

A LEGAL VIEW ON BASIC INCOME*

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ABSTRACT

Sometimes the supporters of basic income appeal to “a right to basic income”. When we talk about human rights we have to explain what we mean by that; if we start from some iusnaturalist or positivist case and what are the reasons we use to justify those rights. Van Parijs, in his theory of justice, talks about rights and basic income but he does not explain the way they are linked. In this paper I will try to give a legal view about the possibility to argue for a human right to basic income. With this purpose I will distinguish three very close concepts: rights, duties and guarantees. And I will try to see how basic income fits into these categories. Because if we make a correct legal design of basic income, it will have more opportunities to become a success.

1. From the theory of justice to institutions.

When we argue for a concrete theory of justice, the next step is studying the institutional design demanded by that theory. In this point, rights are very relevant because depending on the theory of justice we defend, we could argue for one or

* This paper has been improved with the generous help of Gijs Van Donselaar, María Eugenia Rodríguez Palop and Javier Ansuátegui who read previous drafts. However, all the mistakes are my own responsibility. I would thank any comment: jlrey@der.upco.es

another group of rights. In consequence, there is a very close connection between rights and the theory of justice. We can define rights as those justified moral claims that are recognized by the positive law and constitute a system inside the positive law (Peces-Barba, 1995). The rights try to shape as institutions the moral values that a theory of justice contains.

When we follow the ideas of the methodological positivism, as I will do here, the step from the moral values to the institutions is not automatic. Although we can justify some moral claims, those moral claims are not rights yet. It is necessary that some positive laws include them. The mediation of institutions is needed. Moral claims can exist without being included in a legal law. In that case, we would have moral claims that try to be legal rights, but they are not that yet. They are incomplete rights.

Other authors call this vision of human rights, known as methodological positivism, a dualistic approach. It would not be far from the argument about “moral rights” made by Dworkin (Dworkin, 1977). The difference between them is that for dualistic approach the moral claims are not rights in a legal sense, but probably the difference is only a terminological one. Methodological positivism tries to distinguish moral from law. We do that when we say that moral is important in the world of rights because these contain the moral claims, but they do not exist as legal rights until they are not included in some positive law. There is probably another difference between Dworkin and the methodological positivism in the role played by democracy. While for the methodological positivist approach, we recognize a legal right as a consequence of the majority decision, Dworkin thinks that the recognition of moral rights is demanded by the moral content of those claims.

The methodological positivism emphasizes the importance of the institutions as opposed to other visions about rights. The very well known iusnaturalist argument points out that the moral values are self-sufficient. Being moral values they are already rights. They do not need the institutional recognition to be rights. In consequence there is a natural law over the positive law. The institutions are in second place, they are not autonomous and they depend on moral. Obviously, there are different types of iusnaturalism. We can distinguish the rationalist iusnaturalism that argues that the moral values must be discovered by the human reason, from the theological iusnaturalism that argues that the moral values and rights must be

discovered by the divine revelation. These differences are not superficial, but both versions share the idea that rights depend on moral and they are not self-sufficient realities.

While the iusnaturalism limits the importance of institutions, the theoretical positivism puts institutions over moral. For the authors who argue in this way, there would not be a concept of justice different from what the legal rules say. It is fair what the laws say that it is. There is no place for a moral analysis of institutions. There is an identification between justice and positive law and, in consequence, moral is not important in the field of legal rights.

However, the methodological positivism that I support, tries to distinguish the place of moral and the place of rights. It gives to institutions the importance that deserve, in the middle of theoretical positivism and iusnaturalism. In addition, this approach makes possible an historical explanation of the evolution of rights. Depending on the theory of justice accepted in each moment of history, the rights have been different. They have gone evolving. A static vision as iusnaturalism one makes difficult to explain the rights as a historical reality that changes. And institutions are historical realities, no moral ones.

When people argue for basic income they can make it in two ways. They can present a group of pragmatic arguments, showing the advantages of basic income compared to other institutions of Welfare States. This type of argument appeals to the idea of efficiency. Others argue for basic income presenting principled reasons, as an institution derived from a concrete theory of justice (Torisky Jr., 1996; Barry, 1996, p. 243; Cunliffe, Erreygers and Van Trier, 2003, p. 16). The one who has developed most this last type of argument is P. Van Parijs, especially in his book *Real Freedom for All*, where he presents his own theory of social justice and basic income as a necessary institution to make real that idea of justice (Van Parijs, 1995). However, authors have developed other arguments of the same type as those that try to defend basic income from a republican idea of justice (Raventós, 1999; Raventós and Casassas, 2002; de Francisco and Raventós, forthcoming). Anyway, I think that the pragmatic and the principled arguments for basic income could join in some place. I will try to discover that place below. However, the difference between the two types of arguments is very important. A concrete theory of justice can be realized in different ways, through different institutions. The pragmatic arguments try to see

which is the best way to achieve one concrete ideal of justice and which institutions are more efficient to that goal. On the contrary, the principled arguments present some institutions as necessary related to an ideal of justice. This happens, for example, with many rights. We cannot carry out a liberal theory of justice without some rights as freedom of speech.

