

LEGISLATION

Universal Credit, 'Positive Citizenship', and the Working Poor: Squaring the Eternal Circle?

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This article examines the potential effects of the Welfare Reform Act 2012 on the United Kingdom social security system, and on claimants. This legislation illustrates new modes of thought and ideology underlying the British welfare state. The introduction of the 'Universal Credit' has the potential to solve the 'poverty trap', where claimants are better off in receipt of welfare benefits rather than engaging with employment, and may assist low-paid individuals into 'positive' citizenship. However, the practicalities of implementing Universal Credit might undermine legislators' ambitions. It may be that the Act attempts too much reform to the social security system, trying to impose legislative uniformity on a highly complex set of socio-economic circumstances which may be impervious to such rationalisation. This could result in the scheme requiring further reform, or even abolition. The ideological and historical underpinnings of Universal Credit are also examined to understand more clearly its nature and structure.

INTRODUCTION

The Welfare Reform Act (WRA) 2012 aims to effect significant changes to the social security system in the United Kingdom, building upon existing welfare reform programmes. Specifically, the introduction of the much vaunted (and somewhat misleadingly-titled) 'Universal Credit' (UC), with which this article is largely concerned,¹ will reduce the number of benefits in the welfare system, ostensibly simplifying some of its more complicated aspects. Due to the highly technical nature of Universal Credit administration, it has been piloted in a number of regions around the UK, with the original aim of having the scheme fully operational by the end of 2017.² However, the emerging

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1 Universal Credit, outlined in Part I of the Welfare Reform Act 2012, will replace six existing benefits: income-based Jobseeker's Allowance; Income-related Employment and Support Allowance; Income Support; Working Tax Credit, Child Tax Credit; and Housing Benefit.

2 The scheme began on 29 April 2013 in one single Jobcentre in Ashton under Lyne, Greater Manchester. Ian Duncan Smith has defended the decision to develop Universal Credit on an incremental basis on the grounds of its complexity. See B. Brogan, 'Universal Credit Blame Game Begins' *Daily Telegraph* 7 November 2013. For a comprehensive list of those areas in which Universal Credit is operational, see <https://www.gov.uk/guidance/>

reality that this original aim will not be met by that target date, and the well-publicised difficulties in rendering Universal Credit operational, have made the scheme highly topical and contentious, even though the Act has now been in existence for over four years. Since Universal Credit was supposed to be at least provisionally operational by 2018, it is an appropriate time to explore both its nature and its potential socio-economic effects on recipients

The fundamental aim of Universal Credit is to assuage the historical problem of the ‘poverty trap’, whereby it is more financially rewarding for citizens to claim benefits than to engage in paid employment. The more punitive aspects of the Welfare Reform Act (WRA) 2012, together with the reintroduction of the ‘less eligibility’ principle through the ‘benefit cap’ in April 2013,³ could be portrayed as a fulfilment of the Conservative pre-2010 election pledges to bring radical legislative changes to the welfare system. The introduction of Universal Credit (UC) could quite easily fit within the populist narrative of assisting the ‘strivers’ in society, those low-paid individuals and families who seek to improve their circumstances through engagement in the labour market, and shaming the ‘shirkers’, allegedly content to live off social security benefits.⁴ Examined in the context of other recent social security reforms, including the introduction of the benefit cap⁵ (and before this the replacement of Incapacity Benefit by Employment and Support Allowance⁶), UC represents not only the natural culmination of the tax credits policy,⁷ but also a profound legislative change to the welfare state, especially in administrative terms.⁸ While there does exist some academic literature on the technicalities of UC, surprisingly little has been written on the potential socio-political impact of the WRA 2012, and it is the intention of this article to help remedy this dearth of analysis.

It is a further aim of this article to evaluate UC, and examine the potential impact of WRA 2012 on the welfare state and citizen claimants. One key background question is whether the introduction of UC, unaccompanied by reform in other areas such as in education and industrial training can actually be decisive in encouraging a substantial proportion of unemployed citizens into the labour market. As a stand-alone measure, it is hypothesised that the WRA 2012 might not achieve the results desired for it. Whatever shortcomings may

jobcentres-where-you-can-claim-universal-credit (all URLs were last accessed 15 October 2017). It is estimated that the Universal Credit scheme will not be operational until at least March 2022. See n 130 below.

3 This was also achieved through the Welfare Reform Act 2012, s 96 and the Benefit (Housing Benefit) Regulations 2012, SI 2012/2994.

4 These terms were first introduced to the welfare polemic by the Chancellor of the Exchequer. See, *The Guardian* 8 January 2013.

5 The cap of £26,000 imposed on all benefit recipients regardless of household number.

6 This reform was introduced by the last Labour government through the Welfare Reform Act 2007. See D. Bonner, ‘Employment and Support Allowance: Helping the Sick and Disabled to Return to Work’ (2008) 15 JSSL 123, and P. Larkin, ‘Incapacity, the Labour Market and Social Security: Coercion into “Positive” Citizenship’ (2011) 74 MLR 385.

7 Both Labour and Conservative governments in recent decades have had the longstanding ambition to merge the tax and benefits systems, to achieve savings on administrative costs and a simplification of the often labyrinthine bureaucracy in both welfare and revenue systems. See N. Harris, *Law in a Complex State: Complexity in the Law & Structure of Welfare* (Oxford: Hart Publishing, 2013) 60 – 61.

8 See below for a full discussion of this.

be inherent in UC, it is clear that its creation reflects a manifest political drive to ensure that engagement with the labour market will always be more financially rewarding for low-paid households than benefit receipt, and a laudable legislative attempt to end the ubiquitous poverty trap within the UK. However, it will be a central contention in this article that, despite legislators' aims for UC, in particular the anticipated savings from streamlined administration and the continued participation of recipients in the labour market, the socio-economic complexities which must be addressed by UC (which are likely to remain unchanged) could eventually overwhelm the successful operation of the information technology system underpinning it. Furthermore, it is possible that with the WRA 2012, Parliament has overburdened the Department for Work and Pensions (DWP), which will have responsibility for administering both the income-based and tax credit aspects of UC for the first time.

HISTORICAL BACKGROUND TO UNIVERSAL CREDIT: CONTINUATION OF OLD POLICY?

