpina (Northern) Ltd* [1981] A.C. 675, 696, that "I think that the movement of the law of contract is away from a rigid theory of autonomy towards the discovery - or I do not hesitate to say imposition - by the courts of just solutions, which can be ascribed to reasonable men in the position of the parties."

8 Reynolds, F. (1995) suggested that radical reform was much easier in New Zealand precisely because we are small.

9 Brennan, G. (1990).

10 Matrimonial Property Act 1976.

11 See the Court of Appeal's decisions in *Gillies v Keogh* [1989] 2 N.Z.L.R. 327 and *Lankow v Rose* [1995] 1 N.Z.L.R. 277. See also *Muschinski v Dodds* [1985] 160 C.L.R. 583 and *Baumgartner v Baumgartner* [1987] 164 C.L.R. 137.

Contracts for the purchase of consumer goods and the provision of consumer finance also give rise to entitlements that go beyond those specified in the contract. For example, the Consumer Guarantees Act 1993 implies warranties into all consumer contracts regarding the quality of the goods purchased. These warranties are irrespective of the actual agreement reached by the parties concerned. Most importantly, they cannot be contracted out of. Another example is where a purchaser borrows money to buy goods, whether it is a television or a car. Once again, obligations are imposed and rights created that are irrespective of the actual intention of the parties.[12] In both cases the obligations reflect a determination that consumers have, or ought to have, interests and entitlements that go beyond what is customarily found in purely voluntary agreements.

New Zealand, in particular, has seen the rapid development of notions of unconscionability.[13] It is now well established that contracts can be modified or set aside entirely because the terms are considered too harsh or are being exercised in ways that are unfair. Typically, such concerns arise where there are special circumstances such as a gross disparity of bargaining power, or a lack of mental capacity, education or worldliness, which deprives the individual of the ability to make a judgement in his or her best interests. Although unconscionability usually leads to a contract being set aside, as opposed to creating new terms, the doctrine is nevertheless a recognition that the contract is not, in all cases, the best or the exclusive regulator of the parties' relationship.

While it perhaps goes too far to suggest, as did one American scholar (Gilmore, 1974) that contract as a purely consensual device is dead, the illustrations above do clearly demonstrate that the contractual statement of rights, duties and entitlements is no longer necessarily exhaustive of the parties' interests. There is now an acceptance that a party to a contract may have expectations and interests that are worthy of protection even though they may not be stated in the contract. Most importantly, there is a recognition that the contract's silence as to these interests does not deny either their claim to protection or the law's ability to protect them.

A worker's interests

The existence of rights and interests independent of those agreed to in a contract may provide a basis for, and justification of, a general right to compensation for redundancy. The argument is as follows. Where a worker has a "right" to compensation for redundancy the law will lend its weight in protecting and enforcing that right. This proposition is accepted by neo-classical theorists and others alike. Neo-classical theorists, however, would limit the source of such a right to the contract itself.[14] As we have seen, however, society has rejected the assumption that rights are exclusively contractual. Rights and entitlements may

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[12] Credit Contracts Act 1981. The Fair Trading Act 1986 also modifies consensual agreements.

[13] Generally see, Burrows, et al. (1988) and Finn, P. (1994).

[14] The leading advocate of this view is Epstein, R. (1984).

also arise extra-contractually. Therefore, just as the existence of an explicit right to compensation for redundancy unequivocally entitles the worker to compensation, recognition of an extra-contractual interest must entitle the worker to compensation with equal force.[15]

If it is accepted that extra-contractual interests might be recognised and protected, the crucial issue becomes one of establishing that workers have such interests. Commentators and theorists have sought to do this in a number of ways.

