

Procedural Protections, Appeal Arrangements, and Welfare

Conditionality

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Abstract

Welfare conditionality (WC) is a crucial ingredient of social policies around the world. WC demands that recipients meet specific behavioral goals to either access the benefit for the first time or retain the benefit's ongoing advantages. This article argues that any justification of WC must seriously consider procedural protections (PPs) and how they shape the policy's outcome. PPs are institutional principles and mechanisms that guarantee fairness in the administrative decision-making process. This essay normatively evaluates appeal procedures - a key component of PPs - in the context of conditional cash transfer programs (CCTs) implemented during the last two decades in Latin America. It explains why CCTs often fail to provide their recipients with adequate appeal procedures to protect them against administrative errors and poor decision-making. These programs can be unfair redistributive programs not because of the type of conditionalities they promote, but rather due to the limited PPs they provide.

Keywords: welfare conditionality, procedural protections, conditional cash transfers

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Welfare conditionality (WC) is a crucial ingredient of social policies around the world.¹ WC demands that recipients meet specific behavioral goals to either access the benefit for the first time or retain the benefit's ongoing advantages. We frequently observe WC in both developed and developing countries. Policies like workfare programs and conditional cash transfers (CCTs) are examples of this mode of welfare allocation.

A frequent and popular normative objection to WC is that this type of policy often imposes unfair behavioral obligations. Critics argue that WC can be stigmatizing, punitive, intrusive, and costly.² In reply, advocates of conditionality argue that not all behavioral conditions are unfair. While acknowledging that *some* conditionalities might be unfair to welfare claimants, advocates argue that this does not necessarily indicate that *any* behavioral requirement associated with a welfare policy is unjust. As Stuart White puts it, "(just) conditionality is conditional".³

However, WC's fairness does not depend exclusively on the degree of moral acceptability of the behavioral requirement. Instead, its overall fairness is inseparable from the procedures adopted to implement, evaluate, monitor, and enforce conditionalities, as well as how the program handles the complaints of welfare recipients. WC policies can be fair in one respect and unfair in another. Consequently, it appears prudent to evaluate

normatively both the substantive rules of the policy and its procedural adjudication of benefits.⁴

This article argues that any justification of WC must seriously consider procedural protections (PPs) and how they shape the policy's outcome. PPs are institutional principles and mechanisms that guarantee fairness in the administrative decision-making process. They are meant to operate as safeguards for welfare recipients against administrative abuse, unfairness, and arbitrary actions by welfare bureaucrats. PPs are crucial to minimizing the occurrence of several problems such as stigmatization, shame, and unfair treatment, among others. Likewise, they are essential in reducing the number of potential welfare beneficiaries excluded from welfare rolls because of organizational practices rather than as a result of their substantive status or individual preference.⁵

In particular, mechanisms to appeal administrative decisions constitute a key component of a procedural protection scheme. Appeal arrangements help to correct administrative errors and improve the administration of welfare policies. Given the ability of appeal arrangements to completely alter the defensibility of a WC program, regardless of the program's substantive aim, it is crucial to examine the characteristics of these arrangements and their interactions with the goals of WC.⁶

This essay normatively evaluates appeal procedures in the context of conditional cash transfers (CCTs) implemented in Latin America. Without doubt, CCTs have become the most extensive welfare policy adopted in the developing world during the last two decades. This redistributive policy has three main characteristics: "a cash transfer, a targeting, and conditionality mechanism".⁷ The common objective of CCT programs is to provide needy families with an income while connecting them with access to basic services such as

education and health care.⁸ I explain why even though CCTs endorse just behavioral conditions, they often fail to provide their recipients with adequate appeal procedures to protect them against administrative errors and poor decision-making. If the analysis is correct, then it can be argued that some CCTs programs are unfair redistributive programs not because of the type of conditionalities they promote, but rather due to the limited PPs they provide. This is not a reason to abandon WC, but to be aware of its normative implications at different levels.

Before beginning my analysis, however, two caveats are in order. First, my comparative analysis of these public policies is not comprehensive. In an essay of this scope, I cannot seriously examine and compare all these programs' whole administration processes; thus, I will only focus on a set of crucial variables that affect the PPs of these policies. Although the literature on CCTs is extensive, I am unaware of any previous normative discussion of these policies' PPs.

Second, a comprehensive empirical analysis of PPs in CCTs programs would require collecting, presenting, and analyzing the voices of welfare recipients and administrators. For instance, data collected through in-depth interviews is crucial to determine the dynamics and implications behind the different PPs adopted in CCTs. Nevertheless, in the absence of that empirical information, I normatively analyze CCTs based on the available empirical academic literature and various reports presenting and explaining the functioning of these programs.

The remainder of this paper is organized as follows. Section 1 briefly presents a normative defense of CCT programs. Section 2 describes the challenges of CCT programs in terms of administrative justice. Section 3 analyzes appeal arrangements' main

characteristics as a procedural protection mechanism to dispute unfavorable administrative decisions. Section 4 evaluates the use of appeal arrangements in CCT programs. Finally, Section 5 concludes the article.

1. The normative case in favor of WC⁹

There are multiple criticisms of WC. For instance, some detractors claim that WC is an instrument to punish the poor and minorities.¹⁰ In countries like the United States, WC is at the center of racial disparities in poverty governance.¹¹ Likewise, critics of this type of policy argue, not without good reason, that WC policies often promote an unjustifiably paternalistic attitude toward the poor because they limit the autonomy of welfare recipients to decide what is better for them and their families. For example, workfare programs require needy recipients to apply for and get jobs in exchange for receiving welfare assistance. This is typically grounded in the idea that the poor suffer from a lack of work ethic or motivation to participate in the labor market.¹² However, workfare programs may force the poor to work in tedious, boring, and humiliating jobs. Thus, this mode of WC can stigmatize the poor, as welfare recipients may find job-related requirements shameful.¹³ Although this is true for several WC initiatives, it is crucial to keep in mind that both conditionality and unconditionality are policy instruments that can be used for different purposes. For instance, even though WC often targets policies primarily implemented through means-testing, that does not need to be the case. It is possible to design universal although conditional redistributive policies with a behavioral component that does not involve selectivity through means tests. One example will help to clarify this possibility.