In conceptual and policy terms there is little that is entirely new in UC: the most significant early example of legal attempts to augment low household wages was the eighteenth century 'Speenhamland System', which provided a financial supplement out of local rates to an agricultural labourer's income.⁹ This system was abolished by the Poor Law Amendment Act 1834, but the underlying principle of state supplements to low wage workers' families was resurrected in the early 1970s with 'family income supplement' (FIS),¹⁰ and 'family credit' (FC)¹¹ in the 1980s, the latter running for six months, with recipients gaining automatic entitlement to other means-tested benefits such as free National Health Service prescriptions, dental care, and free school meals. However, the proportion of the 'working poor' in receipt of family income supplement and family credit remained well below expected targets.¹² The reasons for the low take-up rate of FIS and FC were similar: the stigma related to benefit receipt attached to both benefits, and, as claimants' hours of work and wages rose, FIS and FC would be 'clawed back' at a high rate, pushing families back into the cycle of working poverty.¹³ FC itself was retained by

9 M. A. Crowther, *The Workhouse System 1834 – 1929* (London: Penguin Books, 1987) ch 1. This wage supplement was not favoured by commentators such as John Stuart Mill, who asserted that it permitted employers to keep wages artificially low, placing the costs of hiring labour onto parish ratepayers. These fears were to re-emerge in the debates over Family Credit, tax credits, and, ultimately, UC. See below for further discussion of this. See also, J. S. Mill, 'Of Popular Remedies for Low Wages' Book II Chapter XII in J. S. Mill, *Principles of Political Economy* (London: Longmans, Green and Co, 1909).

10 Prescribed by the Family Income Supplement Act 1970.

11 Introduced in the Social Security Act 1986.

12 Berthoud and Brown, for example, stated that family income supplement claimants in 1981 numbered only 90,000. See R. Berthoud and J. C. Brown, *Poverty and the Development of an Anti-Poverty Policy* (London: Heinmann, 1978) 78 – 80.

13 See, N. Lee, 'The New Tax Credits' (2003) 10 JSSL 7, 9. Lee notes that the incentives provided by FC were an improvement on FIS, but still were too negligible to encourage significant numbers of benefit recipients into the labour market.

the pre-1997 Conservative Government, which had begun to utilise social security as part of its strategy of ‘building bridges out of dependency’.¹⁴ There were good reasons for this strategy, the central one being that wage levels for the lowest decile of the workforce had reached historic low levels, resulting from deregulatory measures like the abolition of Wages Councils, competitive tendering, increasing use of ‘contracting out’ of labour in the public sector, coupled with the legislative neutralisation of trades unions.¹⁵

The incoming New Labour Government had as one of its key commitments the integration of the tax and benefit systems to create a form of in-work ‘tax relief payment’, administered primarily through the revenue authorities, designed to support financially the family unit and provide parents with the incentive to find and retain paid employment. Because the ‘tax credit’ was administered by the tax authorities it allowed recipients to avoid the indignity of claiming a benefit, and, together with the introduction of the national minimum wage, it was hoped that work would be sufficiently rewarding to encourage either one or even both parents in a family unit to remain in work.¹⁶ This idea of using tax credits to encourage labour market participation was to continue under New Labour governments, with Working Families Tax Credit and Disabled Persons Tax Credit being replaced by ‘working tax credit’, and forms of support for children through tax and social security with a ‘child tax credit’ in the Tax Credit Act 2002.¹⁷ However, it would be inaccurate to characterise UC as conceptually anachronistic in its entirety:¹⁸ what makes UC innovative is that it performs the function of a number of individual benefits within the social security system, and it represents a form of fusion between income-based benefits and the tax credits which have been a feature of welfare policy since the New Labour governments of the later 1990s, and is to be administered by the Department for Work and Pensions through Jobcentres. UC may also be tailored to the circumstances of the individual recipient and their household, and, unlike previous tax credits, the clawback rate of UC is considerably lower, designed to ease recipients’ passage back into paid employment. The legislative structure of UC, and the main policy rationale behind its main provisions will be examined in greater detail below.

14 K. Puttick ‘21st Century Welfare and the Wage-Work-Welfare Bargain’ (2012) 41 ILJ 122, 125.

15 *ibid.*, 25. Gregg and Wadsworth assert that that these factors led not only to a reduction in ‘job security’ but also impacted adversely on employees’ ability to negotiate reasonable wage increases. See P. Gregg and J. Wadsworth, ‘Feeling Insecure? An Analysis of Job Tenure from 1975 to 1995’ *Employment Audit* (London: Employment Policy Institute, 1996). See also, S. Nickell, T. Jones, and G. Quintini, *A Picture of Job Insecurity Facing British Men* (London: Centre for Economic Performance, London School of Economics and Political Science, 2000).

16 According to Gordon Brown, then Chancellor, Working Families Tax Credit, the first of the new tax credits, combined with Child Benefit, was responsible for lifting 1.2 million children out of poverty. The measurement of poverty for these purposes is a household with less than 60% of median national income. See *Households Below Average Income Statistics* Department for Work and Pensions (11 April 2002), cited in Lee, n 13 above, 10.

17 N. Wikeley, *Tax Credits Act 2002 Annotated Legislation* (London: Sweet and Maxwell, 2002).

18 The conceptual blueprint for UC was set out in the Command Paper *Universal Credit: Welfare that Works* Cm 7957 (London: TSO, 2010).