In general, each theory of justice demands the recognition of a group of rights. In consequence, rights are one of the central institutions that make real a moral ideal of justice. The different theories of justice distinguish themselves by the moral values they argue for and by the way they order those moral values. Then those values will take shape in the recognition of a group of rights. Rights are the central institution of a theory of justice.

When people try to argue for basic income with principled reasons, they are trying to present it as an institution required by the moral content of a theory of justice. As an institution without it the ideal of justice is not possible to achieve, and this is the place where the discourse of rights must enter. This is because the content of each different theory of justice implies the recognition of a group of rights; if we follow this way to argue for basic income, we are talking about it as a fundamental right, as something necessary and essential.

Rights are not the only institution derived from the moral values of a theory of justice. Rights are the central institution but there are others. We can talk about duties that use to go with rights and we can talk about guarantees too. My purpose here is discovering how basic income fits into these institutions.

2. Rights, duties and guarantees.

The three institutions that make real the content of a theory of justice are rights that are, as we have seen, the central ones, duties and guarantees. I will try to talk a little about these last two ones.

Duties are the other side of rights. When the moral value of autonomy, the main value in a liberal theory of justice, takes shape in a group of rights, as the right to life, the ideological freedom, the freedom of speech, the right to intimacy, and so on,

all these rights imply a group of duties. In fact, the duties are the argument to distinguish between libertarian rights and social, economical and cultural ones. However, this distinction is not true. All rights imply a duty for every citizen. For example, if one person has the right to life, the others citizens have the duty to respect it. In this sense, the libertarian rights generate negative duties (Hayek, 1979, specially vol. 2, chap. 9 and among others Bossuyt, 1975). The citizens are forced to exercise their rights without harming the rights of the other citizens. They are forced to respect the limits of rights; there is a negative duty that makes possible the coexistence of rights. The State is forced to respect those rights too. In fact, the rights are triumphs against the power of the State.

Libertarians say that the libertarian rights imply negative duties for the State and the individuals while social and economical rights that are the institutions demanded by socialist theories of justice imply positive duties to the State. In this sense the libertarian rights imply negative duties with two addressees: individuals and the State. The social and economic rights imply positive duties with only one addressee: the State. This duty implies that the State is obliged to do something, to offer for example some services in healthcare, education, lodging and culture.

From my point of view, this distinction is not true. Every right implies, on one side, duties for the State and the individuals, and on the other hand, positive and negative duties. We can start with these last ones. The State is obliged to make positive actions by the libertarian rights. These rights cost money as economical and social ones. In fact, the protection of the right to life implies the State has to spend money in its protection. The security budget or the costs of prisons is a good and topic example. In consequence, we could say that the duties derived from the libertarian and political rights are a group of positive and negative duties for the State. It is forced to abstain in some aspects and to develop positive actions in others (Abramovich and Courtis, 2002, p. 24). Libertarians could say that the positive duties of libertarian rights are secondary; they only appear when someone violates one of these rights. In contrast, social rights always imply a positive action for the State. I think this depends on the right we are talking about. The exercise of some rights is impossible if the State don't make a positive action. That is the case, for example, of the freedom to speech; if the State doesn't create the conditions to make real this right, it wouldn't be

exercised. And political rights always imply a positive action to the State in the organization of elections and so on.

At the same time, the economical, social and cultural rights imply a negative duties for the State too, not only positive ones. For example, the right to healthcare is the duty of the State to abstain to make something that could harm it (C. Fabre, 1999, pp. 53-65).

I have said that social rights imply duties for individuals too. What type of duties? In fact, the libertarian rights imply negative duties; individuals are forced to abstain from doing something that could harm the rights of the other citizens. However can libertarian rights imply positive duties for individuals? We could think that the answer to this question is negative. Libertarian rights only would imply negatives duties, that is, respecting the limits of the rights. In the same sense, the economic and social rights do not imply any duty for individuals, neither positive nor negative. They would be rights whose duties are addressed only to the State and this, for the neo-liberal thought, is a proof that demonstrates that social and economical rights are not real rights. However, this argument is very simple. Economic, social and cultural rights imply positive and negative duties for individuals. The labour rights, for example, impose a group of negative duties to the individuals when they act as businessmen. At the same time they imply positive duties because healthcare, lodging or education cannot be promoted if citizens don't pay their taxes. In this sense Marshall pointed out that the main duty of the social and economical rights is the duty of paying taxes (Marshall, 1995 [1963]), but not only this. Maybe the duty to work is another positive duty derived from the social and economical rights. This duty is central in the discussion about reciprocity and basic income, as we will see later.

