



## ARE CAPABILITIES JUST RECIPIENT ORIENTED? AN ARGUMENT IN FAVOUR OF THE CAPABILITY TO WORK, AND OF UBI TO PROTECT IT

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**Abstract:** Under the capability approach, a theory of justice should be capability-based. However, it has been noted that 'capabilitarian' theories are solely recipient-oriented. This discrepancy could be solved by people having access to the capabilities for a good life, provided that they contribute by sharing the burdens of cooperation. Nevertheless, the obligation to contribute is liable to come into conflict with the very notion of 'capability'.

This paper proposes a solution to address this apparent conflict. Since a person's capabilities for a good life are conditional on her obligation to contribute, the key to ensuring the robustness of such capabilities is to make sure that the capability to work, on which they rely, is itself sufficiently robust. In this sense, it is argued, on the one hand, that the best way to reinforce the robustness of the capability to work is to distribute it through unconditional access to work that meets a minimum threshold of decency. On the other hand, it is argued that the most effective policy to this end results from the combination of employment guarantee policies with an unconditional basic income (UBI).

**Keywords:** Capability; Unconditional Basic Income; Work; Justice; Robustness

**Resumo:** De acordo com a abordagem das capacidades, uma teoria da justiça deve ser baseada em capacidades. No entanto, estas teorias têm sido criticadas por serem exclusivamente orientadas para o beneficiário. Este defeito poderia ser resolvido da seguinte forma: todas as pessoas têm acesso às capacidades para uma vida boa, desde que contribuam assumindo uma parte dos fardos da cooperação. No entanto, a obrigação de contribuir é suscetível de entrar em conflito com a própria noção de "capacidade".

Neste artigo propõe-se uma solução para resolver este aparente conflito. Uma vez que as capacidades de uma pessoa para uma vida boa estão condicionadas à sua obrigação de contribuir, a chave para assegurar a robustez de tais capacidades é garantir que a capacidade de trabalhar, da qual as demais dependem, seja suficientemente robusta. Neste sentido, argumenta-se, por um lado, que a melhor maneira de reforçar a robustez da capacidade de trabalhar é distribuí-la através do acesso incondicional a um trabalho que cumpra um limiar mínimo de decência. Por outro lado, argumenta-se que a política

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mais eficaz para este efeito resulta da combinação de políticas de garantia de emprego com um rendimento básico incondicional (RBI).

**Palavras-chave:** Capacidade; Rendimento Básico Incondicional; Trabalho; Justiça; Robustez

## Introduction

According to proponents of the capability approach, a theory of justice should be based on capabilities, insofar as capabilities directly reflect what people are able to do and to be. However, a gap has been identified in respect of the various capability-based theories of justice, since such theories are solely recipient-oriented. That is, they are centred on the benefits—i.e., specific capabilities—that people are entitled to enjoy, but they are silent about the obligations which legitimise people's access to those benefits. As such, justice would concern not only the distribution of the benefits of cooperation—as expressed by the principle that *everyone should be able to live a good life*—but also the distribution of related burdens.

At first sight, this gap could be solved as follows: all members of society have access to the capabilities for a good life, on the condition that they contribute a share of the burdens of cooperation.

The obligation to contribute, nevertheless, is liable to conflict with the very notion of 'capability'. Having a capability means, ideally, being able to achieve a certain state or activity—functioning. If there is any probability of failing to achieve that functioning then it cannot be guaranteed that the person will be able to achieve said functioning. Since the obligation to contribute increases the probability of failing, ergo it also affects the corresponding capabilities for that functioning. In conclusion, a capability-based theory of justice will be condemned to be recipient-oriented.

In this paper, a solution is provided to address this conflict. The paper proceeds as follows. After introducing the problem (0), Part 1 sets out in greater depth the gap and then the possible contradiction noted above. I claim, on the one hand, that since a person's capabilities for a good life are conditional on her obligation to contribute, which is translated by 'working', the key to ensuring the robustness of the former capabilities is to make sure that the capability to work, on which they rely, is itself sufficiently robust. On the other hand, it is argued that the best way to reinforce the robustness of the capability to work is to distribute it through unconditional access to work that meets a minimum threshold of decency. Part 2 briefly discusses how the definition of this 'threshold of decency' is consistent with a liberal theory of justice, as it is understood in this paper. Part 3 assesses which policies are most effective for distributing the capability to work. That is, to guarantee everyone unconditional access to a decent work position. After discussing the shortcomings of workfare policies and of employment guarantee policies associated with the idea of decent work taken in isolation, it is shown that the best way to achieve decent work results from combining

employment guarantee policies with an unconditional basic income (UBI), where UBI provides a form of protection against the risk of losing the capability to work. Finally, Part 4 offers some closing remarks.

Before we continue, I would like to point to two caveats that one should bear in mind. First, there is a risk that the conception of reciprocal cooperation underlying this paper could be seen as too "productivist". The term "work" has almost always been preferred over "employment" or "job" in order to cover not only traditionally monetisable activities, but also other possible activities which, despite their obvious importance, are not limited to their economic value: for example, being a carer or volunteering in civic activities. Secondly, this paper is placed in the context of a society in which human work is required, at least in part, to produce social benefits. In a hypothetical scenario where human work has become dispensable, as is being envisaged, due to automation, the terms of this paper would have to be reconsidered.