MAIN STRUCTURE AND POLICY FOUNDATIONS OF UNIVERSAL CREDIT

The central aims of the Welfare Reform Act 2012 are essentially twofold. The more obvious aim is to achieve maximum participation in the labour market by ensuring that paid employment will always be more lucrative than benefit receipt. The second is to achieve greater administrative cost and time efficiency. The most significant reform is the abolition of six complex means-tested benefits and tax credits,¹⁹ and their replacement with an integrated UC, merging the administration of both tax credits and benefits under the remit of the DWP.²⁰ UC itself is akin to a form of income-based benefit, combining elements of modern tax credits and older means-tested state benefits. Previously, it often proved difficult for potential claimants to understand how the benefits they applied for were related to each other. For example, a claimant with children in rented accommodation might have had to claim four different benefits from three different authorities, and complications were aggravated by the fact that entitlement to tax credits was usually calculated with respect to an entire tax year, whereas entitlement to four of the six benefits abolished by the Welfare Reform Act 2012 were calculated weekly and paid fortnightly.²¹ In addition, it was frequently difficult to ensure that the two different calculations and payment systems tallied with each other accurately, due to the deficiencies in information sharing between the DWP and HMRC. Any error made by either claimant or administration authority could result in an underpayment, leaving the claimant in debt and perhaps pushed further into poverty. The abolition of prescribed income-based benefits and tax credits replaced by the Welfare Reform Act 2012 meant that their functions would be replaced by UC, which would now be administered and disbursed by the DWP.²²

Section 1 of the WRA 2012 sets out the classes of claimant that UC may be awarded to, namely, single persons and couples jointly, both in and out of work.²³ This section also outlines the structure of UC, stating that it consists of a standard allowance, and separate amounts for responsibility for children and young persons, for housing, and for other particular needs or circumstances.²⁴ The detailed rules on claims for UC are contained in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.²⁵

19 Income-based jobseeker's allowance, income support, income-related employment and support allowance, housing benefit, working tax credit, and child tax credit. This abolition is contained in WRA 2012, s 33.

20 See G. McKeever, 'Social Citizenship and Social Security Fraud in the UK and Australia' (2012) 46 *Social Policy and Administration* 465 and G. McKeever, 'Balancing Rights and Responsibilities: The Case of Social Security Fraud' (2009) 16 *JSSL* 139.

21 See J. Mesher, R. Poynter, N. Wikeley and P. Wood, *Universal Credit: Volume V Social Security Legislation 2013/14* (London: Sweet and Maxwell, 2014) 4.

22 The role of HMRC has also been restricted to the administration of child benefit and guardian's allowance.

23 WRA 2012, ss 1(2)(a) and (b). See also s 2.

24 ss 1(3)(a) – (d).

25 SI 2013/380. See also WRA 2012, ss 3 and 4.

The Act introduces the idea of a ‘claimant commitment’,²⁶ to take certain agreed steps to engage with the labour market.²⁷ This is described²⁸ as a record of the claimant’s responsibilities in relation to an award of UC, and includes requirements that the claimant must comply with any prescribed information, and any information which the Secretary of State considers necessary to include. There is little that is entirely original in this idea,²⁹ but the WRA 2012 expands on what is entailed by work-related activity and preparation for labour market participation.³⁰

Furthermore, the legislation creates a unified set of requirements for UC. The Secretary of State is empowered³¹ to direct that the claimant participate in one or more work focused interviews if it is deemed more likely that they will be better able to find paid work after the interview, and it is envisaged that the majority of claimants will be subject to this direction.³² Similarly, the idea of ‘work preparation requirements’ is outlined,³³ whereby the Secretary of State may require that a claimant undertake specified actions which would make it more likely for the claimant to find employment. The Secretary of State is provided with a great measure of authority to impose requirements on UC claimants, supplemented by section 24 of the WRA, containing further powers and duties relating to this subject. The Act and accompanying Regulations also set out prescribed amounts of capital beyond which a claimant will not be entitled to UC if they possess an equal or higher amount.³⁴

As is customary, the WRA 2012 contains a set of sanctions which may be imposed on claimants who have not complied with their legislative obligations. Sections 26 to 28 set up a similar structure of sanctions leading to reductions in the amount of UC to those already contained in the Jobseekers Act 1995.³⁵ Higher level sanctions may be imposed if a claimant fails to comply with any work preparation requirement made by the Secretary of State, fails for no good reason to apply for a particular vacancy, or does not take up an offer of paid work.³⁶ The sanctions are substantiated by the Universal Credit Regulations: for example, a claimant is deemed not to have complied with a requirement to apply for a particular vacancy for paid work where they fail to participate in an interview connected with the vacancy,³⁷ while Mandatory Work Activity is

26 s 4(1)(e).

27 More details on the claimant commitment are contained in the Universal Credit Regulations 2013, SI 2013/376 (UC regs 2013), regs 15 – 16.

28 In WRA 2012, s 14.

29 The jobseeker’s agreement under the Jobseekers Act 1995 required a similar commitment on the part of the claimant to take steps to engage with the labour market.

30 WRA 2012, ss 13 – 25.

31 WRA 2012, s 15.

32 Under subsections (2) and (3) it states that Regulations must prescribe the purposes for which the interview may be required. This prescription is set out in wide terms in the UC regs 2013, reg 93.

33 WRA 2012, s 16.

34 The capital limit for UC for both single claimants and couples is £16,000. See the UC regs 2013, reg 18(1). Where a claimant who is part of a couple makes a claim as a single person the combined income of the couple is taken into account, see reg 22(3)(a).

35 The Jobseekers Act, ss 19 and 20 were substituted by the WRA 2012, and have been in operation since 22 October 2012.

36 See WRA 2012, ss 26(2) (a) (b) and (c).

37 See UC regs 2013, reg 94.

prescribed as a work placement for the purposes of the Act.³⁸ The principles on which sanctions are based are set out in the regulations, with reduction in UC being the standard 'punishment'.³⁹ The period for a reduction in the amount of a UC award is determined in accordance with the regulations,⁴⁰ and may not exceed three years.⁴¹

Another innovative aspect of the WRA 2012, most heralded by government,⁴² is the way in which it prescribes the calculation of UC, and sets out deductions to be made from the award of UC as the earnings of the couple or individual increase. Under section 8(1) the amount of an award of UC consists of the 'maximum amount' less 'the amounts to be deducted.' The maximum amount is calculated on a monthly basis, and is conceptually equivalent to the weekly 'applicable amount' used in the computation of income support, income-based jobseeker's allowance, and income-related employment and support allowance. It is the total of the standard allowance established by the WRA 2012 and accompanying regulations,⁴³ and there are various components to which the claimants or joint claimants may be entitled.⁴⁴ For example, there is the child element, by which an amount is allowed for each child or qualifying young person for whom a person is responsible,⁴⁵ while the childcare costs element are set at 70 per cent of the charges incurred by a claimant for relevant childcare, and a claimant may qualify if they satisfy both the work condition and childcare costs condition.⁴⁶ In addition, there is a housing costs element to UC (which mainly replaces housing benefit),⁴⁷ as well as limited capacity for work⁴⁸ and limited capacity for work related activity⁴⁹ components. Once the maximum amount is ascertained, it is necessary to calculate the amounts to be deducted, a sum consisting of all the claimant's, or the claimants' combined, unearned income, and 65 per cent of the amount by which the claimant's, or the claimants' combined, earned income exceeds the work allowance.⁵⁰ The work allowance itself is equivalent to the 'earnings disregard' set out in various income-based benefits,⁵¹ and a higher work allowance is applicable if the award of UC does not include the housing costs element.