Return on capital

It has been suggested such an interest arises out of the level of remuneration a worker receives for his or her labour. Barron (1984), for example, sees the worker's claim to compensation for redundancy as a return on the capital which the worker has invested in the business.[16] By not bargaining as forcefully as they might, and thereby foregoing additional remuneration, the workers themselves furnish the employer with additional business capital. This additional capital is "contributed" by the worker as, in essence, the price for job security. When the worker is dismissed, and the implicit promise of job security is repudiated, the worker is entitled to withdraw their capital investment. In the case of an express provision for redundancy compensation, the right of withdrawal is explicit. But even where there is no express provision, the implicit agreement under which the workers forego additional wages gives them a right, outside of the contract, to compensation.[17]

Although theoretically attractive, there are a number of difficulties in resting an extra-contractual right to redundancy compensation on an expropriation of capital. First, where the redundancy is merely to enhance profits the expropriation that lies at the heart of this approach is readily identifiable. However, where the firm has not been profitable, or is insolvent, it is much harder to identify the whereabouts of the worker's "capital". If the firm is insolvent it is at least arguable that the worker's capital has been lost. On dismissal, therefore, the worker's interest in the firm is exhausted. Secondly, the approach is weakened by two assumptions: that the worker would have been able to gain additional remuneration had they been more forceful in their negotiations, and that they did in fact forego the additional wages. To date these assumptions are untested, and neo-classicalists would argue that it would be unlikely that such a power would exist in many, if any, cases.

Necessity

An interest sufficient to give rise to protection may also be found in the reliance placed by the worker, his or her family and, indeed, the entire community on the employer. This

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15 See also Solow, R. (1992).

16 See also Collins, H. (1994).

17 As Collins (1994) has noted, this argument can also be framed in terms of the Marxist conception of surplus profits.

interest has been framed in terms of reliance, though this is merely a manifestation of the more general moral principle of *necessite oblige*.[18] This principle asserts that a duty of care arises where one person is heavily dependent upon another. It is most clearly manifested in the duties owed by parents to care and provide for their children.

In the employment context this reliance arises in a number of forms. First, there is the worker's dependence on the employer for his income. A dependency that extends to the worker's family and to an extent the entire community. Second, the worker depends on the employer, or more precisely the job, for his or her social status and sense of self-worth. In recent years there has been a growing awareness of the importance of one's job in modern society. In particular, that a job is not merely a source of income, but establishes one's place in society and is an important mechanism through which the individual attains self-esteem and self-worth.[19]

This approach is also not without its difficulties. First, in its strongest form the approach argues a level of dependence, which apart from single employer towns,[20] is unlikely to occur very often. Second, the concept is inherently vague as to content. While one may be able to identify a relationship of dependence, defining the content of the obligation which then arises is more difficult. Is it, for example, merely to take account of the worker's dependence, in essence a duty of consideration, or must the employer, as with a parent for a child, provide for all the worker's worldly and spiritual needs?

In the final analysis, however, the undoubted dependence of the worker, and the community, on the employer provides a strong foundation for the recognition of some type of interest in the worker to continued employment or compensation. The difficulty that remains is what the content of this entitlement should be. Collins (1994: 152) has suggested that at best it amounts to "a duty upon the employer to contribute to income maintenance after the dismissal to the extent that this is financially possible."

Personhood

A closely related approach focuses directly upon the relationship between the worker, the job and the worker's sense of self-worth and personhood. Two interrelated strands of reasoning can be identified. First, as described above, there is the view that the job, with its attendant role in defining the individual's place in society, is essential to maintaining self-esteem and dignity. The influence of this approach is seen across the socio-political spectrum, from the work of socialist theorists such as Gorz (1989) to the Roman Catholic Church's views on the rights of workers.[21]

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18 Honore, P. (1987).

19 See text following note 21.

20 For example, Patea and Mosgiel, see Peck, L. (1984).

21 See Finnigan, P. (1993).

The second strand,[22] which may be traced back through the work of philosophers such as Locke (1980), takes as its premise the individual's ownership of his or her body and from that extends the individual's right to the fruit of his or her labour. As Locke (1980: ch.v, para. 27) says, "every man has a property in his own person", from which it follows that the "labour of his body, and the work of his hands . . . are properly his." In this way, an individual's work, job and the fruits of that labour are all intimately connected with the individual's rights as a person.