### **1. Is the Capability Approach only Recipient-Oriented?**

According to the capability approach, capabilities constitute the most suitable metric for a theory of justice. In the capability view, what makes capabilities the most suitable metric of justice is the fact that capabilities directly reflect, contrary to other alternative approaches, the kinds of lives people are able to lead (Nussbaum, 2011, p. 20). Capabilities are defined as the real opportunities to achieve certain functionings. Functionings are understood as all the states and activities (beings and doings) that each person might face throughout a lifetime: for example, being well-nourished is a functioning; the real opportunity to be well-nourished is the corresponding capability.

By assuming that a metric of justice is most suitable the better it reflects what people are able to do and to be, we assume that a society's level of justice is related to the quality of the lives that people within it are in a position to carry on. That is, the better its members can live, the fairer a society is. Hence, society has a duty to guarantee everyone access to a minimally good life. This reasoning can be summarised as follows: a society's level of justice is assessed according to the fulfilment of the principle that *everyone should be able to live a good life*; a metric of justice is more suitable the more effectively it fulfills the principle; the better a metric of justice reflects what people are able to do and to be, the more effective it is in fulfilling the principle—insofar as it better reflects the extent to which people are able to live a good life; capabilities, contrary to alternative approaches, directly reflect what people are able to do and to be; therefore, capabilities are the most suitable metric of justice.

However, it could be objected that this principle alone cannot provide a full-blown theory of justice. This principle only governs the distribution of the benefits resulting from the social cooperation (therefore, it is recipient-oriented). Society is a system of cooperation resulting in a sum of benefits—outputs—derived from the

combination of inputs, which include some burdens. Accordingly, justice relies not only on the distribution of benefits, but on the fair balance in the distribution between benefits and the associated burdens.<sup>2</sup> This corresponds to a gap that is commonly observed in capability theories of justice, including Nussbaum's. While a definition is given of which capabilities, and at what level, people are entitled to enjoy it is still to be determined which obligations, if any, people should satisfy in order to be entitled to those capabilities.

This gap is acknowledged by both opponents of the capability approach (Pogge, 2002, pp. 204, 208–209) and its advocates (Nussbaum, 2006, p. 87; Robeyns, 2017, p. 157).<sup>3</sup>

At first sight this gap does not seem to be insurmountable. Society can commit itself to distributing the benefits that enable all its members to live a good life, on condition that, in return for enjoying them, members commit themselves to contributing a share of the burdens of producing those benefits. In this case, people would be entitled to have the capabilities for a good life, so long as they exercised the capability to work (or are willing to do so). In fact, this is basically what is advocated by Elizabeth Anderson. Everyone is entitled to the set of capabilities for a life in accordance with the ideal of democratic equality (1999, pp. 317–318). However, this entitlement is conditional, particularly with regard to capabilities requiring income, on the exercising of a work within the system of cooperation.

Yet, this would seem to challenge the suitability of a theory of justice based on capabilities. This challenge might arise from the relationship between what the notion of 'capability', by definition, implies—what 'being able to do and to be' implies—and drawing on that analysis, the kind of access to the means—the external conditions—that give rise to the capabilities concerned, which this notion requires.

### **1.1. A Capability-Based Metric of Justice and the Obligation to Contribute**

Once again, a capability is the real opportunity to achieve a certain functioning. 'Real opportunity' in this context should be understood as meaning 'being able to'. So, one person's set of capabilities is the reflection of what she is [effectively] able to do and to be. But what does 'being able to do and to be' imply? Being able to *x*—a functioning—means having the option to choose *x* and the assurance of achieving *x* if *x* is chosen. If, on the path a person has to take between choosing and achieving *x*, there is any chance that the achievement of *x* will fail, then it is not possible to say that the person is able to *x*. So, in a literal sense, 'capability' is an absolute notion—what I call the

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<sup>2</sup> "(...) the fundamental organizing idea of justice as fairness, within which the other basic ideas are systematically connected, is that of society as a fair system of cooperation over time, from one generation to the next." (Rawls, 1996, p. 15).

<sup>3</sup> This is in line with the distinctions made by other authors as well, for instance between subject-centred conceptions of justice and justice as reciprocity (Buchanan, 1990), or between distributive and cooperative justice (Van Parijs & Vanderborght, 2017, pp. 103–107).

strong interpretation of capability. According to Robeyns' distinction, either we have an option, that is a functioning, with 100% probability of being achieved if we choose it or if the probability is lower, it is implied that we do not have the capability at all. If the probability is less than 100%, the person may fail to achieve it, which means that this opportunity does not necessarily reflect what the person in question is able to achieve. Therefore, it cannot be classified as a capability.

Under this interpretation, the distribution of capabilities would seem to be too demanding for society. Given the constraints posed by the real world, in some cases ensuring a 100% probability of success between the choice and the achievement of a certain functioning becomes an extremely difficult or even impossible task.

As such, the only reasonable interpretation, sensitive to the constraints of reality, is to understand 'capability' as a matter of degree of success— what I call the weak interpretation. According to Robeyns, capabilities can be more or less robust (2017, pp. 96–98). By robustness is meant exactly the probability of success in achieving the corresponding functioning, once it has been chosen (the more robust, the more probable). So, it can only be concluded that the more robust people's capabilities are, the better they mirror what people are able to do and to be. Thus, it would matter to society that people's capabilities are as robust as possible. Henceforth, this will be the interpretation adopted in this paper.

