Job Rights, Reciprocity, and the Constitutional Approach to Basic Income.

Jurgen De Wispelaere

(PhD candidate, LSE Department of Government).

Paper to be presented at the BIEN Biannual Conference, Amsterdam, 10-12 Sep. 1998.

London School of Economics and Political Science
Department of Government
Houghton Street
London WC2A 2AE
United Kingdom
e-mail: j.de-wispelaere@lse.ac.uk

Acknowledgments:
This paper is (very) loosely based on one I presented at the LSE Political Theory Doctoral Workshop. I want to thank the participants of that workshop for their comments. I would especially like to thank Brian Barry, Keith Dowding, Hans Kriebbe, Cheryl Schonhardt-Bailey, Kennedy Stewart, Lindsay Stirton, Pieter Van Huysse, and Simon Wigley for useful criticism. Robert-Jan Van der Veen extensively read the first draft of this paper, and the final draft benefited greatly from his insightful comments.
Job Rights, Reciprocity, and the Constitutional Approach to Basic Income.

Jurgen De Wispelaere.

"citizens who are able but refuse to work not only may but should be denied welfare."

(Amy Gutmann & Dennis Thompson, *Democracy and Disagreement*, p. 279).

This paper hinges upon the fierce debate between proponents of a universal basic income and their principal opponents, the so-called reciprocity theorists. One way to justify basic income is by making explicit reference to people’s entitlements to particular external resources - e.g., jobs - and their right to be compensated if these entitlements are somehow infringed. It is central to this line of defence that compensation ought to be guaranteed without demanding any additional work or even the slightest hint of a person’s willingness-to-work. Reciprocity theorists oppose this line of thought because they think the unconditional provision of income frustrates the moral norm of reciprocity. According to them, basic income is essentially ‘a recipe for the exploitation of the industrious by the lazy.’

At the outset I want to point out a few limitations of this paper. First, I explicitly build my case on the assumption that prima facie job rights and effort (or contribution) are both valuable moral principles. In other words, I take it for granted that a plausible moral theory consists of a combination of both ideas. I intend to show, however, that basic income and reciprocity theorists fundamentally disagree about how much moral weight each principle carries. Granted that both the principle of prima facie job rights and the principle of contribution have some moral force, the main problem may be recast in terms of determining the relative priority of each of these competing ideas. Secondly, in this paper I take an overall radical stance with respect to the different arguments advanced by basic income and reciprocity theory. For instance, I take it basic income theory essentially holds that a person is entitled to chose a life of idleness, regardless of the fact that a number of proponents of basic income advocate it because it actually allows people to participate more, not less in society. It is important to emphasize that there exist important sociological and economic arguments which this paper does not take into consideration.

---

1. Jon Elster, ‘Comment on Vanderveen and Van Parijs’, *Theory and Society*, 15 (1987), pp. 709-721, at p. 719. Because some scholars, mainly from the “New Right,” constantly remind us that the unemployed are to be blamed for being jobless, and the state for condoning it, this paper may also appeal to scholars who are interested in non-jobholder’s right to (a part of) society’s goods and resources without necessarily willing to endorse a universal basic income.

The first sections outline the competing views of basic income and reciprocity theory, and briefly discuss some interesting characteristics. The next three sections then advance the central claims of this paper, which consist of three main themes. First, the debate between basic income and reciprocity theorists is affected by a fervent information problem. In a social context of unequal opportunity, a fair distribution of goods, based on the relative moral value of job rights versus contribution, presupposes a strict distinction between opportunity-to-contribute and willingness-to-contribute. Unfortunately, this information is not readily available. Secondly, reciprocity proposes a solution to circumvent this information problem. However, I will argue that this solution is defective because in its most plausible form, it frustrates the background set of entitlements that is widely accepted by mainstream reciprocity theory. Thirdly, I propose a different solution, based on what I call “constrained job rights.” I shall argue that there is a fundamental difference between unconditional and unconstrained entitlements; I also maintain that, although there is a case against unconstrained job rights, this does not affect the unconditional provision of goods. I conclude that, at least at a sufficiently general level, basic income fits perfectly within the framework of constrained job rights. Therefore, I think the reciprocity charge to basic income is to a large extent misconceived.

1. THE INDIRECT ENTITLEMENT THEORY OF BASIC INCOME.

Basic income is customarily advocated as well as opposed using a wide range of moral arguments, social concepts and political principles. One credible way of justifying basic income is to look at people's property rights or entitlements to society's goods and resources. According to Philippe Van Parijs, for example, a free (and therefore just) society is a society “whose members can all do what they wish to do with what they legitimately own.” An entitlement approach to basic income differs considerably from a justification based on, say, basic needs. Moreover, we can readily distinguish between entitlement theories that directly justify a basic income - say, as a matter of citizenship - and indirect entitlement theories that presuppose initial property rights in goods or resources (which then become distributed in an unconditional manner). According to a general entitlement theory, basic

---


5. Van Parijs makes it quite clear that there is nothing in the idea of basic income to intimately connect it with basic needs. ‘A basic income, as defined, can fall short of or exceed what is regarded as necessary to a decent existence’ (Real Freedom, p. 35).

