

Fourth International Conference on Human Rights

*Citizenship and Social Rights: a
Discourse for the Future*



EUSKO JAURLARITZA
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and Public Administration

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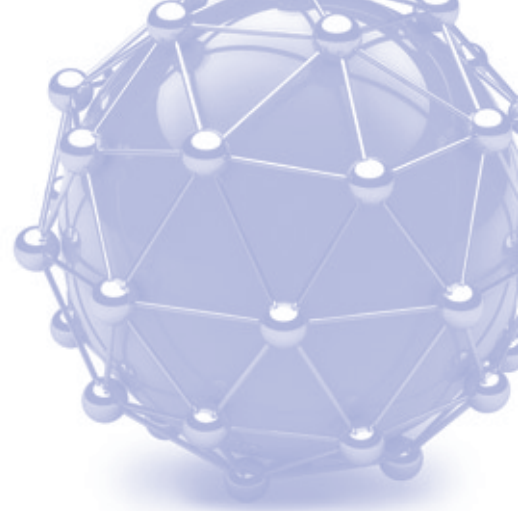
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Vitoria-Gasteiz, 2012

Presentation

Societies that aspire to be real democracies for life organise their ideas around ethical, juridical and political values and around exercising certain civic virtues that guarantee their conservation in plurality and mutual respect.

Democracy and Human Rights are united to the extent that they are conditions for free and full development of the human personality.

Human Rights are not just a legal and political concept, but a global concept.

Becoming citizens means, on the one hand, that we must all be able to fully enjoy Human Rights and feel protected by democratic society.

On the other hand, it also represents active and responsible citizen participation regarding life in society and constant respect for the rights of others.

The promotion of Human Rights can help to develop critical thinking and teach us about living side by side.

It makes it easier for us to understand each other, promotes intercultural dialogue, solidarity, equality between men and women and harmonious relations within a community and among its members.

Training in Human Rights also encourages awareness-raising on the principles of freedom, political pluralism, people's rights and the rule of law.

It also encourages States' effective use of instruments relating to Human Rights.

On these premises, the Basque Government organised the fourth International Human Rights Congress that we are dedicating to looking in greater depth at the concept of citizenship and attempting to decipher the future of social rights.

This approach was very successful and so I am delighted to present this volume of contributions from a group of international experts to analyse and contrast our ideas within this framework.

Social Europe is a dream but, as professor Taylor Gooby so rightly said, it is a dream with many dreamers. Let's make sure that present and future uncertainties do not distance us from the dream that we Europeans have built together in the last half century.

IDOIA MENDIA CUEVA
Minister of Justice and Public Administration

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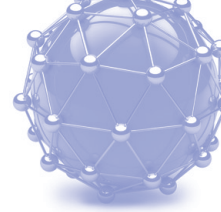
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The Future of Social Europe: The Paradox of (Individual) Human Rights and (Collective) Social Solidarity

I. Introduction: The dilemma of government: spending cuts and social solidarity

Social Europe is a dream, but one with many dreamers (95,500,000 Google hits in .29 seconds). The dream is of a Continent-wide system of integration that reaches beyond the crudely economic (single market; euro zone) and the crudely political (a common presidency) to embrace social welfare. The various national traditions of social provision rest on solidarities that developed in such a way that they could achieve a social settlement across middle and working class groups (Baldwin 1990). The basis of that compromise in nation-state, industrial society, characterised by a male breadwinner, female dependent division of labour, stable population structure and secure growth has now broken down. While the divisions between regime-types remain (Allen and Scruggs 2004; Schroeder 2009, Vis 2010), there seems to an identifiable trend towards greater division of welfare. The pressures of globalisation, expanding demands and constrained resources have led corporatist welfare states to focus social insurance provision more finely and to develop targeted means-tested and incentive-led policies for those outside the systems (Seelieb-Kaiser 2002, Palier and Martin 2008). Similar directions in policy apply to a more limited extent in social democratic countries (Timonon 2003, Meyer and Bridgen 2008), bringing both groups closer to liberal countries. The new welfare states of CEE vary but comparable trends can be identified here, especially among the most developed (Seeleib-Kaiser 2008 ch. 5 and 13, Aspalter et al., 2009).

In this context the EU's *Renewed Social Agenda* (2008) seeks to found solidarity on a common commitment to more equal opportunities and better access to them. It is hard to see this approach making great headway. European societies have generally become more unequal (some more rapidly than others) during the past quarter century (Atkinson 2005). Social mobility differs substantially between countries and does not appear to be making progress across Europe (Jantii et al. 2006, Corak 2004). Two further

approaches to solidarity within Social Europe are available. One is individualised and juridical: the human rights approach which is the primary focus of this conference. The other is more collective and community-based: the democratic decentralisation of power to citizens. The term covers a wide range of activities from opinion survey, through consultation, participation exercises, lay representation, referenda, citizen's juries and deliberative polling to more direct democracy (Stewart 2007 Table 1 gives a useful framework). It has been extensively discussed in a wide range of literatures in recent years (Thompson 2008, Ryfe 2005, Stoker 2006, Renn 2008, Fishkin 2009).

These approaches are not independent. Human rights and democracy are conceptually and historically linked. Many of the rights in the EU's *Charter of Fundamental Rights* (2000) concern enhanced democracy, for example, freedom of expression and assembly, or collective bargaining and the whole section on citizen's rights. Much bears directly on social provision, for examples, rights to social security, health care, dignity in old age, the primacy of the needs of children and freedom of education. However the focus on individualism of the human rights approach also raises problems, particularly where groups with particular and varying interests exercise freedoms to establish institutions which promote the interests of their own group against other groups in society. This is particularly relevant in fields like education and in the context of growing inequality and uncertain social mobility.

This paper considers the relationship between democratic decentralisation and more individualistic approaches and uses the example of free schooling in Sweden and elsewhere to illustrate the point. It pays particular attention to current debates on this topic in the UK which are particularly active and which address issues of managing the relationship between the need for government to contain spending and at the same time to sustain popular support which apply more generally. It discusses the move towards greater democratisation in social governance, and then goes on to review literatures on how that approach has led to more individual-centred and more collective approaches, how the conception of direct user control of community-led free schooling fits in. It includes material from the social psychological literature on group behaviour which does not receive the attention it merits in social policy. It concludes that human rights are necessary for democracy. However, an emphasis simply on individual rights in an unequal society can lead to outcomes that undermine the capacity to promote social solidarity at an urban, regional or national, let alone a continental, level. Individual human rights are not an alternative to strong collective democratic institutions.

Democratising social governance

Democratisation has attracted attention in recent years because it appears capable of contributing to the two main problems of social welfare: making government policies acceptable and contributing to the intransigent pressures on resources. People may be more inclined to accept policy measures to which they have contributed directly. Public engagement may bring into play new resources of proactivity, engagement and finance. We discuss the two dominant approaches in policy (consumerist individualism and political democratisation) and the two main strands in theoretical debate: Habermasian and Anglo-Saxon. Both point to the importance of institutional design, both in the interaction of deliberating participants to each other and the relationship of deliberating groups to the wider society outside the democratic forum.

II. Policy approaches: consumerism and democratisation

Consumerist and political democratisation

One direction dominant in the UK and influential elsewhere (Taylor-Gooby 2009 ch 2, 3) understands individuals (both service providers and users) as pro-active and self-regulating choosers. The bureaucratic hierarchies of welfare management in health care and education are broken up and day-to-day management devolved to individual units (hospitals, clinics and schools), typically competing within a more or less regulated market. Service users become better informed consumer-citizens, exercising the power of choice. The objective is to establish incentives that make services more cost-efficient and responsive in order to tackle both of the problems facing government (PMSU 2006). An analogous logic seeks to structure the incentives facing able-bodied people and those with limited disabilities without paid jobs to move into work. A further variant of the move to constitute individuals as pro-active consumers is contained in the shift to personal budgeting, for example in social care, in which both resources and responsibility are shifted towards the individual (SCIE 2009). This approach and its associated ideology of independence and equal opportunity has been extensively discussed elsewhere and will not be considered further here (see Le Grand 2007, Taylor-Gooby 2009).

A second and alternative direction in welfare governance understands people more as social and political animals, capable of recognising and responding to the concerns of others and well-fitted to make choices collectively. It emphasizes the importance of cultural shifts, educational advances and the step-change in the availability of information, communicative capacity and understanding of one's social context made possible by the shift from hierarchical to a more networked society (Chhotray and Stoker 2008).