So do libertarian rights imply some positive duty for individuals? Maybe they don't imply a direct positive duty but an indirect one. For example, when the Spanish Constitution establishes in its article 30 the duty of Spanish people to defend their country, that is a positive duty derived from the content of some libertarian rights. When some of those rights were under attack, the Spanish citizens must develop a positive action to defend them. The political rights also imply a positive duty to citizens, for example, when we are elected to be presidents or members of an electoral table. And of course, the duty to pay taxes is derived not only from the social and

economic rights, as Marshall said, but also from the libertarian and political rights because the State only can protect those rights if it has economic resources to do that.

In consequence, we cannot distinguish libertarian, political, economic, social and cultural rights attending the duties they imply, because all of them involve positives and negatives duties for the individuals and for the State. Does this mean that the difference among the types of rights makes no sense? Not necessary, we can distinguish among these types of rights if we attend to the moral value that supports them. But this distinction only has methodological aims. In this sense, under libertarian rights is the moral value of autonomy; under political rights the moral value of participation, the value of collective freedom; and under economic, social and cultural rights is the moral value of equality, real and material equality; we could point out another value that is behind the group of new rights as the right to environment: the value of solidarity (Rodríguez Palop, 2002). In the different periods of history, the presence of these values in the different theories of justice made the institutions change, depending on the theory of justice adopted.

Close to rights and duties there is another institution: the guarantees. Sometimes the concept of guarantee has been introduced in the very concept of right. In my opinion this is not correct. For example, Peces-Barba has reformulated the dualist vision of human rights in what he calls an integral vision. He added to the dimension of the moral values and the legal validity, a third one, the dimension of effectiveness (Peces-Barba, 1995). To recognize a right is necessary not only that it were a justified moral claim included in a legal rule, but also it is necessary that right could be effective. This concept is related to scarcity. In a context of scarcity, as this in which we live, it is possible that a moral claim couldn't be a reality, a fact, and that would make impossible an egalitarian content of rights. In consequence, the scarcity makes it impossible to consider a moral claim as a general law.

In my opinion, this third requirement has risks because if we accept it the recognition of rights depends on the availability of economic resources. This is a good argument for the neo-liberalism; probably neo-liberal authors would say that there are only resources to recognize the right to security and freedom and the social, economical and cultural rights cannot be recognized as rights because we haven't enough resources to make them effective. This argument implies that we are putting the economy over moral and law, but I think the order should be the contrary: the

economy under moral and law. Obviously, in my opinion, the Prof. Peces-Barba's purpose with his integral vision is to demonstrate that the efficacy is also important for rights to be real triumphs and not only a catalogue of purposes without any consequence.

This reflection is very important. However, from my point of view, the effectiveness does not relate to the concept of right, but to the concept of guarantee. The concepts of rights, duties and guarantees are very close because they are all institutions that translate the moral content of a theory of justice, but I think it is possible to distinguish them. When I talk about guarantees I am not referring to the secondary guarantees of rights following the Italian professor Ferrajoli (Ferrajoli, 1989, 1999, 2000). The secondary guarantees are the jurisdictional ones, that is, the possibility we have to go to a judge or a Court when one of our rights is harmed. These guarantees are very important for the Rule of Law. However, when I talk here about guarantees I am referring to the primary ones, that is, the different institutions and mechanisms through which rights are effective. Rights and guarantees are both of them institutions and the place of guarantees is secondary respect to rights, because they try to make real and effective the content of the fundamental rights. We must not confuse the *object* of a right with its *ways of satisfaction*. In fact, a right can be satisfied in different ways, and when I talk about guarantees I am talking about that, about different ways of satisfying rights. I am going to exemplify this distinction with a civil right. Everybody has a right to security. Nowadays, one institution that guarantees this right is the police. Does it mean that we have a "right to police"? Obviously not. The police are only an institution that makes real and effective the object of the right to security. We could imagine another institution that guarantees with the same or more efficiency the content of this right. In that case, if we substitute the police by this new institution, we could not say that our right is being attacked. A right is determined by its object; the different ways of making the content of a right real and effective depend on the guarantees.

The efficiency plays an important role in the guarantees. Because when we have to choose among different guarantees we will do by those that imply more economic efficiency as we live in a scarcity context. In this sense, efficiency is the way to size the effectiveness of a guarantee. The economical analysis is secondary; the recognition of rights does not depend on the economy; the guarantees depends on it,

we will choose those guarantees that imply more efficiency to make real and effective the content of a right.