38 See reg 114(1).

39 See regs 101 – 119.

40 See regs 102 – 105.

41 See reg 101(3).

42 It certainly was the aim of the then Coalition Government to enhance financial incentives for citizens to enter the labour market.

43 See WRA 2012, and UC regs 2013, reg 36.

44 The amount of the standard allowance and the various elements are specified in a table forming part of reg 36.

45 See reg 35.

46 See regs 32 and 33.

47 WRA 2012, s 11 and UC regs 2013, regs 25 and 26, and Schedules 1 to 5. This housing element is designed to meet the cost of household rent or mortgage interest payments.

48 WRA 2012, s 12 and UC regs 27(1)(a) and 36.

49 WRA 2012, s 12 and UC regs 27(1)(a) and 36.

50 See WRA 2012, s 8(3) and UC regs, reg 22.

51 For example, income support, housing benefit and employment and support allowance.

INTERPRETATIONS OF UNIVERSAL CREDIT

In technical terms, UC is certainly innovative, with the DWP being responsible for the administration of both the benefit and tax credit elements.⁵² In policy terms, if the benefit cap and stringent reforms to incapacity benefits⁵³ represent the coercive aspects of the nascent social contract, UC could be interpreted as a form of legislative encouragement for low paid citizens to remain engaged in the labour market, even to increase their level of participation. Thus it is hoped that a more active, or 'positive' citizenship among this sector of the population will be fashioned.⁵⁴ In a sense UC represents a return to the origins of the welfare state itself. Wincott has observed that during the post-war years there was not the universal support for the notion of all-encompassing, 'cradle to grave' state social security protection as might be supposed.⁵⁵ When the Beveridge Report⁵⁶ was compiled the necessity to sustain oneself through employment was accepted automatically by the majority of the British population. By ensuring that paid employment will always be more financially rewarding than benefit, combined with a stringent policy on enforcing the national minimum wage,⁵⁷ UC could be viewed as an attempt to recapture a semblance of the spirit of the early welfare state, permitting the virtuous lower paid to achieve the economic independence which Hayek believed necessary for a 'market order' to flourish.⁵⁸ The new direction of this welfare reform inclines away from the rights-based vision of welfare envisaged by Marshall,⁵⁹ towards a much more conditional system. One ancillary aspiration for the Welfare Reform Act 2012 would be that as more citizens engage with the labour market (particularly in positions requiring more advanced skills and education), this would lead to competition for employees, resulting in higher wages, thereby reducing UC costs.⁶⁰ The fact that distribution of UC has been designed partially to reflect modern salary payment methods⁶¹ may be an attempt to forge a psychological link between benefit receipt and the necessity of engaging with the labour market.

52 See below for further critical discussion of the technical aspects of UC.

53 See Larkin, n 6 above.

54 *ibid.*

55 D. Wincott, 'Images of Welfare in Law and Society: The British Welfare State in Comparative Perspective' (2011) 38 JLS, 343, 358. See also, J. Harris, *William Beveridge: A Biography* (Oxford: Clarendon Press, 1997).

56 W. H. Beveridge, *Social Insurance and Allied Services* Cmnd 6404 (1942).

57 Vince Cable MP, Secretary of State for Business, announced that from October 2013 any employer who fails to pay staff the minimum wage of £6.31 an hour will be publicly shamed and then brought before the courts if they refuse to make up the arrears. See *The Observer* 28 July 2013.

58 F. Hayek, *Law, Legislation and Liberty, Volume Three: The Political Order of a Free People* (Chicago: University of Chicago Press, 1979) 12.

59 T. H. Marshall, 'Citizenship and Social Class' in T. H. Marshall and T. Bottomore, *Citizenship and Social Class* (London: Pluto Press, 1987).

60 A policy of higher wages to help uplift UK citizens from poverty is encouraged by the TUC. See *How to Boost the Wage Share* Touchstone Pamphlet#13 at <http://www.tuc.org.uk/tucfiles/611/How%20to%20Boost%20the%20Wage%20Share.pdf>. See also S. Lansley and H. Reed, 'A Boost to Wages is the Route out of the UK's Economic Crisis' *The Guardian* 1 July 2013.

61 See below for a discussion of this.

These anticipated effects of UC may be linked to the political desire to create a more cohesive society. Delanty has noted an 'emerging crisis of solidarity', not only within the UK but throughout Europe, and he traces this back to a series of social and economic transitions, including changes in family, class, and employment structures which cumulatively have weakened previously solid social bonds.⁶² Veitch has asserted that within the workfare contract (of which UC will be a central feature) it is possible to identify two forms of social solidarity, both of which have much in common with Durkheim's mechanical and organic social solidarity, in that they contain punitive and restitutive elements, designed both to exclude and include those members of the population in need of assistance.⁶³ Veitch further suggests that in the post-Keynesian world, workfare, and the contractual nature of benefit eligibility constitutes a method of manufacturing a form of collective individualism in a society which no longer inclines towards collective thought or action.⁶⁴ Lending support to this idea is the theory of Bauman that the development of the 'society of consumers', together with the progressive decline for the conditions necessary for social solidarity, has resulted in a simultaneous diminution of rights-based welfare benefits offered by the state.⁶⁵ It is perhaps felt by legislators that the anticipated greater financial security delivered through UC, the National Living Wage, and engagement with the labour market would lead to a resurgence in the creative energies and community spirit of the working population, prompting the spontaneous creation of self-help organisations among this sector of society.⁶⁶

UC itself, placed against the background of calls among certain leading Conservatives for the achievement of full employment,⁶⁷ a national living wage to boost the living standards of the working poor,⁶⁸ and the recognition that the state has a key role in ensuring economic growth,⁶⁹ would appear to suggest a social democratic counter-current to the neo-liberal Conservatism of the 1980s and 1990s. On the centre-left of British politics there is a corresponding ideology within which UC fits comfortably, the so-called 'Blue Labour' movement, which favours limiting the power of state institutions and instead encouraging working communities to become politically involved by voluntarily forming their own social institutions, as in the pre-Welfare State era. The foremost proponent of this movement, Maurice Glasman, has expanded on the importance of 'mutuality' within state and community institutions:

62 G. Delanty, 'Fear of Others: Social Exclusion and the European Crisis of Solidarity' (2008) 42 *Social Policy and Administration* 676.