6. For a direct citizenship-based justification of basic income, see Bill Jordan, The Common Good: Citizenship, Morality and Self-interest (Oxford: Basil Blackwell, 1989). One major problem with the direct citizenship argument, I think, is that basic
income is primarily justified because some people are *denied* their prima facie entitlement, and therefore deserve to be *compensated* for this loss. In this respect, basic income is always coupled to a potentially unjust social situation; it is a second-best solution to the problem of maintaining a fair distribution of social goods.  

At a general level of analysis, the indirect entitlement justification of basic income consists of three basic principles. The first principle is:

1. *self-ownership*: every person has exclusive control and responsibility over her/his body, as well as personal endowments and choices that are based on or directly follow from the integrity and moral status of the person.
s Peter Vallentyne correctly remarks, a theory of self-ownership generally ‘leaves open who morally owns the rest (the non-agent part) of the world.’

To remedy this, an entitlement theory brings in a second principle, which roughly reads as follows:

(2) **social ownership of external resources**: resources that are not covered by self-ownership are effectively governed by social ownership, which means that every person has an equal right to a fair share to these external resources.

Together these principles serve to prevent a range of violations of a person's central rights. They also establish a prima facie entitlement to goods and resources which this person owns either by virtue of being a moral person or because of a legitimate share of the natural or social resources that are socially owned. In an affluent world with perfectly divisible goods, these principles in themselves may guarantee a complete (and egalitarian) set of property rights. Unfortunately, in reality these principles are subject to many social contingencies and, as a rule, a complete distribution is unfeasible.

To remain faithful to the fundamental egalitarian idea that underlies this approach, a third principle is introduced:

(3) **fair compensation**: a person's entitlement of a fair share of external resources can only be infringed if s/he is adequately compensated.

The principle of fair compensation modifies the social ownership of external resources in an important respect by allowing for two different ways in which a society can respect their citizen's entitlements. In the first case, everybody simply gets what s/he is entitled to; alternatively, in a more realistic constellation, some people will receive whatever they are entitled to, or even more, whereas others receive less than their full entitlement. The general idea is that, under certain circumstances, a person's entitlement may be legitimately overturned provided s/he gets compensated for it. The fair compensation principle, then, rules that both situations are equally fair.

---


9 The principle of self-ownership is very sensitive to the difference between entitlements that initiate from personal choices and those that originate in so-called brute luck advantages. As a general rule, the latter are not supported by self-ownership and justify no entitlement. See G.A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics*, 99 (1989), pp. 906-944.

10 Recently, Adrian Little challenged Van Parijs's ideas, questioning whether it is 'defensible to deprive people of their chance to contribute to their society as long as we compensate them in a pecuniary fashion' (*Post-Industrial Socialism: Towards a New Politics of Welfare* (London/New York: Routledge, 1998), p. 110). This seems an important objection. We must make sure that the object of our investigation at all times remains confined within a category of actions that are 'permissible, but only with compensation', as opposed to actions that are either 'impermissible, even with compensation,' or 'permissible, even without compensation' (Robert Goodin, 'Theories of Compensation', in Frey & Morris (eds.), *Responsibility and Liability* (Cambridge: CUP, 1991), pp. 258ff.). It may be necessary to amend the general formulation with the following phrase: “under certain circumstances, a person may voluntary and temporarily chose to have her/his entitlement overturned, provided s/he is adequately compensated.” The emphasis on voluntary choice seems crucial to prevent certain perverse effects to enter the compensation rule.
Another key element in the indirect entitlement theory of basic income is the idea that jobs perfectly fit this residual category of socially owned external resources. Jobs are socially owned because every person that holds a job can do so partly for reasons that have nothing to do with personal choices. What jobholders in contemporary society need in order to use their privately owned labour power is a position in the labour market; in this respect, the labour market is an external resource to which all are entitled a fair share. Unfortunately, given certain structural features of modern labour markets, not everybody who wants a decent job can actually get one. More precisely, in the context of an unequal opportunity labour market, the social ownership principle cannot guarantee everybody that a right to a job will automatically lead to a job. In fact, as we have seen before, this right may very well be overturned by a concern with, say, efficiency; but only if the person whose right is infringed is adequately compensated. If the fair compensation principle is observed, the argument goes, it is legitimate to deny a person a job; if not, the jobholders derives an unjustified benefit - i.e. an employment rent.

We can now see how a general (indirect) entitlement justification of basic income operates. Combining equal job rights with the fact that modern society cannot satisfy this requirement underpins a right to compensation for all those who’s right to a job is not translated into an actual job. Furthermore, this compensation is justified without any further work requirement. (This follows from the fact that compensation is warranted because the prima facie right to work is being infringed in the first place). The unconditional provision of adequate compensation in principle aims to restore the moral equilibrium that is disturbed by a number of social contingencies.