This analysis regards the market as a constraining and directive tool for collective choice and posits a stronger role for citizens as communicative and political, not simply independent and economic actors. It directs attention to a wide range of forms of democratised and decentralised governance (again, extensively discussed elsewhere: Thompson 2008, Goodin 2008a, Chambers 2003, Ryfe 2005, Stoker 2006, Renn 2008). It has received less attention in policy debates.

These two directions are linked together in recent developments in UK policy-making which copy some features of recent developments in Sweden, New Zealand, the US and elsewhere. These reforms promote user control at the level of the specific institution that provides the service for them. A prominent example is the "Free School" proposals which "will make it much easier for educational charities, groups of parents and teachers, cooperatives and others to start new ... independent, non-selective state schools" (Conservative Party 2010). The schools will enjoy access to state funding, independence from local government and limited state control over curriculum and possibly admission and governance. The expectation is that a greater range of more independent providers close to the community will tap new resources of enterprise, management and possibly finance. Service users will be more satisfied with provision they design and control. Both objectives of government will be met.

This experiment may pre-figure other developments in social policy. Free Schools incorporate a radical democracy in that citizens may collaborate in establishing them, and also a radical individualism in the focus on the particular group and its identification of its own needs and interests in establishing the school. Schools are particularly important in the context of widening inequality and concern about solidarity, since education is linked to social mobility and to the barriers to it. Evidence on social psychology bears on how effective this will be in realising pro-social goals.

III. Traditions of direct democracy: Habermasian and Anglo-Saxon approaches

Habermas and transformative institutions

This framework rests on Habermas' analysis of normative discourse contained in the concept of an "ideal speech situation". The central idea is that any discourse directed at normative ends presupposes an ideal world of free, open, rational and inclusive communication which takes the values of all those participating into account, since this is what discourse about norms entails. Similarly, democratic deliberation about normative issues (for example, how children should be educated) assumes the possibility of ideal communication about these issues: "whereas the observed behaviour of an actor may or may not fit the paradigm of rational choice, the communicative behaviour of participants in deliberative practice always fits the paradigm to some degree, as long as the actor is participating in the kind of practice" (Habermas 2005, 40).

Of course, the demands placed on those involved are stringent (Ryfe 2005, 49, Thompson 2008 509). Because democratic participation in this sense prefigures and aspires towards the ideal it is transformative. It changes participants and is a learning process directed towards positive and pro-social ends.

These assumptions have provoked two kinds of response. First a large number of commentators, using methods from game theory, analysis of discourse and empirical investigation point out that there are strong reasons why participants in discourse may in practice lie, withhold information and outmanoeuvre or exclude inexperienced participants in debate, because it is in their interest to do so (Goodin 2008b, Ryfe 2005, 61, Stewart 2007, 1073-4). Much experience of group interaction fails to reflect the ideal conditions (Landa et al. 2009). From the Habermasian perspective, much democratised participation is pursued by actors whose objectives depart from the ideal commitments of open deliberation.

Secondly, those who take the idea of the transformative and pro-social aspects of democracy seriously have used both developmental psychology and studies of the experience of group interaction to examine whether changes in the desired direction occur. Rosenberg, building on the theories of Piaget and Vygotsky about moral learning, points to the importance of context and opportunities to learn in shaping democratic development, just as the growth of social and moral ideas in children is linked to environmental influences and opportunities. Differences in experience and development lead to differences in the capacity for deliberative interaction. "In sum, the social psychological and developmental psychological research suggest that individuals may be far less logical, rational and reasonable than deliberative democratic theory assumes...citizens differ in their capacity to construct arguments, provide justifications, take one another's point of view and reflect critically on their own or on the conventions to which they adhere" (2007, 347).

While these points challenge some of the more idealistic assumptions of the Habermasian approach, they also suggest that institutional frameworks should and can be structured in ways that provide opportunities for learning the skills and orientations necessary for successful deliberation (Rosenberg 2007, 59-60). These points lead to consideration of the circumstances that promote pro-social learning. One stream of work points out that much collective experience is counterproductive. Participation in civil society voluntary groups may lead to learning experiences which tell against equal sharing of and respect for a diversity of views and are not oriented towards any broader interest (Theiss-Morse and Hibbing 2005, 244). Detailed reviews of evidence conclude that direct democracy makes heavy demands on both participants (because it involves "a disturbance of everyday reasoning habits" Ryfe 2005, 56) and

institutions (because it requires high standards of openness, equality and respect for others (Thompson 2008, 512-3). These may not always be realised.

The experience of citizen juries (Smith and Wales 2000, Wakeford 2002, Gooberman-Hill et al. 2008, Doheny and O'Neill 2009) and democratic polling (Fishkin 2009, Jensen 2008, Renn 2008, ch 8) shows that individuals are able to make progress towards a situation in which the various approaches are considered respectfully in an open atmosphere, but that again the circumstances are of great importance. Inclusion of all the relevant interests is essential for an unbiased debate.

This discussion expands the notion of direct democracy as transformative and directs attention to the detail of institutional frameworks. Habermas starts out from pro-social norms as implicit in interaction. Further work stresses the potential diversity of norms, but also the potential for institutional shaping of norms. Nudge economics confronts the difficulties summed up in the first point, but does not offer the framework for normative learning suggested by the second. The collective interaction of democratised governance may, if participants are committed to including the full range of interests, and reconciling mutual differences and if they interact as equals in a context that encourages and enables them to do so.

The liberal individualist tradition

The Anglo-Saxon tradition in deliberative democracy also points to issues of circumstance and of institutional design. Here the basis is a more liberal and individual notion of citizen, rather than the social, educable and responsive model of the more European tradition. Individuals may choose to interact to resolve a common issue and serve their several interests. A major problem is that articulated by Olson (1965) and Hardin (1978) or earlier by Hobbes and many others: how is extended and trusting cooperation between individuals who have separate interests and every incentive to pursue their own ends against those of others, possible? This has led to a strong interest in work that examines such processes empirically, particularly Ostrom's research on collaborative management of common resources, the study of experimental games in which people negotiate sharing and real-life participation experiments.

Ostrom's analysis of a very large number of cases in which groups of individuals successfully manage common-pool resources (water rights, fishing stocks, pollution control) although pursuit of individual interest would speedily deplete the stock, points to a number of general rules. The most important are: clearly-defined boundaries for the resource system, proportional equivalence between benefits and costs, collective-choice arrangements, monitoring, graduated sanctions, conflict resolution mechanisms, non-interference by government and nested enterprises for resources that are parts of larger systems (Ostrom 2010b, 18). Ostrom starts out from rigorous individualist assumptions (*Governing the Commons*, 2005, starts out from game theory modelling of self-regarding behaviour).

She argues that external authorities cannot, given uncertainty about information and the risk of deficiencies, corruption and political influence in enforcement, guarantee to manage resources as well as individual actors. Individuals are capable of adapting to this situation and learning to manage the goods in a process in which group norms evolve. In this context, trust and the individual capacity to establish trustworthy reputations is crucial. External state intervention cannot supply this (2010a, 71). Her work moves from individual rational action to collective and sustainable normative frameworks.

Much of the experimental modelling of behaviour over shared resources corresponds (for reviews see Bowles et al., 2005, Camerer and Thaler 1995, Sally 1985). Here the emphasis is on games that involve the production of a shared resources, so designed that individuals may serve immediate individual interest by defecting from an agreement. How then can groups co-operate for a more distant common good? The research shows that in such games participants speedily evolve rules and sanctions to reduce the threat of defection and that individuals are prepared to forgo personal advantage to enforce sanctions (Gintis 2005, ch 1). Self-interested individuals can construct and maintain norms in the mutual interest, and tend to conform to them, as the social psychology discussed earlier shows.

Possible the most widely cited positive example of direct democracy is the Porto Alegre participatory budgeting experiment in Brazil. The success of this enterprise is widely attributed to its capacity to involve a broad range of citizens through neighbourhood groups in budgetary debates, so that the interests of all stake-holder groups are included, something in which it “stands apart from many other similar attempts” (Baicocchi 2001, 43, 64).

The Poverty Reduction Strategy Papers of the World Bank from 1999 onwards have emphasized widespread participation as a condition of aid (World Bank 2010). Many of the resulting initiatives are widely seen as unsuccessful through lack of engagement of groups on an equal footing across civil society. For example, the Neighbourhood Dialogue in Bolivia, failed to include all stakeholders, particularly women’s groups and indigenous peoples because the small business backed *Enlace* and church groups dominated consultation forums (Morrison and Singer 2007). Similarly, Habers (2007) shows how neighbourhood programmes in Mexico City excluded some of the less politicised groups, which vitiated their capacity to achieve democratic support in some areas. Aylet draws similar conclusions from the limited success of neighbourhood-based environmental initiatives in Durban (2010).