Consider the case of participation income (PI). This is a universal income program - available to members of society without socioeconomic distinctions - that is paid under the condition that recipients contribute to society in exchange by engaging in a useful activity.¹⁴ PI has three main characteristics. First, it does not require strict participation in the labor market. Instead, it embraces a wide range of social contributions that may or may not be made through working in the labor market. Second, it is paid to individuals, not households. Third, PI does not target any specific group. The critical point is that those who claim welfare benefits contribute through a socially valuable activity in return. As PI is open to everybody and does not use means-testing to classify recipients, this policy will likely negate some of the main criticisms against WC. For example, given that it does not distinguish between rich and poor recipients, it should prevent some of the main problems in terms of stigmatization than other WC policies such as workfare.¹⁵

Moreover, the conditional behavioral component is not meant to punish recipients or discourage them from participating in the program. Instead, the conditionalities attached to PI aim to promote the production of socially valuable services that the market may not adequately provide. This also includes recognizing services and social goods (e.g., care provision) that are often provided without any compensation.¹⁶ Even though there are potential objections to PI programs, these are different from those directed at most welfare conditional plans. The main case against PI has been cast in administrative terms and not directly on normative grounds.¹⁷ That explains why PI is commonly associated with unconditional basic income programs rather than with workfare or other modes of WC.

However, WC can exclusively target the poor and still be grounded in permissible behavioral conditions. Consider, for example, the case of CCTs. This type of program has

two main behavioral conditions: children of the beneficiary families need to maintain regular school attendance and medical checkups. These conditionalities distinguish CCTs from other WC schemes. For example, other conditional policies such as workfare aim to change only the behavior of those who receive social benefits. Workfare schemes impose working obligations on the recipients of the program. However, all those who do not receive the program are exempt from that mandate. In liberal democratic societies, there is no general formal obligation to work. In principle, people are free to participate in the labor market. This freedom naturally depends on the resources that each person may have to subsist without paid work. For instance, those inheriting a substantial sum of money will have more chances to opt out of the workforce.

In contrast, CCT policies promote behavioral changes that are a priori expected of all members of the community, regardless of their socioeconomic status. Even though CCTs target the poor, the conditionalities used have a universal scope in most societies. Put another way, CCTs do not require recipients to behave in ways not required for others. Independent of their income level, parents are expected to take responsibility for their children's education and health. Therefore, we can argue that CCTs reinforce those obligations via economic incentives, not singling out poor parents with specific behavioral requirements that are not enforced with other parents.¹⁸ This is important in contexts in which schooling and child labor compete for children's time. Poor households may prefer to send their children to work to increase their economic status in the short term, at the cost of higher remuneration in the long term.¹⁹

All in all, it is crucial to bear in mind that unconditionality and conditionality are instruments for achieving policy objectives. A justification for conditionality, for example,

does not have to show that conditional policies are always preferable to unconditional policies. Instead, it must prove that in specific contexts, conditionality can be a desirable redistributive mechanism because of the resources it allocates and the types of behaviors it promotes. For example, suppose we have good reason to believe that educational conditions help improve human capital in ways that unconditionality cannot. In that case, it is essential to think about how to design conditional systems that promote that outcome without generating unjustifiable costs. On the other hand, if we have good reason to believe that unconditionality can produce a better result, then conditionality becomes redundant and unnecessary. The mistake, however, is to assume that any of these policy instruments are always preferable without considering the circumstances and the objectives to be promoted.

Even if we may agree on the permissibility of a given type of conditionality, there is a further question concerning alternative modes to implement and adopt a conditional scheme. Similar conditionalities can be implemented in various ways that produce alternative outcomes. PPs play a crucial role in protecting welfare recipients from administrative errors and misuse in implementing welfare conditional policies with permissible behavioral components.

2. Procedural Protections, Administrative Justice, and Welfare Conditionality

Consider these hypothetical but often-encountered situations. Julia and Elena are welfare recipients of a CCT program. The behavioral conditions attached to that policy require that their children must attend school and receive regular medical checkups as an exchange for receiving welfare benefits. Julia knows for a fact that her children have met

the required behavioral expectations; they neither missed classes nor medical appointments. Therefore, she is confident she will maintain her status as a CCTs recipient. Elena is in a different situation. Due to circumstances beyond her control, her children did not meet the health requirements because of the lack of medical services available to them in their community. As a consequence, Elena is at the risk of losing access to welfare benefits. She will have to find the proper formal channel (if any) to explain her situation to the welfare agency.

Welfare programs do not always offer clear guidelines and protocols for addressing Elena's situation. The indeterminacy of the rules may confer welfare officers with the discretion to examine and resolve that ambiguity.²⁰ Welfare recipients can be left to confront discretionary and moralistic programs with practically no legal protections.²¹

Even Julia, who met the behavioral requirements, faces the risk that the outcome will not be expected. It is well documented that welfare bureaucracies commit administrative errors both in intricate and straightforward programs.²² For example, public social security programs do not typically require their recipients to follow specific behavioral patterns in exchange for receiving benefits. Instead, applications to social security are subjected to detailed rules and guidelines related to the characteristics (or status) of their claimants (e.g., age, nationality), as well as their records of contribution to social security funds. These requirements, however, are enough to generate an immense bureaucracy prone to administrative errors.²³

WC incorporates additional regulatory complexities. These policies need to distinguish between deserving and undeserving claimants based on descriptive and behavioral variables. CCT programs somehow evaluate and select claimants based on morally neutral

facts (e.g., benefits contingent on being a specific age) and on morally charged ones (e.g., whether the recipient is taking proper care of their children's education and health). Although the eligibility criteria may look simple on paper, their implementation can be complicated.