While both strands illuminate concerns that are both deep and primitive there are again difficulties. In respect of the Lockean concept the limitations inherent in the theory have been widely debated.[23] In respect of the former conception, although the importance of work to the individual is well established, the implications of these perceptions tend to be more appropriately addressed by governmental policy rather than by the imposition of obligations on individual employers.

Distributive justice

As Collins (1994) notes, the worker's claim to compensation in the event of redundancy might be founded on a conception of distributive justice.[24] When the reduction of the work force improves the profitability of the firm, the sacrifice made by the worker in achieving increased profitability may justify the redundant worker's claim to a share in the gain. In essence, the right to compensation for dismissal rests upon what is perceived to be a fair distribution of the benefits which result from the reorganisation of the firm.

Expressed in these terms a claim based on distributive justice seems rather weak. First, it would only establish a right to compensation in cases where the redundancy was undertaken to enhance profits. Where it was brought about by the company's failure there would be no gains, only losses to distribute. Second, in term of the quantum of compensation it would seem to produce perverse results. As the redundancy of the most highly paid would do the most to increase the firm's profitability it would follow that the greatest amount of compensation would be paid to those who, arguably, are the least needing of it.

While the concept of distributive justice applied by Collins is limited to the specific benefits arising from a reorganisation of the firm there are much broader concerns with the distribution of the wealth and benefits in society generally.[25] In this sense, justice is concerned with the "basic structure of society, or more precisely the way in which the major social institutions distribute the fundamental rights and duties and determine the division of advantages from social co-operation" (Rawls, 1972: 7).

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22 Generally see, Radin, M. (1982).

23 See, for example, Epstein, R. in Paul, E., Frankel, F. and Paul, F. (1994).

24 See also Mitchell D. (1995).

25 Theophanous, A. (1994).

Since the "Age of Reason" dawned over two hundred years ago there have been various attempts to provide a theoretical account of justice, and what it means to say a society is a just one. This century has seen a number of important contributions to this on-going quest. While the libertarian ideals in the work of Hayek (1944) and Nozick (1974) have found expression in the policies of the "New Right", it is the work of John Rawls (1972), more than any other,[26] that awned a renaissance in social philosophy. Although sharing the respect for individual liberty and freedom of Hayek and Nozick, Rawls' concerns, and his conception of what is meant by "justice", is with human welfare. Toward this end, consistent with the liberal tradition, Rawls is prepared to accept an abridgement of individual rights where the strict enforcement of such rights is "unfair".

In determining what is a just society, and what is a just distribution of society's bounty, Rawls identified two governing principles, by which a just society may be determined. In their final form[27] these principles are:

First Principle	Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
Second Principle	Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged . . . (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

At this point it is necessary to say a few things about the content and origins of these two principles.

The first principle - a right to self respect

The first principle is aimed at basic civil and human rights. It thus encompasses those rights which we usually associate with civil rights: a right to participate in the political process, freedom of speech, freedom from arbitrary arrest and freedom of conscience and thought. Rawls' conception of liberty, however, goes beyond these rights, as such rights are only a specific manifestation of an overriding concern with self-respect or self-esteem.[28] In this context self-respect includes an individual's sense of self-worth and right to self-fulfilment. As Lyons (1984) notes, to experience a minimally decent and acceptable existence, one must think of one's own concerns to be worth something. Thus for Rawls the liberties guaranteed

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26 But see: Davies, H. and Holdcroft, D. (1990); Theophanous, A. (1994); Grassian, V. (1981) and Harris, P. (1980).

27 Particulary in respect of the second principle, there was some refinement following the original statement of the principles in *A Theory of Justice*.

28 Theophanous, A. (1994).

by the first principle include not only civil rights but also the right of the individual to self-respect and self-fulfilment.