Once the notion of capability has been clarified, it is important to understand how the capabilities are distributed. In short, capabilities are distributed indirectly through the provisioning of the means, preconditions, or external conditions (Nussbaum, 2011, pp. 20–25)—political, social, economic, etc.—that prove to be most adequate to bring the capabilities into existence.<sup>4</sup> Two questions arise from this: 1) What are these external conditions specifically? 2) What kind of access to these external conditions does the capability notion require? Regarding the first question, having only instrumental value these external conditions would vary, in function of the specific capabilities to be distributed, its level, and people's characteristics (Sen, 2009, pp. 255–256).

Regarding the second question, access to something can be either unconditional or conditional. Access is unconditional when no counterpart is required from the person obtaining such access (Van Parijs & Vanderborght, 2017, pp. 8, 16, 21). Conversely, access is conditional when something is required in return for it: the obligation to carry out a portion of the burdens of cooperation (work), etc. So, the conditionality always entails the risk of failing to obtain access. That is, if someone must perform a certain activity, or seek permission from a third party to access, for example, food, then the risk of failing to access it is always present. Having said that, if access to these external conditions is conditional, then the probability of achieving the functioning at stake, once chosen, will be less than

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<sup>4</sup> Cf. Anderson, 2010, p. 87.

100%. Thus, it can be concluded that, under its strong interpretation, the notion of capability requires, by itself, unconditional access to these external conditions. According to the weak interpretation adopted, we conclude instead that the more unconditional the access, the more robust is the capability, and vice versa.

That said, even under the weak interpretation, at first sight it would not be possible to reconcile the notion of capability (and hence the principle that *everyone should be able to live a good life*) with the obligation everyone has to contribute to the creation of the benefits of social cooperation. If access to the benefits which create capabilities for a minimally good life is conditional on social obligations, then people may fail to obtain this access if they turn out to be unsuccessful in fulfilling these obligations. Consequently, the robustness of these capabilities would be threatened, with the risk that, if the robustness were too low, they would reflect a very poor picture of what people are able to do and to be.

A possible way out of this problem is to accept that people's entitlement to the capabilities for a good life should be subject to the obligation to work, but provided that the capability to work is sufficiently robust. That is, insofar as the capabilities for a good life rely on the capability to work, the robustness of the former will be proportional to the robustness of the latter. Therefore, it is only necessary to ensure the robustness of the capability to work to ensure the robustness of the overall capabilities set.

An effective way for society to do this is by promoting people's unconditional access, as much as possible, to a work position, and guaranteeing that these work positions are at least in accordance with what I will refer to hereafter as a minimum threshold of decency.<sup>5</sup> That is, on the burdens side, a work whose incumbent, in the combination of her individual capacities and the character of the tasks demanded of her, has a high probability of success in performing it—hence little probability of failure—if she chooses to do so, and in performing it, is not forced to undermine or pose a risk to any capability of the set, which would place her below the threshold of a minimally good life.<sup>6</sup> On the associated benefits side, a work whose performance assures people of at least the capabilities for a minimally good life. The value of each capability, in this case relevant for a good life, is qualitatively distinct from the value of the other capabilities —although capabilities mutually support each other. Consequently, it does not suffice that some capabilities are very robust, including the capability to work, if this robustness is the result of the sacrifice, or insecurity, of other ones within the capability set.<sup>7</sup>

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<sup>5</sup> Obviously, the more difficult it is to access a work position, the more unlikely it is to access the associated benefits. This solution is akin to Stuart White's distinction between the unconditional right to a benefit (in the author's sense, income), and the unconditional right to reasonable access to that benefit (2003, p. 139).

<sup>6</sup> In extreme situations of such handicaps people may legitimately be entitled to benefits even if they might be exempt from working.

<sup>7</sup> About the security of the capabilities, and how they mutually affect each other, see Wolff & De-Shalit, 2007, pp. 65–72, pp. 133–134.

## 2. Can a Capability-Based Metric Fit a Liberal Theory of Justice?

Against the previous proposal, it could be argued that setting a minimum threshold of decency would lead a theory of justice to embrace a single conception of the good life, hence making it alien to liberal theory, embedded in the tradition of political liberalism.

Normative individualism is a key feature of a liberal theory of justice. People, taken individually, are of equal moral worth and therefore should be treated with equal concern and respect. Recognising moral equality involves recognising each person's particular interests equally. So, each person must have the right to formulate, revise, and pursue what she considers to be a good life, so long as this does not mean denying the same right to others. Therefore, a liberal theory of justice does not envisage a single conception of the good life, which would be imposed on everyone, but recognises the possibility of plural conceptions of the good. Setting a threshold of decent work would seem to bend the terms of cooperation towards a particular conception of the good life that would be imposed on everyone, thereby going against the precepts that a liberal theory of justice should meet.