Administrative errors in welfare conditional policies can lead to several adverse consequences for vulnerable people. First, errors can deprive welfare claimants of monetary resources that are crucial for meeting their basic needs. Second, adverse administrative decisions can also inflict moral blame on them. Welfare claimants can be stigmatized as not being able to fulfill behavioral requirements that are held to be desirable.²⁴ Third, administrative errors can also deprive claimants of obtaining the benefits associated with compliance with conditionalities. If CCT programs effectively incorporate more vulnerable children into formal education and primary medical care, administrative errors will affect that desired outcome. Finally, in certain contexts, administrative errors may not be randomly distributed among welfare recipients. As Soss, Fording, and Schram showed for the U.S case, race “operates today as a powerful force shaping administrative interactions and guiding street-level decisions about who should get what, when, and how”.²⁵ For all these reasons, we need to pay attention to appeal arrangements as an institutional remedy in case of these undesirable outcomes.

2.1 Procedural Protections and Administrative Justice

This paper addresses a problem of administrative justice. In brief, administrative justice can be understood as “the justice inherent in administrative decision making”²⁶, and it

comprises a dimension related to process and another concerned with outcomes.²⁷ The procedural aspect refers to fairness in the way people are treated during the decision-making process. For its part, substantive justice refers to the content of that decision and its result.²⁸ Thus, procedural fairness applied to administrative procedures is one component of administrative justice. The latter idea also includes a substantive dimension.

Imagine the scenario in which both Elena and Julia can keep their benefits but only after going through a humiliating and degrading process. We would hardly characterize the administration of that program as just. Even if the program allocates benefits that effectively help vulnerable people fight poverty and inequality, the means to achieve that outcome can be seriously questioned. It seems unpromising that a redistributive program aimed at helping a vulnerable population adopts allocation procedures that undermine the values behind its substantive goals. Furthermore, unfair procedures can favor administrative exclusion, discouraging those who qualify for welfare assistance from applying to the benefits or attempting to stay in the program.

Since there are several principles and values that apply to the procedure itself, regardless of whether a purely instrumental approach to procedural justice is favored, there is consensus in the literature that administrative procedures are normatively relevant.²⁹ As Brian Barry suggested, the relationship between a fair procedure and a fair result is empirical. We should expect that fair procedures will produce fairer results than the implementation of unfair procedures.³⁰ To be clear, I am not claiming that procedural fairness is the only factor that matters. This is an issue that I cannot address in a paper of this scope. Instead, my claim is that procedural fairness (institutionalized in part via PPs) is

a crucial dimension that we must take into account at the time of evaluating the permissibility of welfare conditional programs.

3. Appeal Mechanisms and Procedural Protections

Appeal arrangements are only one key component of a PPs scheme.³¹ Their goal is to correct administrative errors and biases. They should have the power to amend previous administrative decisions. These arrangements differ in three main aspects: (a) whether the administrative review is internal or external; (b) whether the procedures adopt an adversarial or inquisitorial approach; and (c) whether the appellants play an active or passive role during the process.

Appeal arrangements can operate as a mechanism of internal or external review. The internal review refers to appeal processes within the same administrative agency that run the welfare program. The external review indicates appeals arrangements that take place in agencies that are independent of the administration of the welfare program.³² These arrangements for reviewing and challenging administrative decisions are not mutually exclusive. Welfare programs can operate with both internal and external appeal

mechanisms. Nonetheless, the emphasis on either an internal or external instance can alter the dynamics of how welfare recipients can challenge adverse administrative decisions.

These procedures can also adopt an adversarial or inquisitorial approach. In the adversarial system, the parties involved (e.g., the welfare recipient vs. the welfare agency) oversee the investigation and evidence presentation before a passive and impartial decision-maker. The latter listens to both parties before deciding based on the presented evidence.³³ In contrast, in the inquisitorial approach, the decision-maker carries out the investigation and decides based on that inquiry's outcomes. Although the parties can participate in the process, the judge in an inquisitorial system is an active participant who collects and investigates the evidence necessary to decide each case.³⁴

Appeal mechanisms also differ in terms of what they require of appellants. There are two broad categories. On the one hand, there are appeal procedures that require appellants to maintain an active role during the process. For example, appellants are required not only to submit a claim but also to participate in the administrative proceeding as an interested party involving the review of their claims. On the other hand, there are procedures where appellants play a passive role. In these cases, after the claim and presentation of evidence, the appellants simply wait for a verdict from the evaluating agency.

These are just some institutional alternatives for the design of appeal mechanisms. The variations respond in good measure to the objectives we seek to achieve through this type of procedure. Suppose the goal is to use the appeals mechanisms as an instance of exclusion of beneficiaries. In that case, the mechanisms will acquire a different shape than

those designed to keep beneficiaries in the program and ensure that they comply with the proposed conditionalities.

An example will help illustrate. In the context of US welfare policies, fair hearings (FHs) are one of the best-studied appeal arrangements.³⁵ FHs are an adversarial mechanism where the parties in conflict present their cases to an impartial judge. In the case of FHs, it is an administrative judge that depends on the agency. As described by Lens, fair hearings are "a quasi-judicial forum where welfare participants challenge denials of welfare benefits". Lens believed that "while hearings sometimes replicate the worst excesses of the bureaucracy, justice is also dispensed."³⁶

As Lens suggested, there are different virtues and problems associated with FHs. She identified four positive attributes. First, FHs allow beneficiaries and applicants to challenge administrative decisions. There is a presumption that the appellant is eligible for assistance until the agency proves otherwise. Second, it is a participatory event that allows welfare claimants to be heard. Third, FHs can be a learning experience. Welfare claimants can receive feedback on how to navigate the system more efficiently, as well as to learn more directly about what is expected of them.³⁷ Finally, FHs can be used to adjust and correct bureaucratic rigidities and inefficiencies. These appeal instances can be a constant source of administrative feedback that helps welfare administrators improve their practices.