3. Basic income: right, duty or guarantee?

When we argue for basic income with principled arguments, that is, presenting it as a necessary institution derived from a theory of justice, it is necessary to think about the place basic income has to occupy: if it is a right, a duty or a guarantee. As I have pointed out before, Philippe Van Parijs is the one who has done the major effort to present basic income in the context of a theory of a fair society. For him (Van Parijs, 1995) a fair society is the one that guarantees to every member the greater real freedom. He understands by real freedom not only the positive or negative freedom, following the classical distinction of Berlin (Berlin, 1979); “being free consists in not being prevented from doing not just what one wants to do, but whatever one *might* want to do” (Van Parijs, 1995, p. 19). With this definition Van Parijs tries to solve the slave objection. The happy slave is the slave who modifies his desires to make them coincident with his reality. Van Parijs does not separate freedom from desires; he separates from the actual desires but not from potential desires. He links freedom to potential desire, that is, those things one might want to do. We will be freer if we have more options to do things we might want to do.

This concept of freedom is central to understand Van Parijs’ thought about the fair society. It has also some difficulties. Firstly, it has been criticized because it supposes *options fetishism* (Van Donselaar, 1997, pp. 201-203); it offers a great number of options to everybody, independently if the individuals have some interest in getting those options. This, at the end, could mean an inefficient distribution of options and opportunities. Secondly, the concept of potential desire has problems too, because to know what we “might want” we have to make a representation of those potential desires and doing that we can manipulate that representation, as the happy slave does. In this case we do not manipulate our actual desires but our potential ones, the representations about we might want to do (Hundayi and Manz, 1998). When Van Parijs talks about the things we might want to do he seems to appeal to an impartial observer for whom all desires would be equal. If this is the case, then it is necessary

Van Parijs explained how to adopt this impartial point of view, because it implies using a concept of freedom different from the one people who may exercise that freedom have.

So the value that a fair society must protect is for Van Parijs real freedom. From this idea, he analyzes the principles that must order a society to be fair, that is, a society that guarantees real freedom. Van Parijs points out three principles: security, self-ownership and a leximin order of opportunities. In the two first principles are condensed the libertarian philosophy about the State. Only with the first one we would be in a communist society where security is guaranteed. Though to achieve real freedom, it is necessary a third principle, the equality opportunities, that is, each citizen must have the greatest possible opportunity to do whatever she might want to do. These principles follow a lexicographic order; firstly, the State must guarantee the security, secondly the self-ownership and in last place, the set of opportunities. It does not make sense guarantying the equal set of opportunities if the security or the self-ownership are not guaranteed. However the priority is soft because the objective is obtaining real freedom and for that, the three elements are necessary. These principles of the theory of justice must be institutionalized. In my opinion, it is in the institutional field where the theory of justice defended by Van Parijs is weaker. The security demands the Rule of Law. But we can use different concepts of Rule of Law. Van Parijs argues for a narrow concept of it that is characterized only by the existence of the authority of Law, the division of powers and the behavior of Administration in accordance to the content of Law and under the control of judges. That is the reason why in a communist society could be Rule of Law (although I am not very sure about it because under communism there were a lot of arbitrary decisions). Though I do not agree with this concept of Rule of Law and from a legal perspective I would argue for a wider concept of it that includes in addition the requirement of law must be democratic and the recognition of a group of rights. Depending on what rights are recognized we could distinguish a libertarian or a Social State if social rights are included at the same level than libertarian ones. The second principle, the self-ownership demands the protection of autonomy and the leximin order of opportunities demands an unconditional income for all the members of the society, because the real freedom is not the freedom to consume, a freedom to choose between different goods, but a freedom to choose among different styles of life. Van Parijs, in consequence,

tries to present a basic income compatible with security and self-ownership as a necessary condition to real freedom.

As I have said, these three principles are conditions to real freedom, but what is unclear is how the principles are concreted in institutions and how those institutions are ordered. In this sense, I think that security and self-ownership are implied mutually. The value that is under the libertarian rights demanded by the principle of security is autonomy. So security and autonomy are very close. In addition, although Van Parijs talks about a group of rights as institutions demanded by the first principle, he does not concrete the institution demanded by self-ownership. Maybe because libertarian rights make real the object of self-ownership too. In last place, the leximin order of opportunities, guarantying the greatest opportunities set to the people worst placed, demands basic income but Van Parijs is not very clear about the position of this institution. We do not know if basic income is under rights or at the same level. We can imagine that basic income is under, because security is the highest principle, but the theory is a little confusing in these points. If security, self-ownership and equal opportunities are the ingredients of real freedom the order would not be necessary, we may say that they are all necessary conditions at the same level. If Van Parijs with the order is trying to solve conflicts of rights, he might be more explicit and explain in what sense he understands those conflicts and why the libertarian rights might be over the right to basic income. A certain asymmetry is observed in the institutions pointed out by Van Parijs. While he presents a general and abstract vision of the institutions derived from security and self-ownership, the institution derived from the leximin order of opportunities is very concrete, it is a very particular institution with a close design. Probably this is because Van Parijs more than trying to defend a theory of justice, he is trying to present basic income as a necessary element of social justice.

