

Exploring Basic Income in
Scotland: Workshop 2
Background Paper

Universal Basic Income, Human
Rights and Equality

By Paul Spicker



**Citizen's Basic
Income Network
Scotland**



Universal Basic Income, Human Rights and Equality

2.1 Human rights and social security

Rights are rules which affect the way that other people and governments may treat the person who holds the rights. Rights to social security are mainly thought of as “claim-rights”, requiring someone to pay benefits to the rights holder; they are also treated as “subjective rights”, requiring the person who holds the right to make a claim. (Taxation is taken from people regardless of whether they make a tax return; if benefits are genuinely universal, it is not self-evidently the case that they should need to be claimed.)

Some rights to social security are “general” rights founded in citizenship - membership of a political and legal community. Others are based in the “particular” (or personal) rights that people gain as part of contractual exchange or undertakings made to them personally. Most pensions schemes in Europe are based in particular, not general rights; people have contributed to specific pension scheme and have a strong property right to their pension. One of the leading human rights cases, *Five Pensioners v Peru*, was actually based not on a human right to receive benefit, but to the right of the pensioners not to be deprived of property they were entitled to.⁽²²⁾

It follows that most social security schemes are not primarily attributable to human rights legislation, and they would not become human rights under any UBI scheme. Nevertheless, there are a number of human rights agreements and international conventions which have a bearing on social security provision. The UN Universal Declaration of Human Rights states that “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

Article 25 continues:

“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

Article 9 of the International Covenant on Economic, Cultural and Social Rights provides “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” and article 11 recognises “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

The UN Convention on the Rights of Persons with Disabilities provides, in article 28:





1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
 - a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
 - b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
 - c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
 - d) To ensure access by persons with disabilities to public housing programmes;
 - e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

The Convention on the Rights of the Child provides, in Article 26:

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27 continues:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. ...

There is no obvious conflict with UBI, but nor is there direct support for the principle. Little in these provisions commits governments to a particular type of benefit or method of distribution; the only methods of delivery that are mentioned are the provision of social insurance and parental liability for maintenance. The UN has recently been arguing, however, that the obligations of international law go beyond the obvious minimum. In the Guiding Principles on extreme poverty and human rights,⁽²³⁾ they call for comprehensive social security programmes, universal access, adequate benefits, and priority to those who are the most marginalised and disadvantaged. But they also argue for processes that protect people in poverty: to protect people in poverty from stigmatisation, to "prohibit public authorities, whether national or local, from stigmatizing or discriminating against persons living in poverty"⁽²⁴⁾; to





enhance the involvement of women in decision-making(25); to ensure transparency and access to information(26); to provide legal aid for criminal and civil cases(27) and to give poor people rights of redress.(28)

The European Convention on Human Rights makes no relevant provisions. The most specific international conventions on social security are the conventions of the International Labour Organisation, but they do not create rights; they only mean that the states that sign up to them have agreed to the principles the Conventions lay out, and not many states have done that. The conventions on minimum standards (1952), equality of treatment (1962), maintenance of rights (1982) or social protection floors (2012)(29) set standards, offer guidance and establish a framework for supervision, for those states that ratify (or partially ratify) the agreements. However, ratification has been limited - as few as 38 countries ratified the equal treatment convention (one has since resiled), and only 4 have ratified the convention on the maintenance of social security rights. The principle of ratification is important. International law works, for the most part, by asking countries to agree to conventions. The rights which are secured are enforced in the first place by the country in question, and international courts mainly have the effect of drawing governments' attentions to deficiencies in their conduct. They do not in most cases give individuals any direct basis for legal action.

2.2 Equalities

Inequality is not difference, but disadvantage; equality is not uniformity or sameness, but the removal of disadvantage. There are many competing concepts of equality.(30)

- The equality of persons demands that people are not treated differently on the basis of birth, race, gender and so forth.
- Equality of rights implies that the same rights, and same rules, should apply to everyone.
- Equal citizenship is about people's status. "All those who possess the status are equal with respect to the rights and duties with which the status is endowed."(31)
- Basic security is a call for a common foundation. Tawney argued for an equality that would 'make accessible to all, irrespective of their income, occupation or social position, the conditions of civilisation which, in the absence of such measures, can only be enjoyed by the rich.'(32)
- Equality of welfare goes further, arguing for more equal outcomes.

It is possible to argue that UBI supports equality in all of these senses.