However, FHs also present at least four critical challenges. First, the judge on duty is an important variable to determine the result of the FH. Some judges understand their roles in different ways. Some try to lead beneficiaries or applicants for benefits to present their case in the best possible way. Other judges are less flexible and strictly adhere to the rules.³⁸ FHs may fail in the equal treatment and consistency dimension, making the process

unpredictable and varying.³⁹ Second, the beneficiaries do not always have the necessary means to make their cases in the best possible way. On many occasions, they omit relevant information or declare behaviors that are counterproductive to their case, casting doubt on this mechanism as a valid instance of hearing. These policies aim to assist vulnerable people who usually are in a weak position to deal with the programs.⁴⁰ For example, welfare claimants may lack the skills to navigate a complex bureaucratic system—that is, the capacity to understand the requirements to which they are subjected and the scope of their rights and duties. Likewise, they may not have the time or the resources to afford their participation in that administrative process. It is well documented that the use of professional assistance (e.g., professional representatives such as lawyers or social workers) in instances of challenging administrative decisions makes a difference to the outcomes.⁴¹

Third, FHs are rarely conceived as a way to modify deficient regulations or administrative practices. In some cases, FHs can help to challenge a specific administrative decision and enable the correction of an erroneous or unfair administrative decision. Nonetheless, the evidence shows that outcomes obtained through this appeal procedure are rarely used as evidence to modify administrative practices that perform poorly.⁴² Finally, there is the problem that the agency determines the judges. Since they are basically officials of the welfare agency, they can be perceived as a part of the bureaucracy that ends up not being impartial to the appellants.

Lens described the case of an appeal mechanism that operates in a highly restrictive welfare system designed to reduce welfare rolls and promote the poor's economic self-sufficiency. It is hardly surprising, then, that FHs present the types of shortcomings mentioned above. From a more inclusive perspective, however, the use of appeal

mechanisms needs to be functional to the inclusion (rather than to the exclusion) of those individuals in need of welfare assistance. Whichever the procedure, it should not discourage people from appealing unfavorable administrative decisions.

4. Appeal Arrangements in CCT Programs

CCTs are the most prominent welfare policy that has been adopted in Latin America in the twenty-first century. Almost without exception, all of the countries in the region have implemented a CCT program. While some of these policies are still in place, others have changed over time, and others have been terminated.

The extensive empirical literature on this policy shows some promising outcomes in terms of school attendance and healthcare checkups.⁴³ Furthermore, CCTs provide monetary assistance in the context of weak welfare institutions. There are, however, important underexplored questions regarding the procedural and administrative practices associated with CCTs. These are complex redistributive programs that require serious planning and careful implementation, and their design and implementation involve multiple steps.⁴⁴

Although appeal mechanisms are a critical component of PPs for welfare recipients, we know extraordinarily little in comparative terms about how these arrangements are used

in CCT programs. In what follows, I will examine this issue. My analysis is only illustrative and exemplary of the challenges that CCTs face in terms of administrative justice. A more comprehensive evaluation should include other elements of procedural protections beyond appeal arrangements, as well as different phases of the administration of these programs.

4.1 Appeals Arrangements in CCTs

In contrast to other dimensions of the implementation and design of CCTs, the literature on appeals arrangements in these redistributive programs is scarce. The few studies dealing with this issue have warned of various problems with existing appeal mechanisms in CCTs.⁴⁵ As Cecchini and Madariaga suggested, the procedures to receive and channel complaints have been insufficient instruments to provide recipients with control and protection over the administration of CCTs.⁴⁶ Difficulties range from poor institutional design to the absence of procedures to protect beneficiaries. We need to know whether appeal arrangements exist in CCTs, as well as to what extent welfare recipients use them, and how their use serves to protect them from administrative error and abuse.

A first common difficulty with appeal mechanisms – at least in the context of welfare policies - is that welfare recipients do not regularly make use of the available appeal arrangements to challenge unfavorable administrative decisions.⁴⁷ There are multiple reasons for this, including distrust of the welfare bureaucracy; fear of retaliation;

skepticism that appeals can accomplish anything; and unfamiliarity with the existence and availability of appeal procedures.⁴⁸

As Handler argues, appeal procedures only work as a solution when beneficiaries use them.⁴⁹ For this to happen, recipients must know that the system made a mistake with their case and that there is the possibility of remedying the situation, and they must have the means to carry out the necessary action. The obvious problem, Handler claimed, is that when one of these necessary stipulations fails, appeal schemes do not work and are thus no longer a valid solution. The most worrying thing is that these stipulations are often not fulfilled. That may explain why the appeal procedures are underutilized and with discouraging results.⁵⁰

Unfortunately, we do not have enough data to examine this phenomenon in CCT programs. For many CCT programs, there is no available public data on appeals activities. Only a few programs (e.g., *Más Familias en Acción*) offer public data on the number of claims and appeals to administrative decisions. In the Colombian case, it is possible to access the number of appeals and the proportion of successful cases. However, there are no estimations of the number of people who refrain from appealing unfavorable administrative decisions. Without this information, it remains unknown how and how often the procedure is used.

Equally problematic is that various CCT programs offer limited information about the characteristics of the appeal procedures. They do not clarify essential steps such as what agencies are in charge of addressing appeals and their relationship with the welfare program administration. Similarly, in various cases, the timing of this procedure is uncertain. As long as the goal is to maintain within the welfare system those who need

assistance and who would benefit from meeting conditionalities rather than excluding them, recipients should be adequately informed about how the appeal process works, the different steps, and the schedule for those steps.

Several tasks must be undertaken in this regard. The procedure and the units responsible for an agency to receive and process the complaints received must be clearly defined. Appeal mechanisms should be designed to establish how these claims are presented and handled. For instance, it is necessary to distinguish allegations of fraud or corruption from administrative errors. Similarly, agencies in charge of accepting and evaluating complaints must set time limits to process claims and determine the sanctions and certification mechanisms.⁵¹ CCT programs, however, do not commonly provide information about these variables.

A third difficulty is related to the available channels to appeal administrative decisions. Although most programs offer a phone number or a website platform to submit claims, these channels may be inappropriate to provide guidance and correct bad practices. For example, in the Uruguayan Family Allowances program, claims and appeals are made electronically on the institution's website. The instructions explain that program officials will contact the beneficiary to respond to the complaint. This type of electronic appeal mechanism can facilitate administrative exclusion,⁵² as vulnerable recipients may have difficulty making appeals in this manner if they do not have access to those channels. To combat this problem, in-person attention should be provided in local welfare offices. Recipients should not be expected to travel long distances and spend a considerable amount of time and resources to appeal an administrative decision.