2. THE RECIPROCITY OBJECTION.

At this point, reciprocity theory makes a marked entrance on the stage of social justice. To begin with, let us take a brief look at why reciprocity theorists think that an unconditional allocation of compensation is unjustified. John Gray, for example, writes: ‘As they are unconditional guarantees of...
subsistence, Basic or Citizen’s Income schemes strengthen the culture of liberty without responsibility, of individual choice without corresponding obligation ... [They] reinforce the denial of agency and the lack of mutuality.\textsuperscript{14} In a more down-to-earth prose, Amy Gutmann and Dennis Thompson claim that governments cannot remain neutral ‘between ways of life that contribute to economic productivity and those that do not.’ The main implication of such a misplaced neutrality, they argue, is that unconditional assistance is self-defeating. ‘Citizens who decline work are in effect refusing to participate in a scheme of fair social cooperation that is necessary to sustain any adequate policy of income support.’\textsuperscript{15} So, then, one might wonder ‘why [should] unearned economic rents be distributed unconditionally to all citizens who do not have adequate income rather than to those who are willing but unable to work.’\textsuperscript{16}

These passages point at a number of different but related concerns, ranging from pragmatic considerations with long-term social sustainability and the growth of a-social behaviour to more principled objections against a decrease of personal agency and initiative and the rise of a culture of dependency. These are no doubt important problems. In addition, a crucial objection is brought forward by Stuart White: ‘Payment of a substantial unconditional basic income ... will lead to the exploitation of productive, tax-paying citizens by those who, while capable of working instead choose to live off their UBI.’\textsuperscript{17} It is the rights violation of contributing citizens that constitutes the chief moral problem. As White makes clear, ‘[t]he relevant principle here is a \textit{reciprocity principle},’ which, he continues, in general reads: ‘those who willingly enjoy the economic benefits of social cooperation have a corresponding obligation to make a productive contribution, if they are so able, to the cooperative community which provides these benefits.’\textsuperscript{18}

Clearly, the reciprocity objection against the unconditional provision of benefits belongs to the realm of morality or ethics. More precisely, moving away from a strict sociological or economic perspective, there are two specific moral complaints. First, it is said that an unconditional provision of benefits breeds unjust a-reciprocal behaviour; where the injustice is conceived in terms of a rights violation on the part of those who contribute to the social system. Secondly, there is an independent moral problem that focuses on the idea that society as such cannot be sustained when a certain number of people adopt this type of behaviour. It is important to realize that, although reciprocity

\textsuperscript{16}Gutmann & Thompson, \textit{Democracy and Disagreement}, p. 281.
theorist indiscriminately combine these different arguments, they do not necessarily always run together. In fact, we can conceive of situations in which the rights-based and the social efficiency-based argument are incompatible.\textsuperscript{19}

Reciprocity theorists come in many varieties. Related to the previous discussion we can distinguish what I take to be three principal types of reciprocity theorists:

(1) \textit{Radically principled reciprocity theorists} insist that every receipt of benefits must be reciprocated by a substantial contributive act. At the basis of this account lies the notion of equivalent exchange, or at any rate something bearing a close resemblance to it.

(2) \textit{Moderately principled reciprocity theorists} concede that a person's situation may allow for being (temporarily) relieved of an obligation to contribute. They are still principled, however, in that they advance the demand for contribution as a “categorical obligation”; an obligation that apparently exists and persists irrespective of the overall need for such contribution in society. They adhere specifically to the view that a-reciprocal behaviour violates individual rights.

(3) \textit{Contextualized reciprocity theorists} hold that somebody only faces an obligation to reciprocate if the social context explicitly demands so. The intuition underlying this version is that what really matters, socially speaking, is that people subscribe to an obligation to contribute (a) if there are no stronger (moral or other) concerns that trump this obligation and (b) \textit{whenever the general context explicitly demands a contribution.}\textsuperscript{20}

The first type of reciprocity theorists can be readily dismissed with for two reasons. First, their views are thoroughly inegalitarian and, more importantly, cannot accommodate for strong moral grounds to be excused from contributing - moral grounds, it must be emphasized, that are widely accepted across particular theories of justice. Secondly, radical reciprocity theorists cannot but deny the moral relevance of initial job rights. This makes their ideas not only incompatible, but also incommensurable with those of basic income theorists. I believe many reciprocity theorists do

\textsuperscript{18} White, 'Liberal Equality', p. 317 (italics in original).
\textsuperscript{19} Take for instance the case in which a person’s contribution brings social efficiency down.
\textsuperscript{20} Compare Alan Gibbard’s claim that I may reciprocate ‘not for anything you actually did for me or will do, but for something you would have done for me’ (\textit{Wise Choices, Apt Feelings: A Theory of Moral Judgement} (Oxford: Clarendon Press, 1990), p. 263). Gibbard’s assertion points out the wide range of possible interpretations that is sustained by the reciprocity principle. I will not concern myself any further with the theoretical validity of the reciprocity principle. Suffice it to say that most authors arguing from a reciprocity perspective rely upon a very intuitive conception of reciprocity - i.e., “doing one’s bit.” Notwithstanding its strong intuitive appeal, I suspect that an intuitive notion is insufficient to carry out a thorough moral evaluation of competing social systems.
acknowledge the relevance of (some form of) fair opportunities in the job market, and are in fact opposed to reciprocity theory in its most radical format.\(^\text{21}\)