The theory is more complicated when Van Parijs introduces the compensation for inequality in internal resources. To obtain this, he uses the concept of *undominated diversity*, that it is originally of Ackerman (Ackerman, 1981). This criterion demands unanimity to compensate brute bad luck. As we can imagine achieving unanimity in a decision is impossible. It seems that this criterion is chosen because it makes the compensation in cases of bad luck difficult. As Van Parijs says, firstly must be compensated the brute bad luck and after, with the remaining resources, a basic income must be distributed; so, when he requires unanimity he is assuring a quantity

of basic income different from zero. Because in accordance with this concept, we can say that A dominates B only if every person has an idea of the good life in accordance with that, it is possible to say that A is better endowed than B. In consequence, it is necessary that everybody consider someone better endowed. If there is some eccentric in the group, that may make the redistribution impossible. We can imagine an individual, X, who is blind. Intuitively we could say that we must compensate X because of her bad luck. If Y has the same endowment than X with the difference that she sees perfectly, then probably everybody unanimously would prefer the Y's endowment to X's. However, in that social group is Z. Z wishes to be blind because she thinks that moving through the city in the darkness is very exciting. Z is an eccentric person, but if she exists, X would not receive any compensation (Arneson, 2003, pp. 102-105). Van Parijs knows this obstacle and demands that the person who declares her preference must know and understand the consequences of having that concrete endowment. With that idea he appeals to an objective criterion that helps us to distinguish authentic preferences from false ones, without saying which criterion it is. Probably if we adopt this type of criterion, we would be in the perfectionism; we would harm the liberal neutrality of State.

The basic income is conditioned to the compensation of the inequality of endowments due to bad brute luck and that, in some cases, could make the quantity of basic income zero. Van Parijs thinks that in liberal societies, that are very diverse, this would not happen because of the requirement of unanimity. He underestimates the circumstances when basic income could be reduced (Williams, 2003, p. 124). If Van Parijs chooses this criterion is to obtain the higher basic income. The unanimity is introduced with the purpose to make difficult the compensation derived from bad brute luck.

In accordance with this new requirement, basic income is conditioned not only to security and self-ownership, but also to equalizing the internal endowments. In my opinion, Van Parijs is not very clear when he talks about the principles and the institutions. He points out that the redistribution must be addressed first to compensate the inequalities in the internal endowments and only after, if we have available resources, we must distribute them as basic income. Does this mean that de undominated diversity is an institution at the same level that the rights and the defense of autonomy? I think it is possible to understand this last institution as something

demanding by self-ownership, by the concept of autonomy. Inequality in the internal endowments decreases the self-ownership of the individuals. In consequence, self-ownership would be over the equal set of opportunities, but as I have pointed out, distinguishing this order is difficult.

When we try to translate the theory of justice argued by Van Parijs in an ordered group of institutions we find all these difficulties. It seems that if all are necessary elements to real freedom, all the institutions might be argued as rights. However, Van Parijs locates the central institution of his theory, basic income, in a secondary place, under the liberal rights and the compensation of bad brute luck. In consequence, is basic income a right or not?

Another way to understand this problem is as conflicts of rights. That is, the order argued by Van Parijs, a flexible order, that concedes priority to libertarian rights and compensation of bad brute luck over basic income, is a way to solve conflicts of rights. However, conflicts of rights are always among equal rights. In that case, we have to solve the conflict attending to the different good each right protects and the consequences of the different possible solutions to the conflict. In my opinion, here we are not in front of a conflict of rights, because the order is previous to the conflict. The conflicts of rights are exceptional and its resolution is case by case. Here, however, there is not conflict between equal institutions, there are different institutions. In the order, the place of basic income is secondary.

We have not yet an answer to the question if basic income is or not a right. The purpose of basic income is guarantying the equality of opportunities to everybody, the equality to choose different plans of life. In my opinion, if we apply the distinction among rights, guarantees and duties, we could argue basic income as a guarantee. Basic income has the purpose to make real and effective the content of another rights that have a moral value behind. In that sense, the idea of real freedom could be argued as a justified moral claim that could be concrete as a right to real freedom. The way to make effective and real the content of that right is a guarantee, and in this sense, basic income is a guarantee to the right to real freedom. It is an institution addressed to make real the moral claim that everybody could live in the way they might prefer. Basic income understood as a guarantee fits better with the ambiguity it is presented at Van Parijs' theory of justice.

If we argue basic income as guarantee that means that we have to do a consequentialist analysis, more than a normative one. We must study the efficiency of different institutions to make real the object of the right to real freedom. Maybe basic income is not the one that has more economical efficiency. The efficiency analysis is the main one now. We can see here, as I pointed out before, how the two ways of argue for a basic income are joined in this point.