The second principle - equal access

The second principle contains two key elements. First, the so-called "difference principle". This asserts that in a just society economic and social inequalities will be distributed so that there is the greatest advantage for those who are worst off. One important consequence of this principle is that it readily admits the possibility of inequalities and accepts that they will be just. All that is required is that there is some gain to the less advantaged. A further consequence is that the inconsistencies between Rawls' view and that of neo-classicists are not as great as it might first be thought. For example, if one accepts that an allocationally efficient market ultimately benefits all, the aggregation of wealth in the hands of a few is not unjust: the lot of the least advantaged is improved by the aggregation.

The second key element is the equality of access. This requires that access to the opportunity to acquire advantages (wealth, income, power and authority) is available to all. Rawls' notion of access is an extended one, however, comprising not only formal equality but also a "level playing field". Thus, for example, it is not enough to make a job open to all with the appropriate qualification, the opportunity to acquire the qualification must also be equal.

The choice of principles - why is such a society just?

The two principles discussed above are the criteria by which we may judge whether a society is a just one. But we may ask, why are these principles appropriate, and wherein lies their normative force? The source of these principles and the feature which justifies redistribution in the case of inequalities, is to be found in the type of society to which rational people would agree. The two central features of this agreement are first, that it is made in the "original position". This is at a hypothetical point of time before society has formed. Second, that the parties are rational but must decide from behind a veil of ignorance. That is to say that at the time of the agreement they are unable to predict what their position in that society will be or what natural advantages they might find themselves with in that society. This agreement would in Rawls' view give rise to the two principles of justice.

This hypothetical, *ex ante*, social contract also provides the normative justification for any redistribution that might be necessitated by the application of the two principles of justice. In much the same way as neo-classicists now rely upon voluntariness as the central, and exclusive, justification for the recognition of obligations, the voluntary (though hypothetical) agreement to the two principles of justice is the justification for the abridgement of any individual rights that these principles may entail. The individual having agreed to a rule that might entail redistribution of wealth at some later date, cannot complain that his or her rights are being infringed when the eventuality occurs. In short, one's "rights" to the wealth acquired are always conditional upon satisfaction of the two principles of justice.

Justice and the worker

The redundancy of a worker would seem to invoke both principles of justice. The dismissal may infringe the first principle in that the worker is denied the opportunity of fulfilment as an individual. As we have seen the rights with which the first principle of justice are concerned encompass rights to self-respect and self-esteem. Work, as opposed to the income it generates, is an important factor in one's feeling of self-respect and self-worth. The lack of meaningful, potential-fulfilling work which undermines the individual's self-respect and self-esteem thus seems to infringe the requirements for a just society. One might also add that the supposition that the employer may buy and sell the worker must come perilously close to infringing essential aspects of individual and political liberty.[29]

It may also be that a dismissal infringes the second principle. Although Rawls spoke primarily in terms of equality of access to employment itself, it may nevertheless be within the spirit of Rawls' conception of justice to extend the right of access to the benefits flowing from the job. In a modern society a job, as well as a source of personal fulfilment, is a gateway through which an individual shares in the benefits and wealth of society. Thus, although a redundancy may not infringe the right of access to employment, there may still be a denial of access to those benefits that flow from the job. By depriving the worker of a job the worker is denied access to the economic and social benefits associated with being employed: income, pensions, medical services and status. Once this is accepted, the dismissal, whether because of the firm's failure or a desire to enhance profits, results in an unjust distribution of the fundamental rights and benefits of society. It is this unjustness that calls for redistribution, the redistribution being effected by the provision of compensation.