In contrast to the radicals, moderately principled reciprocity theorists appreciate the necessity of an in-built floor constraint that accepts people's differential ability or capacity to contribute. This floor constraint may exempt some citizen's from contributing or diminish the level of contribution expected of them. In all other cases, they insist, contribution is mandatory.\(^\text{22}\) Contextualized reciprocity theorists go one step further and make a crucial distinction between “free-riders”, who enjoy benefits that they have not contributed for without necessarily harming those who provide them, and “parasites”, who not only enjoy benefits but also specifically harm the benefactors.\(^\text{23}\) Taking into account the analytical possibility of the “non-harming free-rider”, the key distinction between moderately principled and contextualized reciprocity theorists seems to be how to deal with the question whether the infringement of job rights in itself is not only a necessary but also a sufficient condition for attaining compensation.

Although both moderately principled and contextualized reciprocity theorists in general insist upon including some form of equal job rights in the background set of entitlements, they fundamentally disagree about the extent to which these entitlements justify unconditional compensation. Contextualized reciprocity theorists hold the position that any infringement of a job right justifies an unconditional compensation up to the level where this explicitly harms another person or, alternatively, has important adversarial effects upon society at large.\(^\text{24}\) We have learned from the previous discussion that the moderates take a different view: they principally object to individuals who deliberately chose not to work. It is the choice, they argue, that violates the entitlements of those that perform work. In order to substantiate this claim they rely heavily upon a crucial distinction between opportunity-to-contribute and willingness-to-contribute. Consequently, they must establish such a clear-cut distinction. The next section intends to show that this is quite problematic.

3. OPPORTUNITY, CHOICE, AND THE INFORMATION PROBLEM.

Imagine the following situation. Alf and Betty, who are assumed to have equal productive capacities, each “own” shares of the labour that needs to be done in a factory. The combination of a job share


\(^{22}\)Contribution here always refers to "effort-based contribution" - i.e., work.

\(^{23}\)In David Gauthier's phrase: 'A free-rider obtains a benefit without paying all or part of its costs. A parasite in obtaining a benefit displaces all or part of the costs on to some other person' (Morals by Agreement (Oxford: Clarendon Press, 1986), p. 96).

\(^{24}\)In principle, basic income theorists may hold the view that basic income is justified even when this has negative effects upon society. In practice few will hold this radical view. Van Parijs, for instance, explicitly tries to prevent a variety of
and the labour embodied in it generates an entitlement to consume the benefits produced in proportion to effort or, in this case, working time. To begin with, let’s find out what happens in an equal opportunity regime. Alf and Betty start off with equal job shares: they both have the opportunity to work, say, a 40-hour shift. Most theorists will concur that the following two situations are both unequivocally fair:

(1) equal effort: if Alf and Betty actually work alike, they ought to receive equal shares of benefits.

(2) unequal effort: if Alf voluntarily decides to work only part-time and Betty works the full shift, other things being equal, Alf is only entitled to that part of the benefits that is proportional to his effort level.

An equal opportunity regime is fair in both cases because, barring substantial differences in internal endowments, it can easily be concluded that the difference between Alf’s share in (1) and (2) is fully attributable to personal choices. Given the stipulations of self-ownership, both outcomes are justified.

The real problem only comes out when we modify the story so that we operate in an unequal opportunity regime. Alf now works part-time shifts - that is, even if he wants to, he is not allowed to work more than 20 hours a week. Betty, on the other hand, still works full time. If Alf’s reduction of working hours (job shares) is not due to any personal choice or the consequences thereof - e.g., Alf’s past performance record - some compensation for diminished opportunities is called for. Determining the exact level of compensation, however, is quite problematic. Consider two alternative solutions:

(3) “minimum” compensation: Alf is entitled to compensation for the difference between his job share and Betty’s.

(4) “maximum” compensation: Alf is not only entitled to a compensation for an unjustified infringement of his job rights, but also for the lost opportunity this implies.

Abstracting for the moment from the many conceptual and technical difficulties in determining the relative “worth” of job share versus effort level, the gist of the argument seems to be the following. On the one hand, if we are absolutely certain that Alf would have exhibited the maximum effort level under an equal opportunity regime (cf. 1), he is wronged if we do not compensate him for his lost opportunities. Since effort displayed determines his benefit level, Alf is rightly concerned with his potential adversarial effects of basic income by constantly referring to a basic income “pitched at the highest sustainable level.” See in particular the discussion of sustainability in Real Freedom, pp. 38-41.