Nonetheless, it should not be the case that appeals are processed only at the local level. This leads us to another difficulty. Programs should promote the independence of the offices in charge of receiving and processing claims and appeals. The lack of independence of these agencies making administrative decisions and those overseeing the decisions can affect checks and balances. In Uruguay, for example, the agency in charge of allocating the Family Allowances program (*Banco de Previsión Social*) is also responsible for receiving and addressing complaints about that program.

A related problem occurs when programs include different channels without a clear procedure to guide claims and appeals. For example, the Chilean *Programa Familia* (known before as *Ingreso Ético Familiar*) does not provide straightforward appeal mechanisms for its beneficiaries. This program does not have any specific office to dispute, supervise, or appeal the administrative decisions of the agency. Although the General Accounting Office of the Republic of Chile (*Contraloría General de la República*) supervises the overall policy, this institution does not operate as an available mechanism for beneficiaries to make claims for specific administrative decisions that affect them. Instead, *Programa Familia* provides a diluted net of channels to address recipients' questions, complaints, and claims. These channels include a telephone hotline, a website, and family intermediaries, as well as municipal offices in each commune.⁵³

A final difficulty is related to the role that welfare recipients play in the process of appealing an administrative decision. CCT programs often have some mechanism to appeal unfavorable decisions. Typically, as I mentioned before, CCTs receive complaints and appeals through call centers, websites, e-mail, in-person services, or a combination thereof. One important thing to note is that claimants appealing administrative decisions in CCTs

have a passive role during the process. Although recipients can appeal an administrative decision, they do not actively participate in the administrative process involving that appeal.⁵⁴ The appeal process is activated once the complaint is presented to the agency in charge of investigating administrative errors and other failures. CCT programs do not offer instances of administrative hearings such as FHs. Claimants do not have the opportunity to appeal and be heard in front of an administrative court or an administrative law judge.⁵⁵

As Lens suggested, appeal arrangements with the active involvement of recipients during the process, such as in fair hearing schemes, provide welfare claimants with the opportunity to be heard and tell their stories. Appeal procedures can become a learning experience in which welfare claimants can receive feedback on how to navigate the system more efficiently, as well as to learn more directly what is expected of them. Thus, the opportunity to be heard can also become an opportunity to learn what is being questioned.⁵⁶ Appeal mechanisms that require the beneficiaries' active role during the appeal process allow them to challenge and explain why decisions about their case are unjustified. The burden of proof lies with the agency to show why the applicant should not receive welfare benefits.⁵⁷ Nonetheless, beneficiaries of CCTs challenging an administrative decision are mainly expected to communicate a complaint and wait for an administrative response.

Some CCTs offer appeal arrangements. Even though these procedures are not fully developed and operative to protect welfare recipients adequately, their experiences could be a starting point for other CCT programs interested in improving their procedural protections. Some examples follow.

The Colombian program *Más Familias en Acción* has established procedural protections to protect beneficiaries from administrative errors or irregular situations. There

are several well-specified channels for presenting complaints. These range from face-to-face care in municipalities to free phone lines and online platforms to raise claims and concerns about particular cases. The beneficiaries, participating entities, and other persons and institutions can present petitions, complaints, and claims to the program's administration. Petitioners can address the administration either verbally or in writing, depending on the situation. *Más Familias en Acción* classifies different types of petitions, complaints, and claims. For example, the program distinguishes appeals that are made by a welfare claimant regarding a situation that affects him/her directly (particular interests) from other petitions that involve no specific recipient (general interests). Complaints are codified as manifestations of protest or nonconformity with the allegedly irregular conduct of public servants in executing their professional duties. The category of claims includes all demands regarding errors or misuse of personal data, as well as those related to the unjustified suspension of the benefits or the deficient provision of a service (education, health care, administration of the program). *Más Familias en Acción* has self-imposed deadlines as commitment devices to protect recipients and improve performance. The administration has a 30-day time window in which to address petitions, complaints, and claims, and any delay must be formally explained.⁵⁸

Similarly, the Mexican program *Oportunidades* included a specific channel to receive and handle complaints from affected recipients and non-recipients of the program. The *Sistema de Atención Ciudadano* (SAC) was the agency in charge of receiving demands, complaints, requests, and inquiries about the program's different features. In particular, this agency specialized in working with a vulnerable population to include those who benefit from *Oportunidades*. This agency did provide recipients with an opportunity to

be heard, although it is unclear to what extent it served the purpose of protecting them against administrative errors. Even though the agency could adequately receive complaints and appeals, what it could do with these inputs is crucial.⁵⁹ There are similar cases in Argentina and Brazil. In Argentina, *Jefas y Jefes de Hogar* operated together with a specialized agency (*Comisión de Tratamiento de Denuncias de Los Programas de Empleo*), which was responsible for receiving telephonic, written, and personal complaints about irregularities and errors in the operation of the program. Likewise, *Bolsa Familia* in Brazil has a division that investigates complaints about irregularities in the administration of the program.⁶⁰

These cases show some promising features in terms of administrative justice. Nevertheless, we still need to know more about how these procedures protect CCT recipients from administrative errors. To begin with, we do not have enough information about the numbers of both appealers and non-appealers. The performance of these arrangements cannot be evaluated without this information.

We know very little about why some CCT beneficiaries appeal while others in similar situations do not. Many different reasons may explain the actions of appealers and non-appealers. For instance, we need to take into account variables such as the level of complexity of the process and the presence/absence of adequate help, as well as the speed, quality, and cost of the appeal process.⁶¹ Equally important is knowing and understanding the beliefs that welfare recipients may have about the internal and external appeal processes' independence.

Finally, it is worth noting that in these CCT experiences, claimants appealing to administrative decisions have a passive role. The appeal process is activated once the

complaint is presented to the agency in charge of investigating administrative errors and other failures. CCT programs do not offer instances of administrative hearings. Claimants do not have the opportunity to appeal or be heard in front of an administrative court or administrative law judge.

5. Discussion and Conclusions

Welfare conditionality is an umbrella that covers a wide variety of redistributive programs. While there are good reasons to be concerned about conditional plans, not all behavioral conditions are equal or have similar normative implications. CCT programs use the same conditionalities in almost all cases. However, the administration of these programs varies significantly. These variations materially impact the protections beneficiaries have against the administrative decisions that affect them adversely. The analysis of these programs in terms of procedural justice is essential to evaluate the use of behavioral conditions in welfare programs normatively. Although some CCTs show deficiencies in their procedural protections (e.g., in terms of their appeal mechanisms), others have adopted arrangements that minimize these difficulties.