There are at least two ways to respond to this objection. The first is to stress that in a society left to itself, it is unlikely that the terms of cooperation will be neutral. Due to the influence of arbitrariness and brute luck the burdens and benefits and their distribution will tend to be biased in favour of the conceptions of the good life of some people, namely those with greater bargaining power, and consequently to the disadvantage of others, namely those with greater bargaining vulnerability. In such a situation, the latter are conditioned not to act in accordance with what they consider to be a good life, but rather in the interests of those with greater bargaining power—to the extent that they share a disproportionately greater amount of the burdens compared to the benefits they enjoy. So, the latter's conception of the good life is subordinated to that of the former. Consequently, the precepts of political liberalism are also compromised in such a scenario. The burdens and benefits distribution is not defined by a pre-existing structural arrangement of fixed positions which people apply for and are subsequently placed in. Good luck — natural and social endowments, good health, family socio-economic background, environmental luck, etc.—confers not only greater chances on people to attain more advantageous positions, but especially greater bargaining power to shape, in their own interest, that very arrangement of positions. In other words, they have greater bargaining power to determine, in their own favour, the very terms of cooperation—the distribution of burdens and benefits—within the system, than those who might have little or no bargaining power and would often be forced to subject themselves to the terms of cooperation. To illustrate this, a person who owns a lot of inherited assets, which provides her with a livelihood, is better placed to turn down work (Meade, 1993, p. 41). A person endowed with a rare but highly sought-after talent is more apt to demand high benefits and to refuse to perform tasks that he or she considers less attractive.

On the opposite side, the most vulnerable people within the system of cooperation are very likely to face a scenario in which they either accept a job, submitting themselves to terms they deem to be adverse, or they decline it and as a consequence become entirely deprived of the means they need to sustain themselves. That is, they do not have any acceptable alternative to refuse that option (Cohen, 1988, pp. 239–254; White, 2003, p. 48; Olsaretti, 1998, pp. 53–78).<sup>8</sup>

So, given the interpersonal asymmetries in bargaining power, the distribution structure risks deviating from a criterion of proportionality between burdens and benefits, to follow instead a pattern tending towards ‘minimax’ (Graeber, 2018, p. 81)—minimisation of burdens/maximisation of benefits—for those with more bargaining power and consequently ‘maxmin’—maximisation of burdens/minimisation of benefits—for those with less bargaining power. Some real-world cases illustrate this phenomenon. For example, it can be seen in the case of US corporate executives, as mentioned by Thomas Piketty. These executives “high bargaining power, inherent to their position, means that their salaries are well above their individual marginal productivity” (Piketty, 2014, pp. 330–332). It is also visible in the proliferation of, as defined by David Graeber, bullshit jobs (2018, pp. 9–10), that is, a series of jobs, existing in today’s capitalist societies, which are pointless or even harmful.<sup>9</sup> Despite this, they are often well paid (2018, p. 243), in contrast to shit jobs—very useful jobs, but ones attached to poor benefits and bad conditions (2018, p. 15): building, cleaning, taking care of people, etc..

The second way of addressing the objection is to state that this threshold of decency is not meant to directly represent a comprehensive conception of the good life, but rather the set of minimum prerequisites without which it would not be possible to carry out any conception of the good life, whatever it is.<sup>10</sup>

However, defining a capability-based threshold of decency is problematic (Robeyns, 2017, pp. 61–62). On the one hand, the concepts of capability and functioning are themselves amoral (Robeyns 2017, 41–45). It is therefore necessary to distinguish those capabilities that exclusively matter [that are essential], according to each particular purpose. On the other hand, given the diversity of conceptions of the good life to which people aspire, it cannot be taken for granted that they will all agree on the same nuclear list of capabilities as a bare minimum of decency.

Yet there are two conditions whose fulfilment reinforces the liberal character of a capability-based theory of justice. First, the list of capabilities that constitutes the metric of justice must be the result of a consensus, within

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<sup>8</sup> On the assumption that the hiring party has the alternative of hiring other people for the same position, if one refuses to work under the terms offered.

<sup>9</sup> Nevertheless, the people who work in these jobs usually do not feel self-realised.

<sup>10</sup> That is what Nussbaum provides with her list of capabilities (2000, p. 76; 2011, p. 79).



society, in which everyone has equal decision-making power. Second, capabilities must be devised in a way that leaves room for their multiple realisability (Nussbaum, 2000, p. 105). In other words, they should be formulated in a sufficiently vague fashion to allow for some pluralism in their specification, according to each person's or society's particular interests: a vegetarian person realises the capability to be well-nourished in a different manner from those who eat meat. These conditions will be further discussed in the following part.

### **3. How to Distribute the Capability to Work?**

To recapitulate, one solution to ensure that all capabilities are robust is to make sure that the capability to work, on which those other capabilities rely, is also sufficiently robust. In order to do so, as proposed so far, the capability to work should be distributed through the unconditional access to a work post that meets a minimum threshold of decency, both on the side of burdens and on that of benefits.<sup>11</sup>

Having said that, what kind of policies are the most effective for distributing the capability to work? I will discuss three different kinds of policies aimed at guaranteeing unconditional access to a work position: Workfare policies, without substantially modifying the existing labour market (3.1); Work-guarantee policies attached to a decency threshold, set by society (3.2); Work-guarantee policies combined with an unconditional basic income—UBI (3.3). I will argue for the latter kind of policies.

#### **3.1. Workfare Policies (without Substantially Modifying the Existing Labour Market)**

The first hypothesis involves workfare policies, without profoundly changing the structure of the labour market. The labour market runs virtually interference-free, being shaped by labour supply and demand relations between able-bodied people and employers. The role of society is limited to seeking that this unemployed workforce enters the market, through a variety of incentives: co-funding wage costs, subsidising technical training for workers, tax reliefs for employers, etc.