25. The only way we can make the distinction between (3) and (4) sensible is to postulate some independent value on job shares, and contrast these with the additional benefit of “being able to elicit effort.” Admittedly, this is a rather artificial distinction, but I think it makes sense in the overall framework of this essay.
‘opportunity to earn the rewards of contribution.’ On the other hand, if we have reliable information that Alf is in fact only interested in working 20 hours (cf. 2), Betty is wronged if we apply the maximum compensation rule.

The key difference between the two situations lies in its structural features. If the condition of equal opportunity is satisfied, we can readily assess a person's relative entitlement based on her or his effort level. Unfortunately, contemporary society looks more like the second situation (an unequal opportunity regime), in which we cannot read off people's entitlement from their performance for the simple reason that the necessary precondition - equal opportunity to contribute - is not adequately catered for. It turns out that what really prevents a straightforward fair solution is a fundamental information problem. A fair distribution in an unequal opportunity regime is crucially dependent upon information about the intentions of potential jobholders whose job rights are infringed without their consent. More specific, what we need in order to determine a fair compensation rule is reliable information on the willingness-to-work.

To highlight the problem even further: suppose that this time Alf is unemployed but wants to work 20 hours; Betty still works 40 hours. Given the fact that we do not actually know that Alf only wants to work 20 hours, we might want to compensate him for his loss of 40 hours (i.e., overcompensate him), simultaneously violating Betty’s entitlement derived from her effort. I think the information problem is difficult to avert because the only way we can foolproof determine a person's intentions is by observing actions in a particular context. Unfortunately, an unequal opportunity regime is not conducive to such a comparison. In the end, 'we tend to get stranded in the mud of unavoidably controversial factual claims, typically about how much of a person's poor achievement is due to a lack of capacity she cannot be held responsible for rather than to a lack of will.' This is the central problem (mainly) moderately principled reciprocity theorists have to overcome.

4. A RECIPROCITY-SENSITIVE SOLUTION: MINIMAL CONDITIONALITY.


Even if Alf and Betty in principle agree that one of them has to work full-time and the other part-time, and subsequently try to figure out a fair procedure for allocating the different shares, the issue remains largely unresolved. The problem is not to find an appropriate procedure for allocating who gets what (something like a lottery might do just fine in this case). The real issue again is how to distribute the social goods that are produced in the course of performing work. Should these goods be allocated proportionally? Or should they be allocated in a strict egalitarian fashion? Both seem to involve some kind of violation - be it on the count of “opportunity” or “effort” - and any solution in between - i.e., the celebrated “splitting the difference” - is morally speaking arbitrary. To jump a bit ahead: the key to solving this problem, I think, is to return to the political nature of job rights.

Reciprocity theorists may propose a number of solutions. First, they might want to take a look at past work performance. But past performance is at most a very rough proxy for present willingness-to-work. Moreover, what if the person never has been into the labour market before? Another solution is to make the receipt of benefits somehow conditional upon future work - install a benefit-debt, so to speak. But this is simply imposing another burden upon somebody who already faces the burden of being deprived of her or his legitimate right to a job. A better solution, it seems, is to stick with the present time frame but simply replace the actual work performance by a “hypothetical” contribution. If we cannot actually measure a person’s contribution because of lack of opportunity, reciprocity theorists might argue, we must impose some kind of test which allows us to see if a recipient’s failure to contribute is really attributable to lack of opportunity. In practice, such a scheme may vary extensively, including items like: an obligation to increase one’s skills and human capital, to actively seek work, to perform some community service, etc.

The reciprocity-sensitive solution which imposes an additional condition upon receipt of benefits, appears to deal quite adequately with this information problem by distinguishing between three social categories:

1. those who hold a regular job (and pay taxes that finance the compensatory benefits);
2. those who have no job, satisfy the minimal conditions imposed upon them and receive benefits;
3. those who have no job, fail the reciprocity test, and receive no benefits.

Now, if we accept the moral relevance of job rights in the background of our entitlement theory, the first thing to notice is obviously that a person in group (3) is being denied her or his right to compensation that is justified by the very existence of an infringed job entitlement. Moderately principled reciprocity theorists, however, argue that this deprivation is legitimate because s/he does not pass the reciprocity test. But is the reciprocity test legitimate? This is an important question, because it does not only concern someone in situation (3), but also affects everyone in group (2). Arguably, if it turns out the reciprocity test is not legitimate after all, an individual in situation (2) is also being harmed - this time because, given the background set of entitlements, the imposed conditions are unnecessarily intrusive.