Further work in the UK draws together the experience of participation programmes in local government (Pratchett et al. 2009). The practical conclusion is that participation and engagement exercises must meet similar conditions for success: most importantly the various groups involved must feel they are taken seriously and have realistic opportunities to access relevant information and participate in effective debate, and they must feel that their participation makes a difference and achieves a responses. Differences in scale (Bochel et al. 2008) and the capacity of participants and local government (Somerville and Harris 2008, 76) erode these requirements and damage participation.

The Anglo-Saxon approach has been particularly concerned to study direct democracy and participation exercises empirically, in order to identify the conditions of success. A number of reviews point to four important factors: individuals must be equal in status within the groups and partake in a “respectful and constructive” discourse (Thompson 2008 507), discussion must be directed toward pro-social ends, all stake-holders must be involved (Renn 2008, ch 2) and the activity must be seen to achieve results (Stoker 2005, 96). The first three mirror the Habermasian condition, the fourth is a practical issues for their to be any point in participation. The two main traditions in this field differ in their assumptions about the social status and orientation of citizens, as Robinson Crusoes or social/political animals, and about their capacity to change. However, they arrive at similar positions by different routes: effective pro-social participation according to shared norms is possible but a great deal depends on the institutional framework within which it is conducted. Within the group of democratic deliberators relationships must be equal, open and respectful of diversity. In the relationship between the group and wider society all interests affected must be included and authorities must be responsive.

IV. Group psychology and decentralised governance

The democratisation and decentralisation activities discussed in government reform cover an enormous range. They have in common that they require individuals to take seriously, respond to and seek a stable settlement that will hold across the broad range of interests. In any exercise that moves beyond simple mass consultation, they must involve a smaller group deliberating on behalf of a larger group. Social and group psychology contributes findings relevant to understanding how groups relate to broader social context.

One well-established finding concerns group bias (Stoner 1961). Group membership and interaction tends to lead individuals to adopt a position that is more extreme than the mean of the previous independent positions of group members. This is typically explained by processes that reinforce a majority position and devalue that of a minority, a dynamic likely to iterate. Leadership is likely to fall to those whose position expresses the majority rather than the average viewpoint (Breakwell 2007). This point is developed in detail through analysis of jury decisions and group deliberation experiments by Sunstein to show how the influence of forceful individuals, the reinforcement of repeated evidence by like-minded individuals and the reticence of a minority to state their views tend to consolidate majority views. This becomes part of a sophisticated critique of the impact of widespread and rapid communication in the “information society” (for example, Sunstein 2006, ch.1).

These arguments are reinforced by more recent work showing how the experimental manipulation of the balance of group opinion can influence outcomes (for example, Levine et al. 2000). These points suggest that there may be limitations to the role of representative committees, deliberative groups and similar bodies in decentralised democracy, since their internal dynamic may move them towards less representative standpoints. A number of writers comment on mitigating processes. Thompson (2008) suggests that the structuring of groups in the deliberative polling experiments of Fishkin, so that opinion leaders have little opportunity to emerge, explains the way in which such groups appear able to represent and respond to broader social opinions (see also Renn 2008, 318-9). All the writers discussed emphasize the importance of ensuring that groups remain closely in touch with the interests they represent, and that they also have good access to information and contacts across broader social contexts. Further issues concern the extent to which individuals identify closely and exclusively with particular stake-holders or groups and the importance of promoting cross-cutting memberships of social groups and identities in deliberative bodies (Brown 2008).

Possibly the most important contribution to the theory of groups is that of Tajfel (Tajfel 1978, Tajfel and Turner 1981, see Brown 2008 for discussion). Tajfel was originally interested in psychological processes associated with racism and prejudice. With his associates, he developed Festinger’s original social comparison theory and in-group/out-group analyses (Sherif 1954) to analyse the impact of group membership and identity on behaviour. Categorisation is basic to conceptualising the world at any level above pure nominalism. “Categorisation [lies] at the heart of the modern social psychology of intergroup relationships” as a standard textbook states (Oakes 2001, ch. 1). Tajfel claims people categorise themselves as individuals through group membership and through differentiation from those categorised as members of other groups: “self-definition in a social context” (1978, 61). Social identity is bound up with a distinction between group members and non-members.

This approach, which has proved fruitful in the analysis of a whole range of social phenomena, including aggression, prejudice, identification and motivation, brings together three processes. The starting point is the conceptual need for social categorisation. Group identity contributes to one’s evaluation of oneself. This

then facilitates and requires inter-group comparisons which value one's own group against others (Tajfel and Turner 1979; see Brown, 2008, 311-5). Other members of one's group are similarly valued and this facilitates the construction of pro-social norms within the group.

This analysis provides a convenient explanation for the psychological processes that underpin the success of individuals with conflicting interests arriving at pro-social solutions in relation to the "Tragedy of the Commons" or in Gintis' stylised collective choice games discussed above. In managing common-pool resources or in the interactions of games, individuals self-categorise as a group. Their common identity reinforces the otherwise puzzling capacity to generate and maintain a solution across members. External interventions disrupt these group processes.

More recent research extends the arguments about group identity and categorisation. Postmes and colleagues (2005) bring together the work on internally focused and externally-focused processes in the construction of social groups. Tajfel's conception deals with how identity construction is based on self-categorisation as a group member against an external world. The internal group processes of validation through interaction with others more similar to oneself than members of society at large and reinforcement discussed earlier, will then further strengthen group identity. Experimental work supports this theory.

Zomeran incorporates emotional commitment into the account, showing how group membership can also generate and be reinforced by feelings of sympathy and trust (2008). Spears follows the move in psychological work (compare Gigerenzer) to interpret processes often understood to be widespread but irrational and damaging as in fact adaptive and efficient. He points out that group identification often serves group members' interests (2010). However while group identity may strengthen in-group pro-sociality, it is unlikely to support a broader, inclusive society-wide perspective (Dryzek and Braithwaite 2000, Brown 2008, 341-60).

Tajfel's theory explains the processes that enable the construction of the group norms necessary to promote equal, respectful and transparent interactions in theories of decentralised democracy. It does so at the cost of directing attention and commitment away from the wider social focus that is also essential if such public engagement processes are to enable a particular group to represent stake-holders across a larger community. It is for this reason that commentators such as Brown (2008, pp. 341-54) emphasize the importance of information about the external society and of cross-cutting group identities in their discussion.

Relevance to recent policy developments

These points reinforce some of the arguments developed in discussion of decentralised democracy. Processes within deliberating groups must be equal and open. The group must operate in a way that allows an inclusive and responsive approach to the community and reflect the concerns of a broader society. One implication is that the processes involved in free schooling and the policy stance it prefigures are unlikely to meet these conditions.

In the urban areas in which the vast majority of the population lives, individual schools take some children from a neighbourhood and not others. "Parents, almost universally..., have a strong preference for schools with high academic attainment" (Burgess et al. 2009, 33). Because most parents want roughly the

same things from schooling and because schools are funded in relation to their success in attracting students, schools compete directly. The activities of any one school affects the interests of those who are not included as stakeholders in a system which allows the parents of those actually attending a school a predominating say in its management.

The free schooling approach and comparable initiatives in social provision direct the attention of those involved to their own interests and facilitate the emergence of leadership systems that are likely to promote the reinforcement of self-regarding rather than pro-social concerns. In this context norms which serve the mutual interests of group members effectively are likely to be established and sanctioned, but any machinery for ensuring that these represent broader social concerns is lacking.

A number of commentators have analysed the history of attempts to establish more diverse and decentralised schooling systems in order to mobilise parental and community engagement and achieve greater public acceptability. The outcomes has been social sorting between schools irrespective of regulation of selection, equality of opportunity and equality of funding policies. This applies to recent research on academy and faith school policies (Ball 2008, Machin 2009), broader discussion of mechanisms of open enrolment (Burgess et al. 2005), analyses of area-based (Leech et al. 2003) and open-catchment (Gewirth et al. 1995) systems, broader systems of competition (Gibbons et al. 2008), assisted places in private schools (Whitty et al. 1998) and Nordic free schooling (Bohlmark et al. 2008, Allen, 2010). Conversely policies targeting resources according to deprivation measures by area or school have achieved real but still modest improvements in outcomes (Lupton et al. 2009, Figure 4.3). Effective extension of democracy through welfare state institutions requires the engagement of all stake-holders. This implies a system that includes the full range of interests. In education this would have to operate at a level above the individual school.