4. What happens with duties?

In consequence, I think that the moral value of real freedom allows us to talk about a right to real freedom, in accordance to which, everybody has a right to develop his lifestyle and has a right to the resources needed to do it. A basic income would be a way to guarantee this right. Obviously, we will accept or reject this right and this guarantee depending on the concept of social justice we support.

So what are the duties linked to this right? Firstly, it implies a negative duty to individuals. We must not prevent the development of the plans of life of the citizens. The State is obliged by a negative duty too. The State must not do any perfectionist action, the State must be neutral, but is there some positive duty? In principle, we can see that there is a positive duty to the State consisting on the paying basic income. The State must develop a positive activity addressed to give the citizens the resources necessary to develop the different plans of life. Giving everybody a basic income is a way to do that, and there is a positive duty to individuals too, because they must pay taxes to be distributed as basic income.

As it is known, basic income proposal has been criticized in the side of duties because in some authors' opinion it harms the reciprocity principle. Elster pointed out this idea many years ago when he said that it is unfair that people able to work live from the work of others. For Elster the workers would see the basic income proposal as unfair because it violates a common idea of what is justice, that is, basic income would suppose the exploitation of laborers by lazies (Elster, 1986; but also Galston, 2001 and Anderson, 2001). Basic income shares this objection with other institutions. A lot of critics received by Welfare State in the last years go by the same way: welfare systems allow free riders to live. Society is a system of mutual cooperation; that is the

reason why rights and guarantees exist and also do duties. All together, rights, duties and guarantees, makes possible the society operates.

When Van Parijs presents the concrete design of basic income he assumes that it must be financed by the rents obtained by people who decide working. The way to argue is very original: if external resources have to be equal distributed and each person has a right to the same portion of assets, then we have to see which are the assets we have to distribute. Van Parijs includes among them not only the natural resources but also jobs. For him exploiting someone consist in taking unfair advantage of someone else's work (Van Parijs, 1995, p. 137). So there is exploitation when there is not an equal distribution of assets. A is exploited if she would be better (worse) off, while her complement would be worse (better) off if society's means of production were equally distributed (Van Parijs, 1995, p. 173). Van Parijs thinks that in a context of scarcity of jobs as this in which we live, jobs have to be treated as assets that must be distributed equally. People who have jobs are appropriating more than the portion they are owed. And the way to distribute jobs is with a basic income, because "the granting to all of an equal unconditional income that would exhaust the total net product, after subtraction of the additional allowances for people with special needs, would be one way of guaranteeing –as much as institutions can- the total eradication of all forms of exploitation" (Van Parijs, 1995, p. 180). When someone receives the basic income and does not work she is only taking the part of the asset she has right to.

Again we are in front of the same problem. The right to a same portion of assets (including jobs among assets) does not seem to have any duty on the contrary. The reason is that Van Parijs thinks that leisure is not a scarce resource. He operates as if all individuals, receiving basic income, could decide not to work. However, this is not true. There are a number of options that the individuals could choose only if the other individuals decide not to choose them and leisure is one of these options. A person can choose to live only with basic income and does not work only if the majority of people in that society do not choose the same option (Van Donselaar, 1998). Leisure is a scarcity resource and we cannot universalize the option for a leisure life.

From the idea of reciprocity many authors have criticized the absence of duties in Van Parijs' theory of justice. These authors have argued the necessity of some kind

of duty to avoid basic income be an exploitation instrument. Van Donselaar, for example, assumes jobs as assets as Van Parijs does, but he argues that a fair distribution of resources must depend on the interest people have in using those resources. An interest that must be different from the interest of others to use those resources. Basic income might be conditional to have a real interest in occupying a job. Giving a basic income to the voluntarily unemployed people makes no sense, because their only interest is obtaining a benefit trading with their rights thanks to the scarcity of jobs (Van Donselaar, 1997). The duty that is implied by the right to resources is having some interest in work with those resources, having some interest different from the simple speculation. Widerquist in some papers has criticized Van Donselaar's thesis pointing out that the only use Van Donselaar accepts for resources is a productivist one (Widerquist, 2001 a), 2001 b) and 2003). In my opinion, this critic is not correct. The concept of interest that Van Donselaar uses is not limited to productive matters. The only interest that is forbidden is the speculative one, as when some actions of companies are not allowed because they have a speculative intention that alters the normal way of market. However, I disagree with considering jobs as assets. As the external resources exist without the intervention of the human beings and they can offer advantages without working them (as a tree that offers their fruits), jobs do not exist if people do not work, if people do not make the things that are included in those jobs. Jobs can only be considered as resources in the context of productive relations when these relations already exist (De Wispelaere, 1999 b)).