63 K. Veitch, 'Social Solidarity and the Power of Contract' (2011) 38 *Journal of Law and Society* 189, 192.

64 *ibid.*, 192 – 203.

65 Z. Bauman, *Does Ethics have a Chance in a World of Consumers* (Cambridge, Mass: Harvard University Press, 2008) ch 3.

66 These had greatly impressed Beveridge during his research into social insurance during the early 1940s.

67 Recently, George Osborne has claimed that the Conservative Party is once more the party of full employment. See *The Guardian* 1 April 2014.

68 See *The Independent* 3 September 2013.

69 See *The Guardian* n 67 above.

Distinctive labour values are rooted in relationships, in practices that strengthen an ethical life. Practices like reciprocity, which gives substantive form to freedom and equality in an active relationship of give and take; or mutuality, where we share the benefits and burdens of association. And then, if trust is established, solidarity where we actively share our fate with other people.⁷⁰

The conditionality attached to eligibility for UC conforms to this concept of mutual responsibility and obligation between state and citizen, and could play a central role in encouraging the ‘responsibilisation’ of the low paid and unemployed citizenry of the UK. Certainly it appears that some sections of the Labour Party are determined to ensure that the principles of mutuality and responsibility continue to be intensified.⁷¹

However, even at a policy level, disquiet was expressed by some commentators at the concept of UC, before the passage through Parliament of the Welfare Reform Bill. Questions were raised about the conditionality element in the proposed reforms and parliament was requested to ensure greater flexibility towards parents in the job-seeking system, and to clarify the point at which conditionality would cease to apply to single parents.⁷² Despite expectations that the introduction of UC might lead to a revival of post-War communitarian values, Anne McGuire MP⁷³ during parliamentary debates on the Bill, drew a clear distinction between the idea of UC and the welfare state which Beveridge envisaged. McGuire asserted that UC would simply reinforce the conditional, non-contributory, and rules-based nature of the contemporary welfare state, which stands in contrast with Beveridge’s blueprint for state benefits, based primarily around social insurance contributions engaging the whole of the employed population, all having an equal stake in the system which they could draw on during periods of need.⁷⁴ The Bill under discussion represented a deconstruction of those more socially cohesive principles:

What we have is a system that effectively tells people that they cannot have welfare unless they meet all the criteria, which are not even known, in a Bill that is far more skeletal than many of – indeed, any of – the welfare Bills brought before this House.⁷⁵

It is certainly the case that UC was not designed to engage with society as a whole, despite its title, but rather with unemployed and low paid citizens, and therefore appears more akin to a traditional income-based benefit.

70 See M. Glasman, ‘Labour as a Radical Tradition’ in M. Glasman, J. Rutherford, M. Stears and S. White (eds), *The Labour Traditions and the Politics of Paradox* (London: Lawrence and Wishart Publishers, 2011) 14.

71 Rachel Reeves MP, then Shadow Secretary of State for Work and Pensions, stated recently that Labour was not the ‘... Party of people on benefits.’ See *The Guardian* 17 March 2015.

72 See Gingerbread Consultation Response to 21st Century Welfare, October 2010, 2 at <http://www.gingerbread.org.uk/content/664/Consultation-responses-benefits>.

73 Then Labour MP for Stirling.

74 HC Deb vol col 981 9 March 2011.

75 See Anne McGuire MP, *ibid*.

UNIVERSAL CREDIT: A POSITIVE DEPARTURE FOR WELFARE?

In certain respects the WRA 2012 is technically innovative, particularly since UC must now be claimed online,⁷⁶ and is paid monthly in order to mimic work and the receipt of a salary.⁷⁷ This reflects the reality that some three quarters of the working population now receive their earnings monthly and in arrears.⁷⁸ UC takes the notion of 'mimicking work' even further, since most UC recipients who work part-time will be expected to spend as much time searching for work as the number of hours for which they are still 'available for work.'⁷⁹ The policy aim is to encourage or compel claimants, particularly those in part-time work, to work more and reduce their dependency on benefits.⁸⁰ The DWP has conceded that in order to allow for a measure of flexibility into family working arrangements, for some claimants their 'conditionality threshold' may be lowered in accordance with their personal circumstances on a case-by-case basis.⁸¹ While lone parents with children between five and 12 will be brought into these arrangements⁸² they will only be expected to look for work that is compatible with school hours, and there may also be scope to take account of childcare arrangements, including the necessity for less availability for work during school holidays and when childcare may not be available.⁸³ Similarly, couples with young children will be permitted a level of flexibility in their engagement with the labour market: they will be able to nominate a principal carer who would be subject to comparable requirements to a single parent for conditionality purposes, and individuals with caring responsibilities, including those able to do some part-time work, will only be obliged to seek employment that is compatible with their caring requirements.⁸⁴ It is evidently hoped that as the UC scheme is unrolled throughout the UK it will allow all forms of family unit as well as single claimants to engage in employment to the furthest extent compatible with their family responsibilities, and it also may prepare the way for those who find a measure of part-time work to take on more hours, eventually ceasing to be dependent on UC altogether. Indeed, the construction by the UC system of a 'pseudo "work" culture' that will pervade the welfare side of the welfare-work interface now also extends to workers in part-time work being supported by UC or other benefits.⁸⁵

Another progressive aspect of the WRA 2012 is in the manner of its calculation, which enhances greatly the incentive for families and individuals to enter and remain in the labour market. The 'work allowance'⁸⁶ permits much higher

76 See <https://www.gov.uk/apply-universal-credit>.

77 See K. Puttick, "'21st Century Welfare" and Universal Credit: Reconstructing the Wage-Work-Welfare Bargain Part 2' (2012) 41 *ILJ* 236, 239.