V. Conclusion: Psychology and the policy dilemma

The review of literatures on democratisation indicates that people are able to deliberate successfully in a public interest, but that it is necessary to ensure that the institutions through which participation takes place include all relevant interests and promote equal and mutually respectful interaction. Such interaction can have positive and sometimes transformative outcomes. The evidence from the psychology of group interactions reinforces these arguments: inclusion of all interests is necessary to limit the impact of group bias; equal participation can support pro-social group norms.

Work in both areas emphasizes the relationship between group and wider community. Only groups which include all interests equally are able to engage the full range of groups in democratisation initiatives; group psychology points to processes of group inclusion and exclusion which may generate norms within groups that devalue and ignore interests in wider society. In both cases institutional design is central.

One conclusion is that developments such as group-controlled free-schooling may reconcile the twin problems that currently face policy-makers: a focus on the immediate interests of the users on a particular school may make available new resources in management and finance. People are more inclined to support something in which they are directly involved. The approach risks undermining wider social interests because any one school is unlikely to include the full range of interests across an area, and the processes of exclusion may damage the interests it does not contain and undermine social acceptability.

This paper uses psychological work to examine the way in which group processes undermine the capacity of deliberating groups to take into account interests which they do not include. Because much psychological analysis derives from an individualism which is empirical rather than axiomatic, but parallels in some ways the liberal individualism that predominates in current social policy-making, individual-centred psychological insights have attracted attention. Other work in psychology indicates that human beings as social actors create, follow and modify norms and do so within the confines of social institutions which may be more or less inclusive. This has radical and challenging implications, because it points to the capacity of democratic decentralisation to exclude as well as include groups, and become engines of inequality as well as of democracy.

In general, human rights approaches risk creating a tension between the capacity of individuals and social groups to pursue their own interests and the ability of government to promote a broader and more inclusive settlement. Human rights are necessary to achieve effective democracy. They can also be defined and exercised in such a way as to create enclaves within society that limit opportunities to achieve broader democratic goals. If this conference is to develop a discourse for the future of Social Europe founded on human rights it must reserve a pre-eminent position for those democratic and political rights that made modern social provisions possible.

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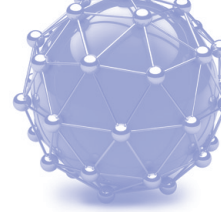
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The future of which welfare state?

The future of the welfare state will not be like its past

Abstract: When discussing the welfare state (WS), there are two different ideas: the WS as a regulative ideal and as a historical product. This confusion is indicative of a problem that arises when assessing the WS and that has led to its unconditional defence and to ignoring stability problems. The problems and pathologies of the welfare state are not proof of the impossibility of realising the principles (egalitarian or welfarist) more or less appropriately invoked by its defenders. In fact, the problems of the WS have much to do with its problems to achieve egalitarian goals with institutional designs, such as democracy and market competition, that generate citizens who are ignorant of their responsibilities, even of their demands. Any attempt to consider the welfare state – or something similar – as a normative ideal requires recognizing its problems (of sustainability, integration into the global economy, political power), reviewing all that is incompatible with the ideals on which it should be based and exploring possibilities of setting up institutions according to what is expected of citizens.

0. Two “models” of the welfare state

The WS appears to have become the straws the egalitarian left are catching at. Gone are the days when the left that was out of power despised it as a way of appeasing and concealing class conflicts and, consequently, of preserving the capitalist system (“maintaining harmony,” in the lexicon of James O’Connor (1973)), while the other left, the one that managed it for a long time, defended it without conviction, as if ashamed, as if feeling they were in collusion with the defenders of the ideas on the end of ideology and coinciding systems, authors accused – in some cases not without reason, as we discovered later – of being on the State Department’s payroll (Saunders, 2000). Now things have changed and suddenly the WS appears to be the ultimate, the only ultimate system, belonging to the left, at least to the left that still retains some egalitarian spirit. Of the other, the one that has embraced a thousand versions of communalism and nationalism, as if going back a couple of centuries, it would be better not to talk.

We have gone from unconditional disqualification to unconditional praise, unreservedly, buying the whole lot, without assessing the goods properly. Making a virtue of necessity is almost a custom belonging to

a tradition that never seems to get rid of its Hegelian, if not simply teleological, trends, where everything is confused and overlapping; logic and history, positive and normative. The WS has not been interpreted based on history, based on the “sound and fury, told by an idiot, signifying nothing”, as the result of a complex dynamic, of processes without purpose, but based on a script, a project that has been clearly anticipated in programmes comprising, as a *totum revolutum* as if they were the same, necessity, chance and goodness. In this context, that custom is manifested in the habit of speaking of a “European social model” when referring to the WS. The background of those expressions hides the confusion between two ideas that often circulate in social theory. A confusion that puts us on the track of important problems and that is not devoid of negative consequences when assessing them and, where appropriate, when demanding them: they ignore the real problems and defend indefensible aspects.

In a *theoretical regulatory* sense, we would speak of “model” as a regulative ideal, the way socialism was able for some time to build a way of organizing economic – and not only economic – life that inspired the political agendas of the parties that considered themselves socialist. The same interpretation in a narrower sense, is behind attempts to realize, to put into practice, theoretical results that are interesting from a certain point of view. The various models of “market socialism” would be typical examples (Ollaman, 1998; Bardhan, Roemer, 1993). Idealised market models that inspire public interventions aimed at creating perfect competition conditions, i.e. operating as targets and, at the same time, as criteria to assess real economies, would work in a similar way.

From a *theoretical reconstructive* point of view, model refers to the idealization of a segment of reality, i.e. the specification of the set of basic relations that describe the operation of a real system, in our case, a mode of organizing economic or social processes, such as, for example, when developing a model of feudalism or (of globalization). These are models that enable us to recognize a structure, the operation of which can be reviewed, but that do not act as a criterion for the foundations of political practices. There do not, to put it classically, inspire any social engineering. They are models or roadmaps rather than action plans. (Of course, one might wonder about the possibilities of survival in the present conditions, just as we wonder how long it will be possible to maintain a certain ecosystem if things continue in the present state, something which, incidentally, has been achieved, with great analytical and formal finesse in relation to the WS: (Hassler, Rodríguez Mora, Storesletten, Zilibotti, 2003: 87-ss)¹.

For what it’s worth, I would recommend reserving the WS notion for the first idea and leave terms like “European social model” for the other, as a unintentional result of diverse social and political processes: migration, labour struggles and political circumstances, including or, in any case as circumstantial responses – that may persist definitely – to certain political challenges, always within certain institutional frameworks. But we already know that, except in certain areas of economic theory, the scope for stipulating, for imposing

¹ In this sense, the above-mentioned distinction is rather conventional: a model that describes what things are like – the conditions under which they work – in a possible world, from a certain perspective can be understood as a way of reproducing – the conditions of – that possible world. An analysis of the conditions under which a system works, even pragmatically, a normative interpretation, a recommendation. We can say, for example, that if things go on as they are, as reproduced by a reconstructive model, a certain real system would not be able to survive and we should modify some of the conditions described (or, conversely, if we wish to return to a reality that has vanished, we will have to rebuild things in such a way as to achieve that end; if something can be done, of course: a model that describes how a giant asteroid hits the Earth would probably not be very useful from a practical standpoint. But these are reflections on the third decimal that does not affect the political aspect that interests me, the difference between positive reconstruction and idealized regulations).

a shared lexicon, are very limited and ultimately the meaning of words comes from their use and the common people, as Cervantes said. Therefore, with a feeling of resignation, let's deal with what I wanted to talk about, the thesis I want to support: The WS, even though it has been included in different policies, inspired in normative principles that are more or less clear – and in social and political demands – should not be seen as an ideal – a project – established *a priori* that we have to achieve. The WS is not a bridge or a clock. It is more like New Delhi or a medieval city than Brasilia or Dubai; if anything, a European city, with partial development plans, on a historical background.

Governments have responded, within institutional contexts, to different economic circumstances and social struggles. In many cases, they respond by not responding, knowing that the best is “do nothing and close the door to change”, among other reasons, due to the lessons learned – at least by Tocqueville (2004, 79, 225) – on account of the French Revolution, where, often, if you open a crack to a small change you end up in a short time having to face revolutionary waves, because once it is understood that there is a possibility that something may change the question almost immediately arises of why not another thousand changes, not to mention the “classic” reasons by Aristotle against democracy and that, now backed by the best economic theory, account for why democracy is more feared – unlikely – when there is more inequality: fear of the powerful that it may lead welfare claims, redistribution (Acemoglu, Robinson, 2005).