I think there are two good reasons why the reciprocity test is flawed. To begin with, many scholars assume that the “natural” background of the reciprocity objection is the idea of society as a cooperative endeavour. In order for society at large to constitute a fair system of cooperation, however, it seems two additional conditions need to be met. The first relates to the notion of mutual

---

acceptance of rules and regulations governing the fair dealings within this cooperative setting. One problem with the reciprocity theorist’s emphasis on minimal conditionality is exactly that what is demanded from these people is not necessarily acceptable to them. Although there seems to be a very large social consensus as to the fact that effort is an important principle, I am sceptical that such a “reasonable” consensus extends itself to incorporate the idea that entitlements to compensation can simply be thrown out for reciprocity’s sake. More importantly, there hardly exists a forum in which everybody can express her or his opinions about the matter, let alone actually participate in the decision process.

Secondly, fair social cooperation is conditional in the sense that it should cater for a feasible exit option. Given the background set of entitlements, a fair exit option allows individuals who disagree on the fair terms of cooperation in a quasi-Roemerian fashion to “leave society” with the share of the resources to which they are entitled. Obviously, this condition is not a feasible option in contemporary society. The only way you are allowed to exit society is without your fair share of resources - the relevant distinction here can be cast in the division between “exit” and “exclusion.” In the absence of a decent “voice” or “exit” option, the individual’s choice set is seriously limited, leaving only two feasible options open: compliance or facing a wide range of restrictions. Admittedly, these objections seriously curb the moral force of the proposed reciprocity-sensitive solution.

5. CONSTRAINED JOB RIGHTS: A POLITICAL PERSPECTIVE.

In this section I propose to take a closer look at job rights and provide a (provisional) argument that this might solve the moral stand-off we seem to find ourselves locked in. So far, the shared assumption has been to treat job rights in very general, a-political terms; job rights are hypothesized out of something like a natural rights frameworks, and it is not exactly clear how they actually come about. Taking these issues serious moves the analysis from a simple preoccupation with positive, pre-existent entitlements to a more complex perspective of political property rights.

To begin with, I propose to take on a contextualized reciprocity perspective by introducing a broad notion of social efficiency into reciprocity theory. Combining the background set of entitlements (job rights) with social efficiency, as exemplified by the idea of mutual advantage,

30 See Gutmann & Thompson, Democracy and Disagreement, ch. 2.
32 For a general argument against natural property rights and in favour of political property rights, see Itai Sened, The Political Institution of Private Property (Cambridge: CUP, 1997).
involves important effects. According to a stakeholder's view of the world, in which every person holds a share of society's wealth, it is reasonable to expect every person to protect and maximize her or his share of society's resources. More importantly, every person will attempt to secure the maximal value of this share: entitlements in resources are only vehicles that individuals use to obtain this value. In the case of the labour market, people will insist upon their right to a job and take on a job if, all things considered, doing this maximizes the value of their share (where this value component is obviously bound by, amongst other thing, the relative preference of leisure over income). Suppose, however, that maximizing the average value of job rights implies that some of them actually must relinquish their right to a job, and satisfy themselves with a fair compensation. In this case, the principled objection of some reciprocity theorists against non-work seems awkward. The main concern of reciprocity theorists, that a-reciprocal behaviour violates a contributing individual’s entitlements, is now dependent upon an explicit evaluation of different social states, taking into accounts practical social effects rather than abstract principles.

A rephrasing of the reciprocity objection in terms of value gains or losses opens up some interesting considerations. For one thing, it becomes clear that there are two relevant dimensions to consider. One dimension, “conditionality/unconditionality,” focuses upon the individual’s behaviour; by contrast, another dimension - call it “constrained/unconstrained” actions - emphasizes outcomes. Combining these dimensions generates the following possibilities:

(1) unconditional/unconstrained: the classic case of the “parasite” who feeds on other people’s contributions and explicitly harms them in doing so.

(2) conditional/(un)constrained: the case of a person who satisfies the reciprocity test, but may very well be negatively influencing social efficiency. Given the principled reciprocity theorist’s insensitivity to social outcomes, there is no way to tell if this conditionality has positive or negative effects (hence, the indifference between constrained/unconstrained).

(3) unconditional/constrained: the case of “justified free-riding”, where non-contribution in the narrow sense poses no threat to another person’s legitimate entitlements, nor to the “survival” of society at large.

Unfortunately, the analytical merits of case (3) have been unfairly neglected in recent social and political theory.

---

33 Note that in the context of social cooperation the background set of entitlements extends to the social or cooperative surplus: a person’s contribution is intended to increase value, therefore that person is entitled to a fair share of this value. Of course, here contribution is strictly speaking not linked to effort but rather to (positive) outcome.

34 A person’s contribution may be only a waste of time and energy, and not necessarily conducive to bringing social productivity down. However, if this “forced” contribution is itself negatively valued by that person, it may be considered to be a social “bad” after all. I owe this point to Cheryl Schonhardt-Bailey.
The obvious place to start an investigation is to take a closer look at the political and moral foundations of job rights. Two diametrical views prevail in the relevant literature. On the one hand, social ownership of jobs becomes translated as collective or joint ownership. According to this interpretation, the resource remains at all times owned by the collective, and any decision upon its use is subject to a social decision rule which all have to consent to (e.g. unanimity). An alternative interpretation is the one where job rights are simply equalized private rights - that is, every person privately holds the title of his job share and solely benefits from whatever results from it. In both cases, operating under the restrictive conditions of persistent job scarcity demands an answer to two interesting questions. How are we to bring different equal job rights together into a limited number of actual jobs? How are we to determine just compensation for those left out on the deal?