This option may be effective in ensuring that everyone has access to a job, but it cannot guarantee that this work meets the desired level of decency, both in terms of burdens and benefits. As I have argued earlier, the setting of the terms of cooperation is quite prone to being influenced by arbitrary factors and brute luck. Once again, the more powerful parties, namely employers, will tend to shape the terms of cooperation to their advantage—maximising

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<sup>11</sup> Not all benefits necessarily take the form of work-related wages. Earning income can be also combined with other kinds of goods and services.

benefits and minimising burdens—at the expense of the less powerful ones. Hence, by introducing these policies, society runs the risk of pushing people into a labour market whose terms of cooperation, already defined, are biased in favour of the employers, placing the former in a vulnerable position. Either they accept the offer of work on the terms proposed, whether or not these meet a minimum threshold of decency, or they refuse, thereby losing the entitlement to any benefits. That is, they are put in a situation where they have no acceptable alternative to subordinating themselves and their interests to their employers' interests. Thus, by taking this route, society would most likely become a tool for creating degrading and ill-paid jobs (Standing, 2017, pp. 115, 201–202).

### **3.2. Work-Guarantee Policies Attached to a Decency Threshold**

To avert the problems raised by the preceding hypothesis, one solution might lie in adjusting work policies in accordance with the required minimum threshold of decency that the terms of cooperation would have to meet. How? In a weaker version, this would simply involve regulating the labour market by a set of legal reforms: rules of hygiene and safety at work, limitation of working hours, minimum wage fixing, etc. In a stronger version, it would add to these reforms the direct creation by society, through the State, of an array of work positions for everyone, able-bodied, who might not have one, shaped to this ideal of decency. That is, the State would act *as an employer of last resort - SELR* (Atkinson, 2015, pp. 144–147; Thomas, 2020).

Despite their merit, these measures are hampered by the same difficulty, mentioned in Part 2, of defining the minimum threshold of decency. In a liberal theory of justice, each person would have their own view of what is minimally decent, in line with their own conception of the good life. So, by means of these policies, the society runs the risk of imposing on everyone a univocal conception of decent work.

This obstacle could be eased if there were a democratic consensus within society, among people with equal decision-making power, about what is meant by a minimum threshold of decency. Once again, simply because people may have different particular conceptions of the good life does not mean that they cannot agree on a shared set of capabilities, as common prerequisites, as Nussbaum argues. The same would apply to how society decides to specify the capability to work. As already noted in Part 2, each capability could be specified in more than one way—what Nussbaum calls multiple realisability. It remains to distinguish what belongs to the collective decision sphere, that is, to society, from what belongs to the individual sphere. In some capabilities this distinction seems relatively easy. For instance, in a liberal theory of justice, the decision to select and distribute the capability to be well-nourished belongs to society, whereas how that capability is specified is left to each individual. Again, a vegetarian realizes the capability to be well-nourished in a different manner than a person who eats meat. However, when it comes to the

capability to work, the distinction is not so clear-cut. While one person's dietary choices apparently do not impact on another's, the same is not true for the terms of cooperation. In a system of cooperation based on the division of labour, the burdens and benefits balance of each person tends to have an effect on the burdens and benefits balance of others. In a workplace, the tasks that one is successful in refusing will tend to be assigned to another. Increasing some people's earnings, while maintaining the same level of productivity, means decreasing the earnings of others, and so on. Thus, the mode of specification of the capability to work has, at least in part, an interpersonal dimension.

The possibility of a democratic consensus, however, can run into some difficulties. Firstly, it is difficult to ensure that the decision-making process is truly democratic, that everyone is effectively fairly represented, well-informed and with the same influence over public choices. Yet, just as the arbitrary factors propitiates interpersonal power asymmetries in negotiating the terms of cooperation at the micro level, it is unlikely that they would not have a similar effect on political decisions at the macro level.<sup>12</sup> Secondly, following Robeyns, in a real world, characterised by so many divergences, gathering such a consensus looks unrealistic (Robeyns, 2005, p. 207). As regards work issues in particular, such divergences have been especially evident throughout history. Finally, even if a substantial consensus is reached, there is still the challenge of how to deal with any dissenters (Widerquist, 2013, pp. 114–117).

Even if consensus were possible, the capability to work still could not be fully specified solely at the macro level. Although a considerable portion of the terms of cooperation may be defined at the macro level (limitation of working hours, minimum wage, health and safety rules, etc.), others will only be decided at the micro level, i.e., within each workplace by its respective direct stakeholders—workers and employers. This is due to the combination of the following three conditions: 1) there is no criterion for assessing what decent work is apart from what each person thinks, according to his or her own conception of the good, decent work is—call this the liberal condition; 2) beyond the general aspects, each workplace has its own particular features, tasks, routines, and socialisation patterns that only those who personally experience them can truly know—call it the epistemological condition; 3) many of these particular aspects are not susceptible to being fixed, but rather have to be negotiated successively on a day-by-day and moment-by-moment basis between the parties involved—call it the dynamic condition.