But sometimes they just try to offer any “solution” to challenges, without incurring major background changes in the institutional landscape, solutions that, over time, become part of the institutional landscape itself. This happened with the onset of social insurance in 1881, in Bismarck's Germany. And it is happening today also, when the political dynamics are imposed on any other consideration: despite the many criticisms to which it has been subjected in recent years, the WS is far from having experienced a decline (in fact, not even significant cuts in transfers and services have taken place: (Glyn 2005). In such cases, it is important not to confuse the result with what was intended. Addressing the result of actions – actions inspired on short-term circumstances – as if they were the objective of the actions would be to think that Louis XVI was asking for the French Revolution when he called the Estates General. I think the comparison is quite relevant, especially if we look at it from the other side: the French Revolution triggered what it triggered, lots of institutions we know today, an accelerated process without a precise programme, no planning, improvisation, in just a couple of months from June 20 to August 26, 1789. And the result was what we all know, and we do not have to believe in the “cunning of reason”, using the precise terms that Hegel coined precisely on account of that event. From one point of view, the different classifications of the WS can be understood as a way of recognising this fact: there is no model that inspired the political practices, but different historical paths that led to something in different ways (Esping-Andersen, 1996).

This does not mean that there have been several attempts to provide the WS with regulative justification (Goodin, 1986; Harris, 1987; Goodin, Mitchell, 2000), not without problems (Shapiro, 2007). But such attempts have been *a posteriori*. The WS has preceded its regulative justifications. In that sense we could very well talk about legitimising strategies, of retrospective moral engineering rather than social engineering (and, I would like to make clear, there is no negative assessment in this view; it is just temporal, the reasons will be found below). The appeal to social rights, one of the earliest and highest quality strategies sometimes cited, cannot be strictly understood to refer to the WS. We shall not spend a minute on tags that lack meaning and which are launched on the political market as purely electoral rhetoric, such as the third way or the new centre, to mention the most recent.

I think that if we want to understand the WS, it would be best to view it in relation to a social democracy system with considerable trade union support and with a vague egalitarian sensibility that, for several reasons, considered the implementation and sustainability of the institutional proposals of all versions of classical socialism very costly (Ovejero, 2007). The “response” will be based on two mechanisms: elections as a means of detecting preferences and the market as a means of economic coordination. It was hoped that this institutional design was sufficiently robust to deal with the identification of social demands and to respond to them. Their persistence is related to the stability of those conditions. But also with the political and social conditions on which they are based. In this sense, one can speak of two types of crisis: internal and conceptual, “because it can go no further”, in the same sense in which we talk about the crisis of an ecosystem due to the devastation of its most fundamental resources, i.e. when the conditions for reproduction are not met, in the way that, according to Marx, the contradiction between productive forces and production relations operated (or the falling tendency of the rate of profit) or, as some say, how real socialism collapsed; external and material, “a viable situation in which nobody is interested”, in the same sense as the passing of a fad or a habit that no one practices any more or that has no further function like, according to Marx, the class struggle under capitalism or like, according to many, including Tocqueville, when the French Revolution occurred because social support disappeared and became aggressive. Between one type and the other, there are external conditions, in the sense that an economic system, once widespread, may disappear due to the disappearance of the essential raw materials, in our case, to put it short, due to the globalization process, of which I will say very little.

I shall begin by reminding you that the operation of this model and the political horizon in which it took place: the failure of classical socialism and how the WS became the symbol of the left; a WS that had a negative beginning, as a sceptical translation of institutional proposals inherited from liberalism: all that could be, should be within the “market competition and democracy” pairing. The conviction that the WS is better understood from a historical point of view, as the transfer of more or less stable dynamics and processes, leads me to focus on the three aspects mentioned above. I shall first examine its internal-conceptual conditions of operation and what I consider an element of instability that has to do with regulatory discontinuity between the (good) citizen and the (better) consumer. Then I shall briefly comment on the external conditions, the economic landscape marked by the process that we inaccurately refer to as “globalization”. I shall then refer to external and material conditions, the political circumstances of its survival, the possibilities and provisions of the agents involved in its origin. By examining the change in political circumstances, I shall dwell on some changes in the nature of the interventions of the WS that, at an empirical level, may not be very important but they are for the theoretical reflection that supports them and that affect those circumstances, the political support. Finally, at a regulative level, and in light of what we have seen, I will contribute some considerations about the conditions of possibility of any WS idea once the regulatory model has been assumed. This, obviously, from a general perspective.

1. The welfare state in the tradition of the left

The social democrat defence of the WS began largely due to certain scepticism caused by problems of real socialism (Ovejero, 2007). To understand this, it is best to remember, briefly, the ideas that supported real socialism; intended as social engineering. The origin of this socialism is inseparable from the conviction that by eliminating the right to property and competition a co-operative arrangement would emerge, so that

the interests of each individual and the interests of everyone would march on in harmony, with generosity in economic tasks and with the will to participate in political tasks. The basis of that trust was an idea that had no guarantees in the Marxist tradition: in capitalist society, human relationships were distorted by the market, relations that appeared as an independent mechanism, regardless of the will of the people who were the main players, in such a way that social processes were imposed on individuals as a second nature. By contrast, in a communist society, that alienation between processes and their actors would disappear and the actors would recover the control over their destinies. Under these conditions, nothing would happen unless the people wanted it to happen. A lighter version of this thesis is limited to arguing that class differences are, besides the motor of history, the social demarcation line to which all others are reduced, the basic scenario of all conflicts. That amounted to stating that, once capitalist production relations, class differences had disappeared and the distortions had been eliminated, individuals would accept shared values and bring out “the best angels in their nature”. So, the problem of how to organise society would disappear once citizens participated in a common idea, when they had identical preferences that would allow them to determine priorities, i.e. assess situations, consider the challenges and establish the goals. Moreover, all this under the assumption, no less classical and on the presence of which we cannot emphasize enough, of unlimited abundance, unlimited development of productive forces, once the straitjacket of capitalist production relations had been swept away; relations that limited, among other things, social talents. But even with in the event of shortages, these excellent shared values and positive outlook would ensure that everyone would freely choose a piece without neglecting the needs of others.

Many are the difficulties involving this project, beginning with the unreal assumption of abundance. No less unreal is the communion of shared ideals, especially in societies where there is “the irreducible fact of pluralism”, i.e. the existence of significant discrepancies on how to live life together that are not simple epiphenomena of production relations. Differences in cultures, sex or age do not dissipate with the removal of economic inequalities. Although it is conceivable that, within a framework of democratic deliberation, ruled by criteria of rationality and impartiality, many discrepancies may be resolvable, there are broad areas in which the idea of a “correct” answer simply does not fit because there are several solutions; it is therefore reasonable to live with “incorrect” solutions or discrepancies that affect the very procedures of solving problems.

However, the major difficulties, if we want to understand the concerns that are at the root of social welfarism, are others. Even if citizens share the same values, the reproduction of social processes requires coordination that does not only depend on good or ill will. No doubt there are many problems related to the “lack of will.” Many of the difficulties related to collective action arise from the selfish or uncooperative nature – it is not now of interest to go into particulars (Elster, 2009) – of individuals, who are interested in the benefits but unwilling to take the hardships to obtain them. The problems of “motivation” of socialist economies we often connected with this fact: people are assured of results regardless of their contribution and they prefer not to collaborate to obtain them; the end result is that the common task was performed poorly or not performed, and the companies supplied distorted information about their productive potential (less than the real figures) and their needs (greater than real figures) to ensure the implementation of the plans; and individuals did the same in relation to their skills and their needs. It is true that motivation is more complex than that of the *homo oeconomicus*, selfish calculating individual, but when behaviour is sustained over time and referred to many people, one must count on the fact that “going your own way” is not an exception”.

But even with the best intentions and shared goals, problems derived from the institutional design, coordination problems, will arise. If at the end of a mass party, we all start sweep at the same time, we will

get in each other's way and we will only be redistributing the dirt. If a fire should break out in an altruistic community, disaster may not be triggered because everyone is trying to be the first to get out and thereby blocking each other, but it may very well occur when everyone is trying to let another pass and nobody is actually making a decision to get out. The passionate debate of the last century about the calculation of prices and market socialism (Hayek and Lange, firstly) was an exquisite intellectual recognition of this fact, the problem of finding, as it were, a socialist hand – invisible or visible –, a way of ensuring the coordination of social processes – and the relevant flow of information in the first place – to harmonize the objectives of each shared objective (Robinson, Nove, Nuti, 1972).