Three issues arise from this analysis. The first is how to design and implement conditional policies that minimize these difficulties. The quick answer is empirically-minded: we can learn from real-world experiences with CCT programs implemented in various settings such as those described above. For example, we know that not all forms of verifying compliance and enforcing conditionalities work properly, and that claimants' methods of redress require better incorporation into the design of these programs from the outset. Likewise, we know that administrative errors can be racially biased and serve to

reinforce racial stereotypes.⁶² Furthermore, as CCTs are targeted policies, it is crucial to evaluate the social construction of the target population— that is, "the cultural characterizations or popular images of the persons or groups whose behavior and well-being are affected by public policy".⁶³ These characterizations are normatively charged and can have a significant effect when designing and implementing target policies. Given all these considerations, we need more research on understanding what types of appeal mechanisms (and procedural protections in general) work better to protect CCT claimants.

A second issue concerns the challenge of institutionalizing and promoting an ethics of public service that can be functional to the implementation of WC. That would consist of the internalization of a given set of ethical rules and norms that helps street-level workers and administrators to run these programs in line with the normative principles that underlie and justify them.⁶⁴ The challenge is how to motivate civil servants to internalize ethical principles aligned with those grounding permissible behavioral conditional policies. One possible course of action is to use external controls such as a code of ethics.⁶⁵ An alternative path consists of pursuing a strategy of internal controls by teaching moral education in public administration.⁶⁶ This is a public administration debate that exceeds the scope of this essay, but it is worth noting that a comprehensive justification of WC would require answers not only in terms of the permissibility of a given conditionality and the PPs in place, but also regarding the strategies to promote ethical behavior among the civil servants administering these programs.

The final question is to what extent we should care about rescuing WC. After all, the most obvious solution to these administrative dilemmas may be to abolish conditionality altogether—that is, to rely on a redistributive scheme that uses a more

straightforward administrative structure to avoid the difficulties associated with the highly complex administration of WC. Nonetheless, we should not abandon that instrument so quickly. On the one hand, it is a mistake to assume that unconditional redistributive schemes are free from administrative challenges.⁶⁷ Even the administration of unconditional and universal programs requires significant administrative effort. For instance, unconditional policies still need to define criteria of eligibility for recipients, determine who meets such criteria, and define an efficient strategy for paying eligible applicants.⁶⁸ Therefore, we need more analyses comparing and evaluating the administrative challenges faced by conditional and unconditional schemes. Although it is reasonable to expect conditional plans to have more considerable administrative efforts than unconditional ones, it would be a mistake to assume that the cost associated with unconditional schemes is null.

On the other hand, to be sure, there are good reasons to criticize numerous current conditional policies adopted in multiple places. Furthermore, this negative diagnosis can be extended to the use of PPs as a palliative institutional response to those problems. However, the pros and cons of PPs must be considered without losing sight of the fact that in many cases, the adoption of this type of arrangement has been consistent with minimal redistributive goals. Instead, we can imagine a WC policy whose purpose is to include rather than exclude people who need welfare assistance. PPs tailored for this goal must be designed to favor the incorporation and permanence of the programs' beneficiaries. Furthermore, they must be designed to ensure that needy recipients not only maintain material support (e.g., income, food assistance), but are also reasonably capable of fulfilling the required behavioral expectations. The global experience with CCTs demonstrates that it

is possible to develop conditional policies that aim to include rather than exclude potential beneficiaries. Furthermore, the fulfillment of the conditionalities should be framed in terms of its potential *benefits* to welfare recipients rather than as a *punitive or exclusionary* mechanism. That is, the overriding goal of CCT implementation should be to move beyond simply retaining vulnerable people within a welfare benefits system and toward helping them meet the actual behavioral demands required for this retention.

¹ For a thorough overview of welfare conditionality, see Watts and Fitzpatrick, *Welfare Conditionality*.

² There is extensive literature criticizing welfare conditionality. See, for example, Piven and Cloward, (*Regulating the Poor: The Functions of Public Welfare*), and Adler, (*Cruel, Inhuman or Degrading Treatment?*).

³ White, "Should a minimum income be unconditional?", 187.

⁴ See Galligan ("Procedural Rights in Social Welfare"), Alexander ("Are Procedural Rights Derivative Substantive Rights?"); Adler ("A socio-legal approach to administrative justice.")

⁵ Brodtkin and Majmundar "Administrative Exclusion: Organizations and the Hidden Costs of Welfare Claiming", 828-829.

⁶ Although the legal literature discussing procedural protections is enormous (primarily focused on the US and UK), this issue is barely addressed in the normative debate on welfare conditionality.

⁷ Bastagli, "Conditional cash transfers as a tool of social policy", 62.

⁸ Cecchini and Madariaga, *Programas de Transferencias Condicionadas*, 169-170.

⁹ I have expanded these ideas elsewhere and won't pursue them in detail now. For further reference, see Pérez Muñoz, "A Defense of Participation Income", "What is Wrong with Conditional Cash Transfers?", and "Participation Income and the Provision of Socially Valuable Activities".

¹⁰ Adler, *Cruel, Inhuman or Degrading Treatment?*; Handler, *The Conditions of Discretion*; "Discretion in Social Welfare: The Uneasy Position in the Rule of Law"; "Poverty, Dependency, and Social Welfare: Procedural Justice for the Poor"; "Welfare, Workfare, and Citizenship in the Developed World"; Piven and Cloward, *Regulating the Poor: The Functions of Public Welfare*; Watts and Fitzpatrick, *Welfare Conditionality*.

¹¹ Soss, Fording, and Schram, 2011, *Disciplining the poor*.

¹² Mead, *Beyond entitlement*.

¹³ Wolff, "Fairness, respect, and the egalitarian ethos." 121-122.

¹⁴ Atkinson, *Public Economics in Action: The Basic Income/flat Tax Proposal*, "The Case for a Participation Income".