Other authors have included one condition to receive basic income. The condition consists on attaining the duty to work. In this sense, it's possible to consider work in a broader sense, not only understanding by it what the market says that it is work. Work is all positive contribution to society. This is the argument defended by Stuart White, who thinks that the right to basic income is conditional to fulfill the duty to make some contributive action in favour of society in accordance with the capacities of everyone. This supposes valorize activities as the *care work* (White, 2003 a) and b)). However the problem is offering a list of which activities can be considered contributive and which cannot. If we do that, are not we designing a perfectionist State? In this point, someone could say that any duty would imply perfectionism. I don't think so, because that depends on how we design the duty. A legal duty that concrete some aspects of the people's life making smaller their

capacity to choose among lifestyles is perfectionist and goes against the principle of autonomy. However, there are other legal duties that are not perfectionist. In consequence, all depends on the concrete duties we design. In this sense, in my opinion, the duty to pay taxes is not a perfectionist one. By contrast, offering a list of activities, that is, of lifestyles, contributive and another one that includes no contributive activities, violates the liberal neutrality of State.

De Wispelaere has pointed out the importance of reciprocity too. He has tried to mediate in the discussion, pointing out that the reciprocity authors and the others agree. The reciprocity authors and the defenders of basic income use the same argument: it's a requirement of justice giving everybody the same access to jobs. De Wispelare thinks that people who decide not to work are contributing too, because they help to make the labour market more efficient: "Paradoxically, non-jobholders actually do contribute by not contributing in the narrow sense in which reciprocity theorists employ the term" (De Wispelaere, 1999 a) p. 22). The unconditionality of basic income is justified because people who work contribute with their effort (and because of this greater effort they receive more, basic income plus a salary) and non-jobholders contribute making the labour market more viable and efficient. Their contribution is smaller and they only receive basic income. This argument is very intelligent. Here we find the same problem: this is an option that depends on the other people decide to work. In consequence, from my point of view, De Wispelaere's argument can only be supported if we accept the duty to work, if every citizen has a right not to work during some time and then they would be obliged to work. It is necessary, in my opinion, linking working to unemployment because this last one, if we consider it individually, is not contributive: it is only contributive in relation to work.

I think that these discussions mean that the reciprocity objection is not something necessary linked to basic income. This depends on the concrete institutional design we do, on how we articulate the rights and the guarantees implied by receiving an unconditional income, with the duties. The reciprocity objection has been so important because in Van Parijs' theory of justice the reciprocity is violated due to there is no a concept of duty. The fair society for Van Parijs is the one that guarantees the maximum possible basic income and with that purpose is necessary including jobs as external resources, so the reciprocity objection is always present. It

could be possible design another institution that does not violate the idea of reciprocity, where rights and duties were compatible with a basic income. That happens, for example, in Alaska where each resident receives an income from the Permanent Fund that is constituted with public oil resources (O'Brien and Olson, 1990). Basic income not necessarily violates the idea of reciprocity. That depends on the context of rights and duties basic income appears.

5. Basic income as guarantee. Paying taxes as duty.

Van Parijs' theory of justice presents, as I understand it, basic income as a guarantee to the right to develop the plans of life, to the right to have the resources necessary to develop any plan of life. The content of this right is very ambitious and it would include other rights because it is a way to formulate the idea of social justice. However, I think that the moral value pointed out by Van Parijs, real freedom, is not enough. I would prefer to talk about autonomy, a value that includes not only real freedom but also other aspects that are present in libertarian and social rights.

In my opinion it is possible to talk about the guarantee of basic income related to other rights and, in consequence, to other duties. In fact, if we start with the rights recognized in the occidental countries, we see that the Constitutions included the civil and politic rights in one side, and the social, economic and cultural rights in the other. As I have said before, this distinction is false. Not only referred to rights and duties, but also referred to guarantees. Because traditionally universal guarantees have been established for the libertarian rights. Institutions that guarantee the right to security or the right to free association or the right to free speech are universal; they do not make distinction among people. Ferrajoli has pointed out that they are universal guarantees (Ferrajoli, 1999). In front of this type, the guarantees to social rights are not universal. In fact, Welfare State can be considered as a system of guarantees to social and economic rights, as a historical concrete model of Social State. We can then say that all Welfare States are Social States, but not necessarily all Social States have to be Welfare States, because we can imagine different guarantees to the ones that Welfare States have established. Obviously, talking about Welfare State is a generalization.

Not all Welfare States are equal: the Nordic countries are characterized by having more universal guarantees (and in this sense these guarantees are closer to the guarantees to libertarian rights) than Anglo-Saxon and South countries. In those countries the guarantees are conditional and selective based on means test. The countries of Continental Europe, with a lot of differences, would be in the middle (Navarro, 2002).