Ignorance of these circumstances, of the existence of differences in the ways of living that are not limited to differences of class, of complex motivations and mechanisms or processes that act regardless of the selfish nature or solidarity of the people, of problems agreeing on objectives, naturally leads to the *personalization of difficulties*: if problems arise, if things do not work, it is because the correct actions have not been taken, because there is no “revolutionary will”. The perpetual coming and going of revolutionary traditions among the “new man” and the repression, between anthropological optimism that requires superhuman morality, unconditional altruism and resignation that only relies on the penalties as an incentive system is no coincidence. Needless to say, there is an impossible paradox in the attempt to generate generosity through punishment, to make “good citizens” in re-education camps.

2. Social-democrat response and new interventions

The problems of the classical model are the source of two resigned types of scepticism which are the background to a social-democrat response that held a vague welfarist and egalitarian awareness and that has a lot to do with the operation of the WS: scepticism about individuals, regarding the possibility of a virtuous citizenry, committed by their actions to principles of justice, and a scepticism about the possibility of an economic coordination system capable of replacing the market. The first results in a resigned idea of democracy, the democracy of party competition (Schumpeter, 1970), functioning essentially as described by the economic theory of democracy (Downs, 1957): a system of competition between political parties seeking to meet the demands of voters without assuming civic willingness among politicians or the public. To put it in the classic words of Alexander Hamilton, public institutions are built under the sole assumption that “best security for the fidelity of mankind is to make their interests coincide with their duty” (*The Federalist Papers*, 72). The functioning of the political system is well-known. Competition between political parties to select – or punish – political elites through the votes of citizens who do not have to be informed or involved with the general interest. Political parties, if they want to govern, have to offer things that match the preferences of the greatest number of voters. Voters opt for projects that cater for their interests. The information collected by the system has to do with the interests (of the majority or of those who have a greater ability to make their voice heard), not impartial considerations of public interest or justice. The proposals put out by the parties seek to respond to “social needs” expressed in votes, which translate citizens’ interests; direct interests or those filtered through the “creators” of votes, lobbyists or opinion leaders.

The other type of scepticism, that concerning social coordination and economic processes, results in a qualified trust in the market. Its malfunction under certain conditions is not ignored (provision of public goods, externalities, economies of scale, intertemporal allocations...), but that does not detract from its

being considered the main system of allocation. The idea would be simply try to complete it – to intervene – where it is seen to fail, where it does not ensure the efficient allocation of resources. Efficiency is the statutory criterion that should govern WS operations, even if the said operations present different strategies, have different distributional effects and result in different consequences in terms of their effects on power relations between classes. Some, the classic ones, were, so to speak, of a macroeconomic nature, cyclical (i.e. just becoming less prominent, as can be seen by comparing any “Public Finance” manual from thirty years ago with recent texts, for example: (Leach, 2004)). The latest, of a micro-economic type, so to speak, are more ambiguous in their distributional effects. For example, any intervention opposing environmental externalities, may place some workers over others. This shift will have important WS policy implications, with respect to the disappearance of classical political support and to the regulative commitment, of the citizens with the WS and among citizens, once they see its compatibility with situations of acute social inequality. Let’s have a quick look at the change in the tone of the interventions.

In the first, those with egalitarian redistributive implications, the essential idea (Kalecki, Keynes) was that, given the higher propensity of the popular classes to consume, the best way to boost effective demand and, therefore, to ensure that no resources were unused (unemployment), was to redistribute income in favour of the poor: savings would translate into investment and growth would be guaranteed. Almost all the arguments of the early advocates of the WS pointed in the same direction: the production of certain public goods, anti-cyclical interventions or social expenditure aimed at mitigating social conflicts, required redistributive intervention as an *instrument* (or as a by-product). But, ultimately, redistribution would be justified on grounds of efficiency, not justice, even if the end result was a more equitable distribution.

Another strategy with re-distributional consequences, but from a microeconomic perspective (to continue with the classic and controversial distinction), crystallized in inspired interventions aimed at eliminating certain negative externalities (crime, social conflict, poor health...). Even now, the commitment to equality is the best instrument to achieve efficiency, but without, so to speak, targeting income levels directly, and, in that sense, social classes. Similar to these, other interventions, supported by recent research, which also advocated the redistribution in the name of efficiency, appeal to the consequences of the first, of equality on human capital. To the extent that it fosters a greater equality of opportunities, improves the quality of human resources, and thus makes it more likely that the management of public affairs (political and economic, as well as business) falls into the hands of better managers (Benabou, 2000)). It is an argument that should not be neglected given the questionable quality of political and economic elites selection mechanisms (among other reasons due to the problems of asymmetric information related to political markets (Calvert, 1986; Ferejhon, Kuklinski, 1990; Ovejero, 2002)).

Special mention should be given to the case for “paternalistic” intervention seeking to improve the selection conditions based on the recognition that there are many cases where agents are not in a position to process the information in order to make decisions. This happens when choosing savings, pension plans or mortgages: the parameters are many and complicated. In such cases, we usually get carried away by a number of ideas that lead us astray from rational behaviour, and end up behaving based on inertial, imitative rules, neglecting probabilistic considerations, overstating the present or unduly swayed by how we see the alternatives (Baron, 2000). The result is that our choices are far from optimal, even from the point of view the objective of the agents. The problem may even be more important, regardless of specific circumstances, because the very desire for a neutral framework when choosing is a chimera. Richard Thaler and Cass

Sunstein (2008), using a mental experiment, have displayed this difficulty. The way students consume in a refectory depends to a large extent on the distribution of the food. It is not the same if the desserts are displayed first than if the greens or spaghetti are first. Depending on the order, and we will always have to choose one, we will maximise the health of the students, the profit of the distributors, consumption time or any other aspect. Choice is conditioned by the framework of choice and no choice can dispense with a framework. It seems reasonable, in such circumstances, to arrange an intervention to help improve the conditions of choice, even to clarify preferences, and, for obvious reasons, it must be assumed that this intervention will benefit individuals with lower incomes, with more limited financial habits, lower levels of information and those who do not have professional advisers.

Finally, we have interventions with unpredictable redistributive effects, almost all related to classic market shortcomings. Overall, we can stress the presence, in the market, of important information asymmetries that lead to inefficiencies or even to the collapse of the market itself. Unlike what happened with previous formulations, these interventions (public institutions dedicated to inspecting products, guarantee systems for consumers, contract specification requirements, shaming offenders) are blind (neutral) from a distribution point of view. Although they are beneficial in a general sense, as they ensure the efficient allocation of resources, they do not benefit, *a priori*, specific segments of the population, certain social classes. Employers and workers of a certain sector may be adversely affected by government intervention and their interests may conflict with those of the rest of the population. Indeed, the distributional consequences of these interventions cannot be anticipated. It depends on each case. Sometimes, they may have egalitarian effects, as with interventions that seek to eliminate certain negative externalities (crime, social conflict, poor health...). But many times, that is not the case. Taxation to reduce consumption of polluting products falls on the poorest, those, who living in the outskirts of the city, spend a significant portion of their income on energy.

In any case, it is worth remembering that the market malfunction is not, on its own, an argument for public intervention. We are quite aware of some of the “shortcomings of the state”: problems in determining a collective goal, public goals, based on citizens’ preferences; a lack of credibility of government policies resulting in inefficiencies, largely as a result of having to meet the immediate demands of voters, the only ones that can win elections; problems related to the centralized nature of all political decisions and to the information that the State can obtain; perverse motivations of political agents (lobbyists, private incentives of the politicians that are moving in the opposite direction of public goals); problems related to motivation and information sharing, by bureaucracies, that can lead them to invent tasks to obtain larger budgets. On this, as I said, there is abundant and solid literature. I wanted to list these issues to do justice to the literature, and because I will not mention them again when I address the problems of the WS.

In any case, from the previous review I would like to emphasize the decreasing importance, at least in literature, of interventions that rely on distribution, something that is not devoid of political consequences for the WS. This does not mean, of course, that the social-democracy has lost its egalitarian sensitivity; a sensitivity, we must not forget, that put arguments of efficiency at the forefront, but that little or much it may have and no longer finds support, echoes or pressures in the disadvantaged. We are not, so to speak, in the times of the great trade unions, those which, for example, led to theories such as neo-corporatism ((Schmitter, Lehbruch, 1979). The changes have more to do with thousands of other things apart from those mentioned here (e.g. changes in production processes), but the ones I am interested in now are those that are related to changes in (justification of) WS interventions.

3. The stability of the WS

But the biggest problem, in my opinion, has to do with another essential aspect of the WS. The model described above operates under a kind of waterproof scenario, *watertight compartments*, according to which the egalitarian goals are not affected by individual motivations. Although individuals act in the market directly and in politics, derivatively, according to their particular interests, this would not endanger the welfarist goals. A classic example: a cake can be distributed equally among “altruistic” people who, caring for the others, freely pick a piece, but also among selfish people, if the rule is set that the person who cuts the pieces is the last to choose (Rawls, 1971). Although citizens only serve their own interests, institutions should be arranged in such a way that their provisions did not wreck the desired objectives. The little virtue of citizens would not affect welfare and equality objectives.