This conventional approach to job rights presumes that social ownership can only be validly be interpreted as either private property or joint ownership. Suppose, however, that we translate social ownership in an equal right to non-exclusion. The job market is considered to be a pool of resources, and equal rights to non-exclusion make it possible for every person to take what he needs or wants. This conception of job rights implies that ‘no one user can control the activities of other users, or, conversely, voluntary agreement or willing consent of every user is required in joint action involving the community of users.’ What we have here is a practical or, indeed, political justification of equal job rights. Except for the familiar notions of self-interest and want-satisfaction, there is no need for any sophisticated moral reasoning to explain why people will take any feasible opportunity to “dip into the job pool.”

What makes the concept of equal rights to non-exclusion interesting is that it externalizes the costs of efficiency loss over the whole population. Job markets, like all social institutions, typically have an optimum point at which it can be said to perform at its peak of efficiency. It seems plausible to assert that at a given time, and given the technological and organizational features of society, efficiency partly regulates the number of jobs available. In other words, to some extent the optimal

---

35 Not surprisingly, this interpretation has been criticized because it would violate autonomy and bring bargaining power into a just entitlement framework. See e.g. G.A. Cohen, Self-ownership, Freedom, and Equality (Cambridge: CUP, 1995).

36 This is not to say that society cannot impose restrictions of what can be done with this private title. Similarly, sole beneficiaries can be legitimately taxed to provide for goods that serve a public purpose. The phrase “private” is only meant to incorporate the possibility of excluding other individuals from this property. I am obliged to Robert Van der Veen for pressing this point upon me.

37 Many theorists rely upon some variation on a Dworkinian auction to answer the latter question. See e.g. Van Parijs, Real Freedom, ch. 3. For a critique, see Gijs Van Donselaar, The Benefit of Another’s Pains, PhD. Dissertation (Amsterdam, 1997).


39 Obviously the optimal number of jobs will vary over time. This is why we must make compensation somehow at a par with the dynamic requirements of the economy.
social organization of production also determines the optimal number of jobs. This way efficiency considerations enter the story, and given that jobs are minimally instrumental in that they serve to secure an optimal level of goods or the means to purchase these goods, these efficiency considerations render people's unconstrained access to job resources sensitive to anything that influences productive efficiency. In consequence, there exists a serious constraint to the unlimited access to job resources - hence, *constrained job rights*.

As has become familiar from recent studies in the management of public goods and resources, the combination of non-exclusion and competitive consumption initiates the (in)famous “tragedy of the commons.”40 Because of the widespread externalization of shadow costs, at some stage it is in the general interest to counter this regressive action sequence by contracting for property rights.41 This calls for political procedures in which some people are *induced* to exit the job market *voluntarily* - if only temporarily - in return for a certain, mutually acceptable amount of compensation. What emerges is a repeated n-player employment game: jobholders promise to pay non-jobholders (who only hold a prima facie right to a job) a compensation *on the condition that non-jobholders refrain from taking on a job*. In other words, non-jobholders temporarily relinquish their rightful claims to a job but nonetheless always keep a prima facie right to reclaim their entitled share of the job market. Ironically, in this scheme the right to compensation becomes conditional upon *non-work*.42 Alternatively, one could conceive the outcome of this employment game as a dynamic social contract - a “social employment contract” - in which actions and outcomes are constantly matched with those of numerous other players, who are all constrained by a set of regulations (entitlements) governing the domain in which the game takes place.

---

42. Robert Van der Veen rightly pointed out to me that there exists a marked resemblance between this proposal and the one advocated by Bert Hamminga in ‘Demoralizing the Labour Market: Could Jobs be like Cars and Concerts?’, *Journal of Political Philosophy*, 3 (1995), pp. 23-35. In Hamminga's scheme, jobs are distributed by means of vouchers (“Labour Rights”). The total number of vouchers corresponds to the total number of jobs available, but vouchers are distributed equally among the able-bodied citizens. A voucher market regulates supply (Labour Rights sellers) and demand (Labour Right buyers) by means of equilibrium voucher prices. In effect, the number of vouchers one needs to buy to appropriate a job is dependent upon the level of structural unemployment. There are serious problems with the Hamminga scheme, some of which are ardently pointed out by Gijs Van Donselaar, *The Benefits of Another's Pains*, pp. 174-179. The main difference between Hamminga's liberalized labour market and a labour market based on constrained job rights is that the number of jobs is not set in advance. What is exogenously determined in the latter scheme is the optimal level of jobs in terms of social efficiency. This leaves open two broad routes: sharing the gains of an efficient restriction of the labour market, or sharing the losses of letting everybody insist upon her or his job rights (the “burden of full employment”). Contrary to Hamminga's scheme, a constrained job rights perspective does not presuppose a consensus in favour of the former option, and allows for people to converge rather than diverge on how to organize society's productive capacity and distribute its produce according to some principle of equality. Hamminga's scheme runs into serious trouble if people are all interested in a job, because this would increase the equilibrium price in the voucher market beyond what can be considered a reasonable wage in the “real” labour market (where marginal productivity rather than marginal disutility of labour becomes the crucial variable). In a constrained job rights scheme, one could argue, Hamminga's dual market system becomes integrated by infusing the voucher market with social efficiency considerations.
I believe this political conception of constrained job rights is in principle able to bring some of the major concerns in the debate between basic income theory and reciprocity theory together.