Although all these differences, the main guarantee of Welfare States has been what is called the right to work. Why I understand the right to work as a guarantee and not as a right when many Constitutions and other international laws talk about the “right to work”? When we talk about the right to work we have to discover which is the moral claim that is under it. The right to work in the years of full employment was an instrument to assure the integration of all people in society. Thanks to employment people acquire the position of full members of society with an identity. This social model is nowadays in a crisis because of unemployment. Nowadays the labour market does not work as mechanism of social integration (Gorz, 1995).

In the society where full employment was assured, where the quality of work was high, where unemployment was something accidental, the work was the main mechanism to social integration. However, only what the market valued was considered as work. Other activities that had value and that added something to society were not considered as work. There was in Welfare State a certain male slant (less in the Nordic countries), because the work and the social integration were organized only from the male perspective. Work was the way to achieve the social integration of the members of the political community. In consequence, the moral claim under the right to work was the social integration, the ownership to a group. In this sense, the right to work implied some duties. Firstly a positive duty to individuals, the duty to work and a positive duty to the State: the State was obliged to achieve the conditions that made possible full employment and to proportionate income to people that were unemployed. The right to work was understood as right to employment. However, as I say, in my opinion the moral value under this right was more important than employment because it is the social integration. That is the reason I think when we talk about the right to work we are talking about the right to social integration. A right that was guaranteed in the years of Welfare State by the right to work, but nowadays that guarantee is not sufficient. Nowadays the employment breaks society

in different groups: between employed and unemployed, between people with fixed jobs and peoples with precarious ones, between people who enter and exit of the labour market and people who maintain in it. The labour market then creates social exclusion. The proof: more than one million of people receive in France the Minimum Insertion Income to survive.

I do not think we must expulse the right to work from the catalogue of fundamental rights. We must reformulate it as the right that every person has to participate in her society, the right to social integration. What we must change is the guarantee to this right, what is called the right to work. If the guarantees are institutions that make real and effective the content of a right, they must be adapted to the context they operate. When that context changes we must modify the guarantees too. Today the right to employment, the labour market, does not work as guarantee to social integration.

Here basic income can play a role as guarantee. If we guarantee an unconditional income to all members of a social group we are conferring recognition to every citizen and giving them a minimum that makes them the option to choose their plan of life as autonomous individuals. In consequence we are making real the right to social integration. Social integration with this guarantee will not depend on an instable labour market that is not capable to give a place to everybody who wishes to enter in it. We are creating the conditions that allow the most disadvantageous citizens find a way to carry out their duties (Van der Veen, 1998).

Obviously, the right to social inclusion implies a group of duties. A positive duty to the State: to pay the basic income. It implies negatives duties to the State too, because the State must not develop any action that supposes the exclusion of some member or group of members from society. And are there any duties to individuals? There is one negative duty: individuals must not exclude other members of society from the social participation and the collective processes of taking decisions. The problem starts with the positive duty because we find once more the free-rider objection. I have said that depending on how we design basic income we could or could not violate the reciprocity principle. The positive duty to individuals derived from the right to social inclusion is the duty to pay taxes. In consequence, we have to design a tax system fair enough to make impossible to free riders violating their duties.

With this purpose, we have to finance basic income not (at least not only) from taxes on salaries. We have another instruments as Tobin tax or ecological taxes. We can think that if the purpose of basic income is redistributing resources to achieve the social integration of all individuals, a good way to finance it could be a tax on consumption. As Rawls said it imposes a tax in accordance to the quantity of resources everyone takes from the common pot and not in accordance to the contribution (Rawls, 1971). We have to concrete this general idea because indirect taxes have regressive consequences and we would probably have to introduce some exemptions for products that cover basic needs. Someone could say that taxing consumption is an indirect way of taxing work, because only people who work and obtain an income can consume. Although this is true, if we guarantee a basic income financed through consumption taxes, everybody would have a minimum income and they could choose leisure if with that income all their needs are covered. Obviously, the ones who consume more, contribute more to finance basic income and they are the ones who work more, but with this design the principle of reciprocity is violated less than if we finance only with taxes on salaries.

Anyway, what I want to point out is that the right to social inclusion implies positive and negative duties to the State and to individuals. For individuals the positive duties consist on paying taxes, that is the main duty derived from social and economical rights. We must respect reciprocity principle. This will depend on the concrete design we do of the different institutions, on the fiscal system we choose.

In resume, from a legal point of view, in my opinion the moral value of real freedom is not enough to support a right to basic income. If we assume other values as social inclusion and autonomy, basic income works better as guarantee to other rights as the right to social inclusion. Though if basic income is not a right but a guarantee we have to compare its efficiency with the efficiency of other guarantees to the same right. Sometimes we try to present basic income as a right to give more power to our arguments. Doing that, the consequence could be the contrary. As a guarantee basic income has an important role to play in the world of rights.

Amsterdam, May 2004.

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