Is the *watertight compartment* idea realistic? Can a passive, irresponsible and demanding citizenship sustain the WS? We do not seem to have reasons to answer that question with a “yes”; rather the contrary; there are indications that suggest that the stability of the WS is compromised. The WS requires, for its proper functioning, among other things, a number of civic provisions that it is not capable of producing; more precisely, its own dynamic triggers processes that penalize those provisions. Self-interest and opportunistic behaviours, in general the type of behaviour encouraged by the market, as several experimental studies have shown, act as a cognitive *reducing element*: market relations encourage individuals to compare (and accept the exchange) between different objects, including rights and standards; the competitive environment encourages the justification of behaviour (immoral) that if the same people we faced with the same choices, they would not be willing to simplify or to accept; activities (paid) happen to have an intrinsic value to instrumental considerations, and thus motivation and, often, efficiency are affected (Lane, 1991). In short, there is no way to constrain behaviours encouraged by the market, to limit them to those scenarios – economic, in general – where strategies are dominant.

The ambivalence – if not mere inconsistency – of citizens in their dealings with the state is well known (Taylor-Gooby, 1995). The unwillingness to participate in public affairs and the idea of taxes as an extortion coexist with the permanent demands for services and protection, to satisfy one’s demands without addressing their long-term consequences (environmental, budget, health) or their origins, or whether the problems to be solved are not the result of misfortune (disability, family poverty) but the consequence of decisions taken independently (unprofitable investments, pathological consumption, diseases or injuries associated with risky behaviours). The same background of civic and personal irresponsibility is found in people’s perception of welfare aid. Even though everyone demands it, they also see it as a means of exclusion between citizens, particularly the “poor” receivers. These do not receive benefits as citizens, simply for being part of the political community or to promote their autonomy in choosing their life projects, but because they share certain traits (minorities, elderly, single mothers, unemployed) that become stigmas; this lead other citizens to see them as parasites or “exploiters” and those receiving aid to see that aid as a humiliation, as an affront to their self-esteem, to their minority status, or as blackmail (unemployed) that limits their autonomy.

In perfect harmony with the irresponsible citizen-consumer, the WS assistance system is always involved *ex post*. Individuals do not have a secure income to freely choose and accept the consequences of their choices, income *ex ante*, but, so to speak, receive support to compensate for the consequences of their mistakes. Circumstances that, in the short term, lead to civic indifference and, in the medium term, to an unstoppable growth in demands from – and imbalances of – the WS. All this on a background where groups of citizens

organise themselves into coalitions of interest, pressure groups (*lobbies*), to ensure that their demands are met before those of others, regardless of the justice of their requirements, which results in positional wars without end, in an endless race in which everyone is afraid to be left behind.

These claims for rights, which does not come with any civic responsibilities, duties, has a foundation and a trigger mechanism. The foundation: the childishness of citizen-consumers, who, reduced to seeking satisfaction, do not see their lives as their responsibility. The mechanism: the political competition system that encourages a culture of promises to citizens, for whom politics is like a delegation of responsibilities and a manifestation of some preferences that do not support or require justification. And one result is, among others, that the most responsible politicians want to remove the most important political problems of the democratic agenda from the political competition, those that really deal with the continuity of political communities, through “State Agreements”, or entrusting the solution to “independent” institutions that have not been democratically legitimized, such as central banks).

The difficulties mentioned above have been perceived in different ways. For example, Nanna Kindal (2006) has summarized them in three normative tensions. a) social rights versus responsibilities; b) paternalism versus autonomy, c) family responsibilities versus individual responsibility. Now, I would like to highlight another perspective, that points to the pathological consequences for the functioning of the WS, its instability. Let's recall some ways in which this is displayed:

- a) The forward flight of the budget. The absence of responsibility for preferences in a framework of fiscal laxity, encourages the demand for distributive benefits (subsidies to certain industries, investment in certain regions...) by organized citizens or minority political segments with influence (groups with crucial votes grouped by territory or a single target). Demands to which politicians will agree while they may dilute the costs in the community without resistance. The increase in expenditure is the only way to simultaneously satisfy everyone, in particular, all those who are able to organize distributional coalitions, sectorally. Therefore, demands that will be addressed will not be those based on the best reasons, but those that come with the greatest bargaining power; small groups, with organizational capacity, clear objectives and resources for coordination costs. The military-industrial complex is a good example. (Buchanan, 1965; Tollison, 1982). A circumstance that encourages the reproduction of the mechanism in an endless competition for demands and pressures. Moreover: the fact that the demands considered are not the fairest, but those that can be put forward best, inhibits citizens when making claims, as they know that nobody has to justify their preferences or feel responsible for them. And they also have to anticipate others, the reasons for which are no better.
- b) The difficulties in solving “market failures”. Many of these failures stem from the inability to specify the contracts, the availability of reliable information on what is produced and under what conditions, and they may be mitigated because of the rules (so-called *nice values*: commitment, loyalty, reputation, trust, honour, reciprocity) that ensure efficiency in the coordination of economic and social processes in general. Stated in a negative manner: a low level of trust requires more expensive, more detailed contracts and more (impossible) monitoring to ensure they are implemented. However, in virtue of the nature of interactions that characterize it (ephemeral, with low entry and exit costs, impersonal), the market simplifies the motivations required to function socially and, therefore, eliminates the *nice values*: anonymous relations make reputation irrelevant; low entry and exit costs reduce the formation of (sub)groups (group selection in biological terms) where shared values proliferate; the absence of

segmentation eliminates recognizable treatment, repeated interaction and, with it, the generation of commitment or honour; undifferentiated meetings raise the costs of acquiring information about the honesty of others and, in turn, makes it very uninteresting; sanctions based on prices eliminate the need for sanctions based on reputation, trust or generosity (Bowles, 1998). In these circumstances, and given the willingness to extend the strategies (selfish) from one scenario or institutional framework to another, the persistence of the constraints is assured.

- c) The problems of implementing public policies. Public interventions are easier when there is cooperation from the citizens: citizens provide information, make the implementation more or less costly and accept or do not accept the final result. They would hardly take place if people considered them with suspicion or indifference, because they are not seen as based on considerations of justice, but on the ability to influence. In this sense, civic contribution helps solve two types of problems: *a)* information, as long as citizens provide better information and make decisions based on better information (Elkin, Soltan, 1999); *b)* confidence, which “cheapens” the costs of interventions (Warren, 1999). We also have some evidence here that such are things. Various economic experiments show that, concerning public benefits, an incentive-compatible mechanism that seeks to tie the selfish interests of individuals to obtaining public benefits, has a worse outcome than behaviour guided by principles of justice. (Frolich, Oppenheimer, 1995).

But it is in the context of the globalization where the “civic” problems of the WS acquire particular gravity.

4. Globalization

We must now dedicate at least a few minutes to one of the processes that is most often referred to when talking about the WS crisis. I will only mention areas where the debate has developed, without going beyond, due to time constraints and lack of competence, and because, to be honest, this is one of the fields in which there is very little accurate literature, starting with the very idea of globalization.

The argument that the globalization process poses a threat to the WS leads to various interpretations. According to the first, the WS can only function in self-centred economies, with few external dependencies. A thesis that, in a sense, seems to be inevitably tautological. Whatever its plausibility, the Keynesian-inspired model mentioned above was couched in terms of a closed economy. Simply put, they were the conditions that ensured the validity of what was stated, namely, that redistribution in favour of the poor would improve the allocation (which does not mean you cannot be valid in other conditions). A variant of this interpretation, more general and not less tautological, regards the conditions of replication. In a closed economy, by definition, you cannot consume more than what is produced. Under these conditions, any resources allocated to social services require the reduction of personal consumption and, hence, the redistribution of the capacity of consumption through the tax system. In that sense, the level of the WS depends on the willingness of citizens to provide political support, to assume it. It is advisable, in any case, whether to support the thesis or to criticize it, not to ignore that it depends on the nature – closed – of the model and, especially, that its interest is mainly theoretical, virtual if you will, as regards operating conditions, not real. But those are the conditions of validity of our instruments, those which, for example,

allow us to recognize our theory describe how things are when we progress at limited speed compared to the speed of light, in the case of Newtonian treatment, or whenever we find very large dimensions of action with respect to Planck's constant, in the case of classical mechanics. One thing are the limitations of other theories and another those of reality. In the world of theory, there are closed or static models, but the world of theory is not the real world. It is good to remember these essentials to know where to target blame and so as not to go, in our conclusions, beyond what the premises allow. I must stress that I am not saying that the WS will not have problems in an open economy; I believe it has and I shall talk about that now; I only want to say that the theories mentioned are not followed, that, they are not dealt with.