The first condition (liberal condition), alone, is not necessarily problematic. As I have tried to show, it is not impossible that people with different conceptions of a good life might reach a consensus. The situation is, however, different when the first (liberal condition) and second (epistemological condition) conditions are combined. If there are some aspects within a certain workplace that can only be known by those directly affected by it, then only they are in a position to assess them, according to their respective conceptions of the good life, as meeting (or not) a

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<sup>12</sup> According to Robeyns, large economic inequalities undermine political equality (2019, pp. 254–256). Proponents of the capability approach have argued about how to select capabilities that are immune to arbitrary influences, and thus ensure truly democratic decisions (Sen, 2004, 2005; Bohman, 1997; Byskov, 2018).

minimum ideal of decency. They may find some aspects necessary, whilst others redundant; some more appealing, others burdensome; some reasonable, others undignified, etc.<sup>13</sup> Accordingly, on a macro level, the scope of an ultimate democratic consensus becomes narrow, insofar as it is not feasible for all represented parties to legislate on something whose information, except for a tiny minority of them, exceeds the information to which they have access. The case becomes even more complex when the third condition (dynamic condition), mentioned above, is joined to these two. Many of these particular aspects of each workplace are not permanent, i.e., stable and predictable in the medium/long term, but rather volatile. This leads to the conclusion that not all terms of cooperation are amenable to being fixed by ex-ante decision-making. At least some of them are rather negotiated successively, if tacitly, on a daily basis, from one moment to the next, between the stakeholders directly involved in the workplace at stake—namely between the employer and the employee, between the hierarchical superior and the subordinate. Such negotiation is expressed, on the one hand, in the type of tasks that are requested at each moment, the objectives required, the ways in which the performance is assessed by one in relation to the other, and even the communicational tone used. On the other hand, this process of negotiation is also evident in the room that people have or not, when faced with these incidents, to consent or to complain, to be forced to accept the burdens or to leave them to others, and so on. It is obviously possible, ex-ante at the macro level, to set some boundaries that impose limits on the patterns of the negotiation and eventually mitigate bargaining power asymmetries. By setting a minimum wage, an employer is not allowed to negotiate with a worker for less than that amount. However, there remain some points on which it is not feasible to set boundaries. For instance, it seems infeasible to fix the maximum number of hamburgers that a worker at restaurant x can grill in an hour, or the number of spreadsheets that an accountant at company y can process, over which it ceases to comply with a minimum ideal of decency. Similar impracticalities apply to trying to set a limit on the level of decibels a boss is allowed to use to communicate with his subordinates, or on the frequency with which he can interrupt his subordinates' activities to check that everything is going well, etc. Only those who live such experiences first-hand would seem to be qualified to assess them.

Thus, although such work-guarantee policies may be effective in ensuring that everyone has access to a job, by virtue of the combination of these three conditions, they still fall short of guaranteeing that work meets a minimum threshold of decency. As such, it would seem that Alan Thomas' ambition, following Minsky, to deploy the *State as employer of last resort*, and his dictum "Don't fit the citizen to the job; fit the job to the citizen (...)" (2020 pp. 21–22),

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<sup>13</sup> As Van Parijs Vanderborght (2017, pp. 22–23) and Stern (2016, p. 165) emphasise, it is workers, rather than any expert, legislator or bureaucrat, who are best qualified to assess the intrinsic qualities of each kind of work.

risks being unattainable. As I hope to have demonstrated, following these kinds of policies, people (some more so than others) will most likely have to be fitted to the work they are offered, rather than otherwise.<sup>14</sup>

### 3.3. Work-Guarantee Policies Combined with an Unconditional Basic Income—UBI

Work-guarantee policies as discussed in 3.2 should not, however, be entirely dismissed. Policy decisions taken at the macro level may be vital in providing work for all, setting many of the terms of cooperation, and placing certain limits on the unacceptable. On the one hand, without any support, it could be very difficult for people to find the kind of work they might want to do. Training, workfare or employment policies of last resort can sometimes be the difference between people accessing this kind of work or not. On the other hand, it would be very difficult to impose some limits to the unacceptable without taking some action at macro level. For example, setting a minimum wage, and a maximum limit on working hours, establishing occupational safety regulations and non-discrimination rules in the workplace, granting leave and holiday entitlements, and so on. Yet, due to the combination of the three conditions (liberal, epistemological and dynamic) highlighted above, it is important to note that, despite the best of intentions, some of the terms of cooperation might escape from the decisions at the macro level. Since (1: liberal condition) there is no criterion for assessing the degree of decency of a job apart from what each person defines decent work to be, and (2: epistemological condition) there are particular aspects, within each workplace, that only those who live them are epistemically qualified to know, then only the workers are in a position to assess the level of decency of their work. Moreover, (3: dynamic condition) given that not all terms of cooperation are fixed, some of them may be subject to constant negotiation. Therefore, at least part of the terms of the cooperation are determined at the micro level, between those directly involved in the particular workplace.

As I said, in a workplace, the bargaining power to negotiate the terms of cooperation tends to be asymmetrical, as a result of arbitrariness and brute luck. Consequently, these terms will tend to be biased towards the interests of the more fortunate at the expense of those less advantaged. As such, the key to guaranteeing access to work that meets a minimum threshold of decency, is to complement work-guarantee policies with mechanisms that empower each person, at the micro level, to bargain the terms of cooperation presented to them. Whereas work-guarantee policies provide a structure of fixed positions, setting out the burdens and benefits distribution in which people would be

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<sup>14</sup> In addition to a *State as Employer of Last Resort*, Atkinson proposes a *Participation Income* (2015, pp. 219–223). This differs from an *Unconditional Basic Income* in that its allocation depends on a social contribution. However, it also differs from traditional labour income in that it considers the performance of activities other than those accounted for by the labour market as a 'social contribution'. The same objection made in this article to the *State as an employer of last resort* applies to the *Participation Income*. Due to the three conditions listed, it is very difficult to define at macro level which activities are considered 'social contribution', and to ensure that these activities meet a minimum threshold of decency.

placed (fitting the person to the job), it is necessary to make sure that, rather than simply being placed, people are empowered to reshape these positions in their own interest (fitting the job to the person).