78 *ibid.*

79 *ibid.*

80 *ibid.*

81 DWP, *The Payment Proposal*, UC Policy Briefing No 2.

82 WRA 2012, ss 19 – 25 and UC regs 89 – 91.

83 *ibid.*

84 *ibid.*

85 See Puttick, n 77 above.

86 The structure of the 'work allowance' and 'higher work allowance' is set out in the WRA 2012, s 8(3) and UC regs 2013, reg 22. The higher and lower work allowances are each applied at six different rates which are specified in a table which forms part of reg 22.

earnings disregards than under other income-based benefits such as Income Support and JSA. This entails that claimants will be able to retain more of their earned income before their UC award is reduced and, if the figure calculated for earned income during the assessment period does not exceed the applicable work allowance then no deduction is made from the maximum amount.⁸⁷ In addition, once the reduction begins, claimants only lose 65 per cent of the increase in their income rather than 100 per cent, a development which accounts for the marked difference in outcome between working claimants on JSA and those on UC.

These reforms do go some way towards removing long-standing, and seemingly intractable, financial disincentives for citizens from various types of family background to engage with the labour market, particularly in light of the post-2010 Coalition Government's commitment to ensure that 85 per cent of childcare costs for poorer UC recipients would be met by public funds.⁸⁸ It is possible that the UC scheme may be less costly on public finances due to average wages levels growing faster than inflation in 2014,⁸⁹ while the fact that the self-employed may also be eligible for the benefit may encourage unemployed citizens to adopt this route to self-reliance.⁹⁰

However there are reasons to be cautious about the prospects for UC's success, and its supposedly progressive nature. None of the ambitious socio-economic goals outlined above for UC can be realised unless there is a realistic possibility of operational delivery of these objectives. Ironically, the innovation of placing the entire administration of the system within the remit of the DWP may indeed hinder the system's operation, since it will involve computation and disbursement of the tax relief elements of the UC, a function previously exercised by HMRC, which works on the basis of a different culture and set of priorities to the DWP. Even at the conceptual stage, Brewer observed that integrating benefits with tax credits would bring about considerable transitional costs, while the large scale information technology projects necessary to operate the new system could bring risks for government and claimant alike.⁹¹

The aim of simplification for both the purposes of administrative efficiency and end-user convenience is indeed laudable, a point underscored by Baroness Hale in *Hinchy v Secretary of State for Work and Pensions* when she stated that all could potentially draw upon welfare funds, it is in the interests of all citizens, both claimants and contributors, that the system be well designed and well administered.⁹² Certainly the abolition of six major income-based benefits and their replacement with a unified UC does go some way towards rendering the system less complex.⁹³ However, Baroness Hale in *Hinchy* did sound one note

87 See Mesher et al, n 21 above, 10.

88 See *The Guardian* 18 March 2014.

89 *The Daily Telegraph* 16 April 2014.

90 The Bank of England believes that the benefits cap imposed by the WRA 2012 has pushed more citizens into self-employment, a development hailed by Iain Duncan Smith as vindication of government welfare policy, see *The Daily Telegraph* 23 April 2014.

91 See, M. Brewer, *21st Century Welfare: Commentary on, and Response to, the Government's Consultation on Welfare Reform* IFS Briefing Note 110 (London: ESRC, 2010).

92 [2005] UKHL 16 at [48].

93 n 91 above.

of warning about why the social security system is so complicated in nature: the manifold functions of the welfare system, and the number of different life situations which its administrative system must cope with, means that it must always be, by nature, complicated.⁹⁴

Therefore, administrative complexity inherent in the calculation and distribution of UC awards is likely to remain high, as will levels of bureaucratic cost, given the scale of the reforms in question. Certainly Seddon and O'Donovan adopt a critical view on the information technology dominated 'industrial design' of UC, seeing it as greatly flawed, and predicting massive disruptions in the service flow, duplication of effort, and, ultimately, rising costs.⁹⁵ From the claimant's viewpoint, Sainsbury has asserted that the introduction of UC would not automatically simplify the highly complex nature of the tax credits and social security system,⁹⁶ an opinion endorsed by both Brewer⁹⁷ and the Policy Exchange representative on the Standing Committee for the Welfare Reform Bill.⁹⁸

Another point observed by the Parliamentary Joint Committee on Human Rights (JCHR) was that the rollout of UC has been incremental, and focused on claimants whose circumstances are relatively straightforward.⁹⁹ Only recently has it been extended, on a limited basis, to couples with children, a group which is particularly vulnerable in the event of household breakup in the event of situations such as domestic violence when the female partner leaves the family home with the children.¹⁰⁰ UC paid into a joint bank account 'could leave a victim vulnerable in these circumstances if the male controlled the account'.¹⁰¹ It was for this reason that the JCHR recommended during the passage of the Welfare Reform Bill in 2011 that it be amended to allow payments for children to be labelled as such and be paid to the main carer.¹⁰² However, this recommendation was not accepted by the then Coalition Government, since they did not wish to alter the planned structure of UC.¹⁰³ The JCHR also noted that automatic payment of the entire UC payment to the mother in couples with children would not be legal,¹⁰⁴ and refused to accept the Minister of State's assurance that the situation relating to female victims of domestic violence and their children was satisfactory.¹⁰⁵ These observations are paradigmatic of the manifold socio-economic realities which UC must cover, and which may serve to retard its successful operation in future years.

94 n 92 above. See also, Harris, n 7 above.

95 J. Seddon and B. O'Donovan, 'The Achilles Heel of Scale Service Design in Social Security Administration: The Case of the United Kingdom's Universal Credit' (2013) 66 *International Social Security Review* 1, 2.

96 Committee Debate – First Sitting: House of Commons 22 March 2011 col 6.

97 *ibid.*

98 This was Matthew Oakley, Head of Economics and Social Policy at Policy Exchange, see *ibid.*

99 See, House of Lords/House of Commons Joint Committee on Human Rights, *Violence against Women and Girls: Sixth Report of Session 2014-15* HL Paper 106 (London: TSO, 2015) 42, para 159.

100 *ibid.*

101 *ibid.*, para 152.

102 *ibid.*, 3.

103 *ibid.*, para 158.

104 *ibid.*

105 See *ibid.*, at para 159.

It also makes it extremely difficult to gauge what effects the introduction of UC may have on raising living standards among poorer working families in the UK.