¹⁵ Pérez Muñoz, "A Defense of Participation Income", "Participation Income and the Provision of Socially Valuable Activities".

¹⁶ Pérez Muñoz, "A Defense of Participation Income", "Participation Income and the Provision of Socially Valuable Activities".

¹⁷ De Wispelaere and Stirton, "The public administration case against participation income."

¹⁸ Pérez Muñoz, "What is Wrong with Conditional Cash Transfers?".

¹⁹ Grosh et al., *For Protection and Promotion*.

²⁰ Goodin, "Welfare, Rights and Discretion", 234.

²¹ Handler, "Discretion in Social Welfare: The Uneasy Position in the Rule of Law", 1274.

²² Mashaw, *Bureaucratic justice: Managing social security disability claims*; Lipsky, "Bureaucratic Disentitlement in Social Welfare Programs"; Brodtkin and Marston, *Work and the Welfare State*.

²³ Mashaw, *Bureaucratic justice*; Handler, "Discretion in Social Welfare"; Baldwin, Wikeley, and Young, *Judging social security*; Wikeley, "Social Security Appeals in Great Britain"; Sainsbury, "Social security decision making and appeals."

²⁴ Wolff, "Fairness, respect, and the egalitarian ethos."

²⁵ Soss, Fording, and Schram, *Disciplining the poor*, 13.

²⁶ Adler, *Administrative Justice in Context*, 129-131.

²⁷ As several authors have maintained, procedural justice has received far less attention in normative debates than substantive justice issues (Galligan, *Due Process and Fair Procedures*, xvii; Bayles, *Procedural Justice*; Solum, "Procedural Justice", 2. An indicator of this is the relative lack of general theories about the nature of procedural justice and its application to different fields.

²⁸ Bayles, *Procedural Justice*, 3; Adler, *Administrative Justice in Context*, 129.

²⁹ It remains controversial to what extent the procedure has intrinsic value or if it should instead be understood exclusively as an instrument to achieve specific results. Within these two positions, we can find a range of intermediate views. These interpretations determine, among other things, the scope of procedural justice and its relationship with other "locus of justice". See for instance, Bayles, *Procedural Justice*; Galligan, *Due Process and Fair Procedures*; Adler, *Administrative Justice in Context*, 136; Ceva, "Beyond legitimacy. Can proceduralism say anything relevant about justice?".

³⁰ Barry, *Political Argument: A Reissue with New Introduction*, 102.

³¹ As I mentioned in the introduction, there are at least five principles and mechanisms that help protect welfare recipients. The first principle is the absence of unjustified bias in decision-making. In this context, unjustified bias occurs when specific groups of claimants are treated differently based on criteria that do not find legal or normative support in the program's operating rules (Galligan, "Procedural Rights in Social Welfare", 60). A second principle is the thought that people should be treated equally and consistently throughout the decision-making process (Galligan,

“Procedural Rights in Social Welfare”, 61). The principle of equal treatment implies that people in a similar situation should be treated equally, while people in different circumstances should be treated differently. Additionally, that treatment must be consistent among all people who are in a comparable position. If Julia obtains a benefit *X*, all welfare claimants in similar circumstances should receive the same benefit. Third, PPs must ensure that there is a statement of the reason behind any administrative decision. That means that the decision-makers must be unambiguous when transmitting administrative resolutions. Fourth, there must be some kind of hearing that gives welfare claimants the opportunity to be heard. Finally, there should be a possibility of reclassification and return to the program is due. Welfare agencies must enable the correction of erroneous or unfair administrative decisions and allow the reincorporation of recipients who were mistakenly excluded (Schuck and Zeckhauser, *Targeting in social programs*, 122-125).

³² Adler, "A socio-legal approach to administrative justice"; Cowan et al., *The Appeal of Internal Review*.

³³ Sward, "Values, Ideology, and the Evolution of the Adversary System", 302.

³⁴ Sward, "Values, Ideology, and the Evolution of the Adversary System", 313.

³⁵ Lens, "Complaining after Claiming: Fair Hearings after Welfare Reform", "Administrative Justice in Public Welfare Bureaucracies: When Citizens (Don't) Complain", and *Poor Justice: How the Poor Fare in the Courts*.

³⁶ Lens, *Poor Justice: How the Poor Fare in the Courts*, 7.

³⁷ Lens, *Poor Justice: How the Poor Fare in the Courts*, 34.

³⁸ Lens, *Poor Justice: How the Poor Fare in the Courts*, 15.

³⁹ Lens, *Poor Justice: How the Poor Fare in the Courts*, 38.

⁴⁰ Soss, *Unwanted Claims*, 300.

⁴¹ Genn, "Tribunals and Informal Justice"; Cowan et al, *The Appeal of Internal Review-*

⁴² Lens, *Poor Justice: How the Poor Fare in the Courts*.

⁴³ For instance, some studies show the positive effect of CCTs on health, education, and poverty reduction (Rawlings and Rubio, "Evaluating the impact of conditional cash transfer programs"; Fiszbein, Schady, and Ferreira, *Conditional cash transfers: reducing present and future poverty*) In the short term, these programs increase the use of educational and health services. School enrollment levels increased for children of CCT-receiving households in Colombia (Attanasio et al., "Should Cash Transfers Be Conditional? Conditionality, Preventive Care, and Health Outcomes."), Ecuador (Schady and Araujo, "Cash Transfers, Conditions, and School Enrollment in Ecuador.") and Mexico (Behrman et al., "Are conditional cash transfers effective in urban areas? Evidence from Mexico."). Compliance with the conditions imposed by these programs seems to explain these results (IEG, *Evidence and Lessons Learned from Impact Evaluations on Social Safety Nets*). For example, (Baird et al, "Relative Effectiveness of Conditional and Unconditional Cash Transfers for Schooling Outcomes in Developing Countries: A Systematic Review.") provided a systematic review of 75 reports from 35 different studies. Compared to non-cash transfer programs, the authors find that CCTs that penalizing non-compliance has a significant effect on the enrollment rate in children's educational centers (Baird et al, "Relative Effectiveness of Conditional and Unconditional Cash Transfers for Schooling Outcomes in Developing Countries: A Systematic Review", 29). Likewise, programs implemented in countries where the costs of attending classes are high seem to have a more significant impact than those where school attendance is not an issue.