This conception of distributive justice differs from that envisaged by Collins in that we are no longer solely or exclusively concerned with the specific distributional issues arising out of individual redundancies and dismissals. Instead we are concerned with the distribution of all of society's rights and wealth. While the worker is employed, the inequalities are tolerable because the worker has an opportunity to partake of society's wealth. Although the employer "owns" a disproportionate amount of society's wealth, this ownership is consistent with the second of Rawls' principles: non-owners have an opportunity, through employment, to benefit, and the allocative efficiencies of the aggregation does benefit the least advantaged. Where, however, the worker is dismissed the inequalities in wealth distribution become "unjust", and the compensation payable becomes the mechanism by which this inequality is addressed.[30]

At the risk of labouring the point, on this broader conception of distributive justice the worker's claim to compensation on a redundancy rests not on the specific features of the

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29 From a neo-classical perspective the element of voluntariness would save this analysis form charges that it is tantamount to slavery. One can of course take issue with the assumption that workers really have a choice. In an era where we seem to be heading in the direction of Nozick's (1974) minimal state, the alternatives are fast disappearing.

30 One might respond that distributional concerns do not explain why it is the particular employer who must bear the costs of the redistribution. While an important point, the answer lies in the employer's proximity to the worker and the causal role of the employer in the worker's disadvantage.

particular dismissal, but upon society's concern with social justice and a perception that some are unfairly disadvantaged. The redundancy itself is merely the occasion upon which the inequalities become intolerable and remedial action is taken.

To test our conclusion that compensation for redundancy is necessary in a just society we can consider directly the social contract which underlies Rawls' identification of the two principles of justice. As discussed, the principles which govern a just society are those to which rational individuals would agree, if that agreement were made from behind a veil of ignorance. We can, therefore, ask, would a rational individual, unable to predict whether he or she would at some future point be worker or employer, or whether he or she would be naturally gifted, well educated or from an affluent background, agree that compensation should be payable upon a redundancy? In the writer's opinion the answer is indisputably yes.

In these terms, as a basis for the worker's claim to compensation, distributive justice is both the most abstract and potentially the most compelling. It establishes a right to compensation that is independent of the particular factual circumstance or motivation for the dismissal, and one that is clearly vindicable against the employer rather than the state. It is a right, furthermore, that draws together and gives a philosophically sound expression to many of the insights which informed the other justifications discussed above.

Ultimately, however, its force as a justification rests upon one's conception of what is a just distribution or a just society. From the standpoint of a libertarian such as Nozick (1974) a just distribution can arise only from consensual or voluntary transactions, while at the other extreme socialists take equality as the governing concern (Ogus, 1994). In the final analysis, however, if we are to continue to live in close proximity to one another, and if society is to survive at all, our choices may be more limited than we currently perceive. Bauman (1993) has recently suggested that for us to have a collective existence, to in fact have a society at all, depends upon the moral competence of its members: the regard held by the individual for the other, not merely conduct necessary to be in proximity to others. Bauman's point is that society's very existence is predicated upon the morality of its members. It is the individual's regard for the other that makes society possible, rather than, as the "contractual" theorists such as Hobbes and Kant thought, society making moral conduct possible or necessary. For Bauman, as individuals we are inherently "other-regarding", and the attempts to rationalise this altruism, to justify why we act in the other's interest without thought of reciprocation, destroys the essential nature of this altruism and therefore threatens the continuation of society. If society is to continue, therfore, it may be that the decisions to keep or dismiss the worker, the terms on which it is done and the financial and moral support given in the event of redundancy must not be based, at least exclusively, on the employer's self-interest, but upon the effects on the worker and what is right.

Conclusion

In the revival of the economic system associated with Adam Smith (1976, 1986) there has been a tendency to extol the virtues of the "invisible hand" (1976: 184-5) of self-interest at the expense of justice and morality. Yet such matters were central to Smith's wider concerns

with social philosophy. For Adam Smith, while mankind's self-interested outlook might play an important part in the greater plan, such tendencies were inimical to the existence of society. Smith recognised that if society is to survive we must on occasion put aside self-interest in favour of the interests of others. If, therefore, we are to pursue an economic policy based on Smith's "invisible hand" we would do well to recognise the limits Smith himself imposed on that policy. In short, the invisible hand of self-interest should be constrained by the more visible hand of compassion.

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