In the face of the difficulty of neutralising all the factors derived from arbitrariness and brute luck, it is better to opt for a second-best, but more feasible, solution. This would consist in granting everyone bargaining protection against extremely disadvantageous working conditions. That would be especially salient in the case of the most vulnerable, i.e. those most prone to be affected by the imbalance of power. In other words, the aim is to enable everyone to have the minimum reasonable power to say no. In fact, the asymmetries in bargaining capacity are reflected, in essence, in the level of power to say no. For its part, the level of power to say no comes from the quality of the alternatives to the option that one might want to refuse. An employer is in a good position to reject the claims of a worker when she has as an alternative, if the worker refuses to work on these terms, the possibility of replacing her with another, or simply living off stored capital. A very talented worker is in a good position to quit, in the case of not having her claims attended to, if she has other employment proposals. In contrast, a worker for whom the consequence of refusing a job is the imminence of losing the associated benefits, being totally deprived, would have little room to refuse that work on the terms as presented to them. In other words, the latter will tend to accept such conditions because there is no acceptable alternative.

The mechanism I defend in this paper to guarantee everyone a minimally reasonable power to say no, whilst not neglecting other employment guarantee policies, is the implementation of a UBI, in line with what has been argued by many proponents of this measure (Widerquist, 2013; Van Parijs & Vanderborght, 2017, pp. 22–23, 103; Standing, 2017, pp. 121–122). That is, an income paid by society to its members in regular instalments. It is ‘basic’ in the sense that it stipulates an amount that everyone starts with, to which is added whatever they might earn from other sources. It is ‘unconditional’ inasmuch as it is destined to everyone simply on the grounds of their social membership, without any obligation in return: that is, regardless of working status and willingness to work, level of wealth, family composition, location of residence, etc. (Van Parijs, 1997, p. 35).

Let us imagine that everyone receives a UBI. Let us suppose that its amount will at least cover what is required for subsistence. Since this is already assured by the UBI, the people concerned would have greater power to negotiate the terms of cooperation in their own interests. That is, they now have an acceptable alternative, or at least a significantly lower cost than complete deprivation, enabling them to say no to the terms of cooperation as might be proposed to them by their employer/superior. The latter, if they want to hire or keep the worker, will eventually have to make some concessions: to raise wages, put less pressure on workers, improve working conditions, etc. In this way, people are assured that—whatever happens—their capabilities will never fall short of a certain level of robustness. Either they succeed, through the negotiation process, in getting the terms of cooperation presented to them to be in

line with what each one considers to be, at least, minimally decent. Or, if their negotiation goals are not achieved, they know that they can reject the ‘final offer’, losing the capability to work, without having to face the most extreme disadvantages of that loss. They take for granted, at least, a subsistence threshold. Thus, the UBI serves as protection against a possible lack of robustness of the capability to work, and consequently of the person’s overall capabilities set.

Thus, there seems to be good reasons to implement a UBI, as a form of protection, combined with other work-guarantee measures, to distribute the capability to work, associated with a minimum threshold of decency.

However, being an unconditional income, that is, one whose access does not entail an obligation to work, a UBI allows people, regardless of the quality of the work opportunities presented to them, to decide voluntarily to enjoy the benefits of cooperation without doing anything in return. So, this would be a threat to the principle of reciprocity.<sup>15</sup> There are at least two replies that can be provided in the face of this possible objection. First, on the assumption that people are interested in pursuing what each one understands to be a good life, taking into account that the amount of UBI would be relatively modest, it seems unlikely that the majority of the population, in such a scenario, would have as their first choice simply not to work. Second, violations to reciprocity concern not just those who appropriate the fruits of cooperation without cooperating, but also the maldistribution of burdens and benefits among those who are willing to cooperate. However, the mismatch between burdens and benefits is also likely to occur in the latter case. UBI promotes a better balance in the distribution of burdens and benefits among those who are willing to work, if the working conditions concerned are decent in their own view. So, UBI would favor reciprocity in that way. Every policy involves some cost. The possibility that some people may decide not to work, no matter what working conditions are at stake, would be the price to pay for the protection against the lack of a minimum of decency.

The idea of such a protection is not new. It has been proposed by Stuart White, albeit with a slightly different terminology. Although White has been critical of UBI as a threat to the principle of reciprocity, more recently (for example, in 2018) he has ended up advocating for UBI (an ‘unconditional minimum income’, in his definition) as a protection, as a sort of an insurance, against the absence of fair terms of cooperation. His reasoning may be summarised as follows. The idea of reciprocity entails that access to income, as a benefit of cooperation, be conditional—subject to making a contribution, or being willing to contribute, to its creation. Nevertheless, conditionality is itself also conditional. In other words, in line with what has already been said, the principle of reciprocity implies not only that some should not benefit, without doing anything, from the work of others, but also that the terms of cooperation between those who do something need to be fair—fair terms of cooperation. If this is

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<sup>15</sup> Assuming that at least part of the UBI would be financed by a levy on the product resulting from cooperation, i.e. on work.

not the case, some people will be more prone to being exploited by others. So, in this scenario, a UBI (or UMI) might be justified.