⁴⁴ The most notorious ones are: (a) set the objectives of the program; (b) decide program's conditions; (c) establish the amount of the grant to be allocated; (d) decide the institutional arrangements for governance and running the program; (e) decide a monitoring and evaluation system; (f) define the target population and the targeting method; (g) determine payment system; (h) define mechanisms to verify compliance; (i) set a scheme for appealing administrative decisions; and (j) decide a plan to exit the program (Castañeda, "The Design and Implementation of Conditional Cash Transfer Programs: Issues and Lessons for the Future", 191).

⁴⁵ Hevia, “Mecanismos De Participación Ciudadana Y Control Social En Los Programas De Transferencia Condicionada De Renta En México Y Brasil, Un Análisis Comparado.” ; Hevia and Grueneberg, *Continuidades y Reformas En El Sistema de Atención Ciudadana Del Programa de Desarrollo Humano Oportunidades*; Grueneberg and Pereyra, “De La Teoría Promisoria a La Práctica Concreta: Los Sistemas de Rendición de Cuentas En Los Programas Sociales.”.

⁴⁶ Cecchini and Madariaga, *Programas de Transferencias Condicionadas*, 171.

⁴⁷ Handler, “Poverty, Dependency, and Social Welfare: Procedural Justice for the Poor’; Genn, “Tribunals and Informal Justice”.

⁴⁸ Cowan et al., *The Appeal of Internal Review*; Lens, “Administrative Justice in Public Welfare Bureaucracies”.

⁴⁹ Handler , “Poverty, Dependency, and Social Welfare: Procedural Justice for the Poor’, 137.

⁵⁰ Handler, “Discretion in Social Welfare: The Uneasy Position in the Rule of Law”; “Poverty, Dependency, and Social Welfare: Procedural Justice for the Poor’, 137.

⁵¹ Castañeda “The Design and Implementation of Conditional Cash Transfer Programs: Issues and Lessons for the Future”, 197.

⁵² Moreover, as Rossel et al, (“How Could Conditional Cash Transfer Programme Conditionalities Reinforce Vulnerability?) demonstrated, appeals procedures are unclear for this program's recipients. In the legislation that gives substance to the Family Allowances program, there is no mention of the appeal procedures associated with the policy. Thus, it is not explained what the protection procedures are. The guidelines for appealing to unfavorable administrative decisions in these programs are available at <https://www.bps.gub.uy/bps/file/10760/2/instructivo---reclamos-de-pago-afam.pdf>

⁵³ Vargas, Cueva, and Medellin, *¿Cómo funciona Ingreso Ético Familiar?*, 32.

⁵⁴ It is worth noting that some CCT programs have incorporated instances of beneficiaries' participation and representation in different instances of the administration of CCTs. That is the

direct participation of beneficiaries in commissions and other collegiate bodies. These instances can be merely consultative or directly impact some facet of program implementation and design. This type of arrangement has been adopted in programs in Mexico, Colombia, Argentina, and Brazil. However, as some authors have pointed out, they have a small impact given their limited scope, budget constraints, and the possibility of being co-opted by local and municipal governments (Adato and Roopnaraine, “Conditional Cash Transfer Programs, Participation, and Power”; Cecchini and Madariaga, *Programas de Transferencias Condicionadas*, 171). Furthermore, it is unclear how these mechanisms can help recipients to appeal administrative decisions formally.

⁵⁵ Although they are generally isolated cases, some beneficiaries have used the judicial route to appeal administrative decisions of CCT programs. For example, in Argentina, a group of imprisoned mothers living with their infants challenged the Family Allowance program to exclude them as potential recipients Arcidiácono, “Distinguir donde la ley no distingue. Las madres privadas de libertad por fuera del sistema de Asignaciones Familiares.”

⁵⁶ Lens, *Poor Justice: How the Poor Fare in the Courts*, 34.

⁵⁷ Lens, *Poor Justice: How the Poor Fare in the Courts*, 16.

⁵⁸ Medellín-Sánchez Prada, *How Does Más Familias en Acción Work*

⁵⁹ Hevia, “Mecanismos De Participación Ciudadana Y Control Social En Los Programas De Transferencia Condicionada De Renta En México Y Brasil, Un Análisis Comparado.” ; Hevia and Grueneberg, *Continuidades y Reformas En El Sistema de Atención Ciudadana Del Programa de Desarrollo Humano Oportunidades*; Grueneberg and Pereyra, “De La Teoría Promisoria a La Práctica Concreta: Los Sistemas de Rendición de Cuentas En Los Programas Sociales.”

⁶⁰ Pereyra, *Rendición de Cuentas y Programas Sociales*; Hevia, “Mecanismos De Participación Ciudadana Y Control Social En Los Programas De Transferencia Condicionada De Renta En México Y Brasil, Un Análisis Comparado.”

⁶¹ Adler-Gulland, *Tribunal Users' Experiences, Perceptions and Expectations: A Literature Review*.

⁶² Soss, Fording, and Schram, 2011, *Disciplining the poor*.

⁶³ Schneider and Ingram, "Social construction of target populations: Implications for politics and policy." 334).

⁶⁴ Cooper, *The responsible administrator*; Cordelli, *The Privatized State*; Heath, *The Machinery of Government*.

⁶⁵ Chandler, "The problem of moral reasoning in American public administration: The case for a code of ethics."; Kernaghan, "Towards a public-service code of conduct—and beyond."; Huddleston and Sands, "Enforcing administrative ethics."; Blake et al., "The nature and scope of state government ethics codes."

⁶⁶ Rohr, "The study of ethics in the PA curriculum."; Mayer and Harmon, "Teaching moral education in public administration."; Roberts, "The rise of compliance-based ethics management: Implications for organizational ethics."

⁶⁷ De Wispelaere and Stirton "The administrative efficiency of basic income."; "The politics of unconditional basic income: Bringing bureaucracy back in"; "When basic income meets Professor Pangloss: ignoring public administration and its perils."

⁶⁸ De Wispelaere and Stirton, "The politics of unconditional basic income: Bringing bureaucracy back in".

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