The duty of public services in the UK to reduce inequality is based not in human rights legislation but in the Equality Act 2010. This calls prohibits discrimination, harassment or victimisation for people with a range of "protected characteristics", requires public services to make reasonable adjustments for people with disabilities, and requires a public service "when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

The protected characteristics are

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;





- race;
- religion or belief;
- sex;
- sexual orientation.

This is not comprehensive. In Belgium, equalities legislation refers to inequalities of birth, and inequalities of “fortune”; being unlucky is not a good reason for people to be homeless or destitute, or a reason to differentiate between people.

Although UBI could be considered to be egalitarian in general terms, most UBI schemes do not act specifically to remedy inequalities in the protected characteristics. The main exception concerns couples. Benefits within the existing system generally pay less for couples than they do for two adults claiming in their own right (for example, a brother and a sister). The effect of that rule is a potential inequity - the implication is that unmarried couples may be treated more advantageously than married ones. This leads to the “cohabitation” rule, that people “living together as man and wife” (or even “living together as if they were in a civil partnership”) should be treated as if they were a couple. The difference between a couple and a brother and sister comes down to sex, rather than membership of the same household, and consequently the cohabitation rule has been associated with prurient and intrusive investigations of people’s personal circumstances. Paying people UBI individually is a way of avoiding those problems.

It can be argued too that UBI will have a positive impact on the relative position of women. This is not straightforward. The cumulative effects of lower income tend to imply that women are more likely to be poor, but this is not reflected in every benefit. The following table is drawn from ONS figures.(33)

Men and women claiming key benefits, 000s, Nov 2016

	Men	% men	Women	% women	Total (000s)
Jobseekers	279	61	181	39	460
ESA	1275	52	1171	48	2446
Lone parents	10	2	391	92	401
Carers	214	31	471	69	685
Other	53	73	20	27	73
Disabled	160	51	152	49	312
Bereaved	15	21	56	79	71
State Pension (May 2017)	5687	44	7197	56	12884
Pension Credit (May 2017)	673	37	1149	63	1822

The existing pattern of benefit receipt means that women disproportionately receive some benefits relative to men: particularly low income benefits for pensioners, lone parents and carers. However, women are less likely to receive benefits as jobseekers or for long term sickness - most probably, because they drop out of the labour market and depend on family support instead. The imbalance of genders relating to Pension Credit is significant: low income pensioners are much more likely to be women, and this group is particularly likely to gain from UBI or a Citizens Pension.

On the other side of the coin, most UBI schemes do not discriminate to the detriment of any of the protected categories: however, there are commonly differences proposed in the provision made for





people of working age and older people. This is defensible, because it can legitimately be argued that the difference between pensions and people of working age is not a disadvantage to either, but it reflects an acceptance of the principle that different economic positions require different adjustments. (It is rather more difficult to defend some of the other age-related anomalies in the existing benefits system, such as the denial of mobility support to people on the basis of the age at which their disability starts.)

References

- (22) Inter-American Court of Human Rights, 2003, Case of the "Five Pensioners" v Peru, http://www.corteidh.or.cr/docs/casos/articulos/seriec_98_ing.pdf
- (23) UN, 2012, Guiding principles on extreme poverty and human rights, http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf
- (24) UN 2012, p 5-6
- (25) UN 2012 p.6
- (26) UN 2012, p.10
- (27) UN 2012, p.19
- (28) UN 2012, p.11 29 e.g. International Labour Organization, Social Security (Minimum Standards) Convention, 1952 (No. 102); Equality of Treatment (Social Security) Convention, 1962 (No 118) Maintenance of Social Security Rights Convention, 1982 (No. 157); Social Protection Floors Recommendation, 2012 (No. 202)
- (30) See P Spicker, 2006, Liberty, equality, fraternity, Bristol: Policy Press. 31 T H Marshall, 1963, Sociology at the crossroads, London: Heinemann, p.87.
- (32) R Tawney, 1930, Equality, London: Allen and Unwin, 1961, p 122.
- (33) Nomis, at <http://nomisweb.co.uk>; StatExplore, at <https://stat-xplore.dwp.gov.uk/webapi/>.

Find out more about author of this paper Paul Spicker on [his website](#).



To learn more about Citizen's Basic Income visit
www.cbin.scot

*If you would like to get in touch with us,
please send an email to:*
info@cbin.scot



**Citizen's Basic
Income Network
Scotland**

Citizen's Basic Income Network Scotland is a Scottish
Charitable Incorporated Organisation (SCIO) SC046356.