Despite having some points in common, there is a fundamental difference between White's proposal and the one put forward in this article, which should be drawn out. White's argument assumes that the conditions that ensure the fair terms of cooperation are amenable to being entirely known and politically fixed at the macro level. He simply observes, on the one hand, that these do not yet exist in reality, particularly in UK society, towards which he directs his focus, and on the other, that these conditions are unlikely to be attained in the near future. Neither legislating on all the matters that would be required to make the terms of cooperation fair, nor increasing the political representativeness of the people who would be most affected immediately, seems feasible in the short/medium term. Thus, considering the risk of these conditions not being met soon, if ever, a UBI (or UMI) would offer a second-best, less ideal but more feasible, solution.

In contrast, the proposal put forward in this paper is based on the opposite assumption. Due to the combination of the three conditions outlined above (liberal, epistemological, and dynamic), even in an ideal scenario, in which a truly democratic political consensus was reached, there is no way of guaranteeing that the terms of cooperation are, in their totality, fair. Once again, there are aspects that can only be known within a workplace, thereby beyond the macro level, and which cannot be fixed. Instead, they are subject to constant negotiation between the involved parties. This last factor is, above all, decisive in illustrating what distinguishes this proposal from that of White. Let us suppose that there is a scenario X in which the terms of cooperation are fair. Recognising that the current scenario falls short of X and that it is unlikely to be feasible in the near future to reach a political agreement on a legislative package to attain it, White considers the introduction of a UBI. Now let's imagine that, for some extraordinary reason, X is accomplished. What happens to UBI? Following White's argument, in that circumstance the UBI would have to be removed. If the terms of the cooperation are fair, it becomes illegitimate for anyone to enjoy the benefits of the cooperation without contributing, or being willing to contribute, to its creation. The UBI would operate somewhat analogously to the gender quotas that exist in some societies. These are a non-ideal mechanism in service of the ideal but difficult aim of attaining gender equality within a society. If, however, this equality is finally attained without the need to use quotas, there is no longer any justification for quotas. That is somewhat how the author appears to envisage UBI.

A similar approach does not apply from the perspective advocated in this paper. Even if X is attained (let's assume that a national survey was taken and, surprisingly, all people think the conditions under which they work are fair), the UBI cannot be withdrawn. Insofar as part of the terms of cooperation are not fixable, but rather continuously negotiable, even if in X these terms are fair, it is not possible to ensure that they will remain so in time



$X_1$ ,  $X_2$ , and so on. Given the endless array of possible subjects of negotiation within each workplace, it would be impossible to set boundaries, at the macro level, for all of them. Consequently, people would still need to be endowed with the power to say no, which UBI provides. Furthermore, it is not possible to know whether people's behaviour, particularly that of the most vulnerable in the market, in  $X$  reflects their genuine will or already, by anticipation, some fear that these terms, which they consider to be fair, will change for the worse in the future (Pettit, 1997, pp. 22–23). Guessing what people would do if they had an acceptable alternative, without yet having one, is too speculative.

To sum up, although the other kinds of policies are potentially effective in guaranteeing widespread access to work, they cannot ensure that it meets a minimum threshold of decency, as a liberal theory of justice demands. The kind of policies described in 3.1 leaves the terms of cooperation prone to the influence of arbitrary factors and brute luck. As for the policies discussed in 3.2, they are, even in the best scenario, insufficient to totally shape the terms of cooperation to a threshold of decency (unless one opts for a univocal conception of work). This is owing to the existence of three combined conditions, which I classify, respectively, as follows: 1) the liberal condition; 2) the epistemological condition; 3) the dynamic condition. A UBI, operating as a protection against the eventual lack of robustness of the capability to work, seems a powerful instrument to deal with the combination of these three conditions. Therefore, the option put forward in 3.3, work-guarantee policies combined with a UBI, seems to be the most effective one for the purpose in question.

#### **4. Final Remarks**

To conclude, a few remarks are in order. Firstly, it may seem that the article is set against the backdrop—namely the policies discussed in Part 3—of a labour market based on a capitalist economy. It would be pertinent to analyse the arguments presented according to each specific economic system. However, employer/employee (whether the former is the owner of the productive capital, or a state administrator) and superior/subordinate relations, hierarchies, and asymmetries in bargaining power are not exclusive to the capitalist system. Hence, the arguments put forward may apply to other systems as well. Secondly, the paper ended up often translating the benefits of cooperation in terms of income, whereas capabilities may, in certain circumstances, require other types of means. Tackling this issue would involve writing a different paper altogether. It can only be anticipated that income, as a homogeneous means towards various ends, will surely have some place in the distribution of a capabilities within a liberal theory of justice. Finally, the fixed amount of the UBI, as it is usually described, seems to contrast with the spirit of the capability approach, according to which, due to human diversity, people with different characteristics will need different means, in both quantity and quality, to achieve the same ends. Again, this issue would demand further reflection. However, three possible ways of dealing with the objection can be advanced: 1) Although it has been

presented as a fixed amount, nothing prevents variable values being equated, depending on the differences between people; 2) Even if a fixed amount is equated, it can be set to cover what is estimated to be the full spectrum of human variation, that is, to be enough to satisfy people with the greatest needs, within the scale; 3) The limitations of a fixed amount could possibly be offset by combining it with other types of goods and services. For example, a person suffering from a serious illness will have the same amount of income as a perfectly healthy person but will have access to specific medical treatment according to their condition.

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