(1) It respects the prima facie entitlements to a job that originates in the social ownership of external resources.

(2) These prima facie entitlements are constrained by social efficiency considerations which are shared by all. This means that every person has an interest in securing that jobs are efficiently used, provided s/he somehow shares in the efficiency gains this generates. 43

(3) Constrained job rights accommodate for an important critique, namely that job rights ought to be used properly and cannot be “occupied” for purposes of selling or trading. 44 Following the economic interpretation of property rights, resources only generate value if properly used; by implication, an unused resource is worthless. 45 Constrained job rights are in accordance with this intuition, emphasizing the efficient organization of production and job allocation, as well as securing a right to compensation for those voluntarily relinquishing their aspirations in the labour market.

(4) Constrained job rights, if properly institutionalized, adhere to a particular conception of reciprocity - i.e., contextualized reciprocity - because ultimately compensation keeps in touch with society. The level of compensation remains dependent upon the effects of workers and non-workers trying to get as close as possible to the social optimum. This invokes the important notion of contribution-by-restraint which, I think, ought to be taken seriously by reciprocity theorists.

Thus conceived, a theory of “constrained job rights” paints a distinctively liberal, if not libertarian picture. The market mechanism is central to its working properly. To put it in (too) simplified terms: if society needs more people to work, the level of compensation goes down, thereby creating an additional incentive to work; conversely, if less people are needed, an increase in compensation again may create an incentive - this time to refrain from working. Moreover, determining who ought to work at what job and what rate of pay in this way remains loyal to the liberal principle of neutrality between different conceptions of the good life. To safeguard this liberal ideal, both “effort” and “restraint” must be rewarded to some extent (though arguably at a different rate). This overly liberal emphasis notwithstanding, at the very core of the theory of constrained job rights lies an egalitarian

---

43 This might also provide a rationale for determining (and justifying) who actually gets a job once the differential capacity to contribute are brought into the picture.

ideal: social ownership of external resources and, in particular, equal prima facie entitlements to a job share. The major challenge of course is to translate this fundamental equality in a workable theory that respects both equality and personal responsibility.

6. CONCLUSION: A CONSTITUTIONAL CASE FOR BASIC INCOME.

By taking a designer’s point of view, I think it becomes possible to move the issue of job rights into the arena of constitutional political theory or even constitutional political economy. The main characteristic of this approach seems to be to devote attention not only to the justification and content of rules, but also to the purpose of these rules and the way they themselves operate within a larger set of rules. In a way, constitutional theory is about the rules of rule-making. This is exactly what I attempted to do in moving the moral foundation of job rights to a political level. According to a constrained job rights perspective, it is not only who gets what (and why), but also the very nature of the job rights that is up for rational deliberation or reasonable (dis)agreement.

It seems that this approach has some interesting consequences in many domains of the current welfare state. The reform of the welfare state by means of a basic income is a prime example. At first sight, the idea of constrained job rights sits somewhat uncomfortably with an unconditional provision of benefits. In fact, as we have previously seen, compensation is even crucially linked to a condition of non-work. If you take up your job entitlement and take on a job, nobody will or can prevent you from doing such, but as a consequence you will lose your compensation. But how do we harmonize this feature with the basic income theorist's focus on unconditionality?

Moving from a theoretical to an institutional or policy level of analysis, basic income theory still seems an ideal regime to implement constrained job rights. Combined with a proper taxation scheme, basic income may be designed so that non-jobholders receive a net basic income while jobholders pay a net tax that finances their own and the non-jobholder's basic income, while safeguarding the dynamic features, particularly in the labour market, that make basic income so attractive from a pragmatic point of view. I do believe that the ultimate justification for basic income as a tool of social design is to be found at the institutional or policy level. At the same time, however, I am convinced that the apparently unconditional (and ultimately moral) right to compensation that underlies the indirect entitlement justification of basic income ought to be grounded in a political conception of constrained job rights.


46. There is an increasing literature on constitutionalism, constitutional political economy and even political theory. For a good review, see Geoffrey Brennan & Alan Hamlin, 'Constitutional Political Economy: The Political Philosophy of *Homo Economicus*', *Journal of Political Philosophy*, 3 (1995), pp. 280-303.