Linking both policy and technical elements, Hills asserts that the thought behind WRA 2012 and UC, with its terminology of ‘shirkers’ and ‘strivers’, is fundamentally flawed, as it does not reflect adequately how the circumstances of claimants change over the course of their working lives, since during some periods they will be tax and national insurance contributors, and at other times they will be compelled to draw upon public funds, often due to impersonal economic circumstances beyond their control.¹⁰⁶ Hills also notes that the concept of UC and the dividing of citizens into imagined categories of hardworking and aspirational, or idle and feckless runs against the entire rationale of the welfare state, which is to help unify all the people of a nation.¹⁰⁷

O’Hara has analysed the introduction of UC against the background of a sombre picture of the lower paid strata of the UK workforce.¹⁰⁸ She charts the decline of the real value of the national minimum wage from mid-2008 onwards, and states that over 300,000 people in the UK workforce do not even reach this level of earnings,¹⁰⁹ suggesting that the eventual cost of UC to the taxpayer could be much more than anticipated. Indeed, one report asserted that UC may have the effect of distorting the labour market,¹¹⁰ and actually trap citizens in poverty by incentivising them to take on part-time work instead of full-time employment, with public funds bringing their income up to reasonable level. Although the DWP have estimated that 250,000 extra people would enter work under UC, it has been observed that UC itself does little to help wage progression in work,¹¹¹ and the Resolution Foundation concluded that the income taper of 65 per cent may still be set at too high a level to progress in UC for those who already work part-time.¹¹²

With the rise in the number of workers on zero-hours contracts, in which hours of work may vary radically from week to week,¹¹³ it will be extremely difficult to calculate the amount of UC which such workers will be entitled to, if, indeed, they qualify at all, a problematic issue under the previous tax credit system. Ancillary to this concern is the fear that employers and self-employed

106 J. Hills, *Good Times Bad Times: The Welfare Myth of Them and Us* (Bristol: Policy Press, 2015) 3. A similar point was made by Anne McGuire MP, see n 73 above.

107 Hills, *ibid.*, 1 – 15.

108 M. O’Hara, *Austerity Bites* (Bristol: Policy Press, 2014) 62 – 63.

109 *ibid.*, 62.

110 A. Tarr and D. Finn, *Implementing Universal Credit: Will the Reforms Improve the Service For Users?* Joseph Rowntree Foundation 2012 at <http://www.jrf.org.uk/sites/files/jrf/universal-credit-benefits-summary.pdf>. Similar charges were made against the Spennhamland System. See Crowther, n 9 above.

111 V. Alakeson, M. Brewer, and D. Finch, *Credit Where it’s Due? Assessing the Benefits and Risks of Universal Credit* Interim Report of the Resolution Foundation Expert Panel Review of UC (London: Resolution Foundation, 2015) 5.

112 *ibid.*, 23.

113 It is possible for someone on a zero hours contract to receive no hours or wages in any particular week, because their services are not required. John McDonnell, MP for Hayes and Harlington, now Deputy Leader of the Labour Party, stated during debates on the Welfare Reform Bill that within his constituency the jobs on offer tended to be casual and low paid, with many working on zero-hours contracts. See HC Deb vol col 988 9 March 2011.

citizens, aware of UC, will be inclined to keep wages and salaries as close to the minimum wage as possible, thereby artificially preventing incomes rising to natural market levels.¹¹⁴ Despite her recognition of government ambitions for UC, and an acknowledgment that it was designed to reduce the complexity of the social security system, O'Hara stated that its planned introduction was one of the gravest concerns benefit claimants had for their financial futures. Among the primary concerns she noted was the shift to a single monthly payment, which could lead to hardship on the part of households accustomed to managing their finances on a weekly basis, and the lack of computer literacy among many claimants may hinder access to UC, which must be applied for online. Another concern expressed by O'Hara¹¹⁵ is the potential impact of UC on women, specifically the effect of the single payment per household, rather than per claimant, which could potentially reduce women's financial independence.

The Institute of Fiscal Studies stated that within the new benefit system lone parents would fare worst of all under the new system,¹¹⁶ a view endorsed by a leading charity, which noted that single parents under the age of 25 would receive the same financial award as a single adult under 25 with no children, a policy without apparent logical justification.¹¹⁷

Apprehension was also expressed that vulnerable recipients may fare unfavourably under the new system, particularly disabled citizens and those with poor literacy and numeracy skills, social groups amongst whom access to computers and information technology skills would be low, and for whom accessing the online system, altering their claims, and engaging with the labour market could pose great difficulty.¹¹⁸ Furthermore, the task of creating widespread civic virtues in UK society may be much more arduous than supposed by legislators, and certainly not an end that may be achieved simply by statutory financial incentives for clients to remain in paid employment. Clark has noted the rise in inequality in living standards in the UK since the late 1970s, a development inimical to the natural development of self-help and civic groups so admired by both the adherents of the 'Big Society' and 'Blue Labour', and this inequality could now be so ingrained in UK society that it would be practically impossible to lessen it.¹¹⁹ With the recession of the last decade the lower paid and unemployed have found so many demands upon their time and finances, with such citizens either holding down more than one part-time job or engaged constantly in the search for employment, that they do not have the

114 It is also possible for the self-employed to deliberately pay themselves minimal wages so that they may qualify for UC.

115 See O'Hara, n 109 above, 66.

116 M. Brewer, J. Browne, and W. Jin, *Universal Credit: A Preliminary Analysis* London: Institute of Fiscal Studies at <http://www.ifs.org.uk/bns/bn116.pdf>.

117 This was pointed out by Fiona Weir from the charity Gingerbread. See O'Hara, n 115 above, 66.

118 These issues were raised in The House of Commons Work and Pensions Committee, Third Report of Session 2012, *Universal Credit Implementation: Meeting the Needs of Vulnerable Claimants* HC 576 (2012).

119 See T. Clark, *Hard Times: The Divisive Toll of the Economic Slump* (London: Yale University Press, 2014) 117 – 135.

opportunity to carry out the voluntary activities upon which the 'Big Society' is founded.¹²⁰

Another central factor which must be addressed is that the success of UC will ultimately be contingent on many factors external to the WRA 2012 itself. The introduction of a National Living Wage in April 2016¹²¹ may not in itself ensure that the costs of UC to public funds are kept low: one Report commissioned by the Joseph Rowntree Foundation suggests that some seven million people in the UK are living in poverty despite being part of a working family, poverty occasioned largely by the high costs and insecurity of private rented accommodation.¹²² The posts occupied in the labour market by the working poor tend to be less coveted, low skilled positions, which are frequently short-term or casual, and have few prospects for advancement. Commenting upon those social groups to which the WRA 2012 will inevitably apply, one commentator remarked:

Many, if not most of those affected lack basic skills like literacy, numeracy, and IT, let alone job-specific skills. It is therefore somewhat pointless to equip them with presentational skills for interviews for jobs which they cannot hope to be offered.¹²³

Such low-skilled members of the UK workforce will inevitably find it difficult to gain access to higher paid employment, and many may not even be guaranteed more hours of work, so the state will be obliged to continue supplementing their incomes through UC, meaning that the costs of the new system are liable to remain high. Related to this issue is the reality that UC can only assist those who have already entered the labour market, and the process of assisting unemployed citizens into work is a highly onerous task in its own right. The 'work first' policy favoured by legislators in the UK within social policy, placing emphasis on guiding the unemployed back into work, contains certain problems, the main one, according to Dean, is that it does not succeed in assisting people with multiple problems and needs into the labour market.¹²⁴ Rather, it constructs welfare provision, life needs, and paid work as if they were discrete and contradictory entities. This inability, or unwillingness, to view work and other aspects of life such as family time as interconnected, and

120 *ibid.*

121 The National Living Wage entitles workers aged over 25 to pay of £7.20 per hour, see <https://www.livingwage.gov.uk/>.

122 See A. Tinson, C. Ayrton, K. Barker, T. B. Born, H. Aldridge, P. Kenway, *Monitoring Poverty and Social Exclusion 2016* at <https://www.jrf.org.uk/report/monitoring-poverty-and-social-exclusion-2016>.

123 L. Lustgarten 'Wanted: Domestic Service for the Political Classes' at <http://www.theweek.co.uk>. While Lustgarten was referring specifically to those unemployed citizens who would be affected by the work-related provisions of the Welfare Reform Act 2009, but it could equally apply to those citizens who will be affected by the WRA 2012. See also P. Larkin, 'The Legislative Arrival and Future of Workfare: The Welfare Reform Act 2009' (2011) 18 *Journal of Social Security Law* 11.

124 H. Dean 'Re-Conceptualising Welfare-to-Work for People with Multiple Problems and Needs' (2003) *Journal of Social Policy* 441. See also K. Ings 'One-Size-Fits All Approach doesn't Help Jobseekers', the *Guardian*, May 14, 2010. See also Larkin, *ibid.*

seeing citizens entirely as economic beings, is viewed by Dean as inimical to encouraging such people into the labour market,¹²⁵ therefore rendering many of them beyond the scope of assistance from UC.

CONCLUSION

Despite the ideals which legislators have for UC, its success is far from guaranteed. UC itself is an extremely complex and transformative adjustment to how social security benefits will be distributed, and the magnitude of this transition is probably the reason why the implementation of UC has been beset by so many setbacks, despite the protestations by the former Secretary of State that it would be delivered on time and within budget.¹²⁶ By November 2014 only some 20,000 people were claiming UC, instead of the one million which had been predicted by the government.¹²⁷ The cost of the information technology system designed to facilitate the new system accelerated out of control, and is estimated to have risen by 60 per cent,¹²⁸ and in November 2013 the Public Accounts Committee accused the DWP of squandering public money due to errors and mismanagement.¹²⁹ By the end of 2013 it was confirmed that the transfer of all claimants to UC would not be achieved by the original target date of 2017.¹³⁰ It is possible that UC may engender as much dependency as previous tax credits, and not simply from claimants; employers, aware that low wages will be supplemented by public funds could be incentivised to retain pay at a basic level. To this end, calls for a rise in wages and salaries have been made by government, the TUC, and the Institute of Directors for industrial and service workers in the UK.¹³¹ This lobbying culminated in the introduction of the National Living Wage in April 2016,¹³² which, in combination with UC, does have the inherent potential to raise the living standards of some percentage of the working poor.

However, closely linked to the issue of dependency, there exists the broader question of whether it is ever really possible to break the cycle of working poverty by legislative means alone. The WRA 2012, and UC, does nothing to address directly the structural and cyclical causes of working poverty, which

125 H. Dean, 'Tipping the Balance: The Problematic Nature of Work-Life Balance in a Low-Income Neighbourhood' (2007) 36 *Journal of Foreign Policy* 519.

126 See G. Eaton, 'Duncan Smith can't avoid the blame for Universal Credit disaster' *New Statesman* 5 September 2013.

127 See A. Chakelian, 'That families can only just claim Universal Credit shows how disastrous it has been' *New Statesman* 25 November 2014.

128 The cost of the IT system is said to have risen from £396 million to £637 million by autumn 2013. See, Eaton, n 126 above.

129 See *The Independent* 7 November 2013.

130 See O'Hara, n 117 above, 67. Indeed, full implementation of UC has now been delayed until at least March 2022. See *The Independent* 21 July 2016. Furthermore, implementation may have been hindered by recent Government cuts to UC. See *The Guardian* 10 April 2016.

131 This is to ensure that employers make a suitable contribution to the 'work-wage.' Skelton argues that raising the minimum wage is perfectly in keeping with the principles of conservatism, see D. Skelton, 'Increasing the Minimum Wage is entirely within the Tory Tradition' *The Guardian* 5 March 2014.

132 See n 121 above.

can really only be countered through proper education and skills training. It is possible that the strictures of Popper, that it is frequently impossible to predict the outcome of legislative projects and attempted social engineering, should have been better heeded,¹³³ and whether any of the hopes for the WRA 2012 are achieved remains to be seen. In any event, whether it is ultimately successful in its aims or not, the WRA 2012 may firmly be placed against the background of the movement towards greater conditionality inherent in the UK social security system, a feature of recent decades, and a development which appears set to continue in the future.

133 K. Popper, *The Poverty of Historicism* (Oxford: Routledge & Kegan Paul, 2004).