The second interpretation turns its attention to real economies, to empiricism (not forgetting that, as mentioned in the note the distinction may be – and is – rather conventional. Behind an empirical judgement that states that “process X (globalization, for example) makes a WS impossible”, there is a counterfactual opinion: “If process X did not occur, *ceteris paribus*, the WS would be possible”). According to this, the social pacts on which the WS was built have been undermined by several processes associated with globalization. Suffice to mention three, of different nature. First: the ability of large corporations to escape national laws, tax laws given the absence of an international tax system, and labour laws, the rights won by workers: high salaries, working hours, child labour, health and safety... Less is collected and, furthermore, no State may unilaterally establish regulations: if they are established, companies will go next door. Second: the relationship observed between the openness of societies to migration processes and a more limited will of their citizens to pay taxes; as if people thought: “if the beneficiaries are “our people” we are more willing to contribute” (Alesina, Glaeser, Sacerdote, 2001). Of course, this is not an argument in favour of cultural homogeneity.

Third: the WS has a poor relationship with globalization processes, although, in this case, as it were, the chain of causation is reversed: the WS is an obstacle to addressing the political challenges of a global dimension, the most important that we will have to face in coming years, including, most fundamentally, environmental problems, aggravated by the appearance of emerging economies that have arisen thanks to globalization process. Competitive democracy is only sensitive to the demands of present citizens. Citizens, with short-sighted and short-term preferences, would penalize any politician that would require the population to make an effort to preserve the balances that would ensure the long-term interests of the species. Hence, as stated above, more and more proposals for excluding “serious” political problems from the political debate, or rather, from electoral competition are being heard. The WS is subject to national interests and to sustained increases in demand and these are going in a direction that is contrary to the interests of all.

But the problems of the WS are not only connected with civic instability (with the unreal “watertight compartments” assumption) and the globalization process.

5. Political defeats

The survival of the WS depends, in an immediate sense, on the persistence of certain circumstances that have long contributed to its maintenance. If, as noted above, the WS has to be understood less as an ideal than a decanting of political and social processes that translate the correlation of forces and regulations, potentials and the desire to act, changing such circumstances will, obviously, have consequences. An example of the former, modifying the composition of forces, is the loss of bargaining power of those social sectors

that could most benefit from the WS, or at least those who were its traditional supporters. When answering the question about the willingness of employees to accept to maintain the WS, we cannot ignore the capacity to impose social priorities, their weaker political force, as a result, among other things, of various changes in the workplace, inter-related changes: in the production process, including mainly the disappearance of very large industrial plants, in labour negotiation models (more decentralised); in the role of trade unions, now purely defensive when not testimonial.

Examples of the latter, changes in regulatory requirements, relate very largely to new interventions in the WS, described above; those grounded in externalities or information, distributively much more ambiguous than at other times. On the one hand we can see a lesser willingness to compromise with a WS whose immediate benefits are not seen and, on the other hand, there is greater difficulty for reciprocal behaviour to flourish with increasing social polarization. As inequality deepens, citizens are unlikely to sit in the “same boat”: they will not be “objectively”, because they share different experiences and do not face the same challenges, or “subjectively” because they will hardly display any willingness to contribute and take responsibility in favour of fellow citizens with whom they have little in common concerning their problems and aspirations (Tocqueville warned of the impossibility of democratic deliberation and collective action when inequalities are acute (2004, 247-8)). Not only that. Arguably, the most privileged among them will opt for private systems (education, health) and, therefore, be reluctant to fund something that they will not be using, with the added effect that they will cease to act as powerful, educated critics, supervising public services, which usually results in a lower quality of the said services (Hirschman, 1970) and, ultimately, to a deepening of the gulf between them.

In any event, circumstances such as these are relevant to understand whether the inertia exist for the maintenance of the WS and, in that sense, whether they are related to the second idea of model mentioned. But the possibility of persevering, tells us nothing about the feasibility or desirability of the WS. It may well be that inertia contribute to prolonging a long agony. Moreover, the complexity of the circumstances vetoes any categorical conclusion (and in that sense, the “crisis” of the socialist countries is instructive).

Another thing is whether it is worth thinking of an interesting normative survival, closer to the first idea of model and that, if the pessimistic diagnosis about the impossibility of the long-term feasibility of the WS is confirmed, it would require the model to be redesigned. I will just draw some coordinates, consistent with the above on the instability of the WS.

6. Conditions that will make the WS possible

The journey so far, and in particular the WS’s stability problems, produce some valuable lessons for any foundational proposals of the WS, once its status as a normative model has been accepted. Very generally, and I am not abandoning the terrain of the most obvious, they concern the design of institutions and the willingness of citizens, including their most basic motivations, their “instincts of justice”, and their normative motivations, their “views of justice”. It would also be necessary to deal with the political conditions, the territory where ideas join forces and interests, but here, I will not say anything beyond what has already been pointed out, not forgetting that such conditions are not independent, obviously, from regulations, institutions (to cite an example: in a situation where there is no work, if there is no unemployment benefit, it is unlikely that workers will be willing to embark on joint action).

Arguably, the sustainability of any “new” WS depends largely on the willingness of citizens to accept responsibility for maintaining it. In the absence of international institutions with real powers, including tax powers, i.e. once it is assumed that large corporations cannot be counted on – either because of their ability to escape taxes, either because, even if they pay taxes, their contribution is not important – the survival of the WS depends largely on the willingness of potential beneficiaries to behave according to principles of reciprocity between each other, and assume the interests of future generations, the continuity of the institutional framework, as if it were their own. As Glyn says: “The fundamental question is whether it is possible to persuade employees to accept to pay more taxes so that the WS can survive” (Glyn, 2006: 163).

Addressing this last question requires answering another question first: Do such rules exist among citizens? (Elster, 2009). And this, in turn, leads to another: Are the institutions sensitive to such provisions? (Kolm, Yhtier, 2006). This last question is relevant because it may well be that the institutions are insensitive to – or that they penalize – good behaviour, that the objectives are not achieved because there is no way of channelling civic vocations in the right direction. An institution that ignores the voice of the citizens, their opinions on what seems right and what not, just leaves one option – going home; more comfortable but less informative, because it tells us nothing about why people feel detached (Hirschman, 1970).

The question of whether such requirements exist among the public has no easy answer. There are several dimensions involved here. Two fundamentally. The first, basic, anthropological in the strongest sense, the balance of which is not inevitably pessimistic, refers to what was once called “instincts of justice.” And here the empirical results show that “we have a predisposition to cooperate with others, to penalize those who violate the rules of cooperation, with personal costs, even if we do not expect the costs to be offset by others or later” (Gintis, Bowles, Boyd, Fehr, 2005: 8). We are not “naturally selfish”. Not because we are “naturally” anything, but because we are “naturally” much more. The assumption that humans are purely selfish is false, as false as the idea that they are purely altruistic. Perhaps the best proof is that not even the market would be possible if we were all only selfish. The market operates under a regulative and institutional setting that encourages fulfilling agreements, recognising legitimate exchanges, the acceptance of property, the acceptance of certain distribution criteria as fair, the consideration of some forms of competition as unsuitable (Schultz, 2001). In short, for all we know, all we can conclude is that one must think of other behaviours, other basic provisions, in addition to selfishness. It is enough not to ignore this possibility in order to consider other institutional possibilities. (Moreover, we should be cautious when interpreting the results of economic psychology, almost exclusively focused on displaying that we are not selfish. This is normal after so many years of the psychological coarseness of economists, limited to *homo oeconomicus*, but I do not think it would be difficult to prove, like thousands of experiments, that we often go our own ways. Besides, when policies are made, especially economic policies, many feel it is sensible to assume that people respond to higher interest rates by applying for fewer loans, that they resist new taxes and complain about falling wages).

The second dimension relates to assessment criteria of citizens, their guiding principles, their views of justice. Here, too, the results suggest that the image of individuals who are insensitive to considerations of justice and brazenly selfish is not true. European citizens acknowledge the existence of gross inequalities in their societies, they believe that such inequalities are unfair and that it is up to the public authorities to mitigate them (Förster, Mira d’Ercole, 2005). Halfway between motivations and opinions, we find other results that tell us of their welfare and their ideas about their welfare. It appears that the welfare of individuals is directly related to equality, rather than income levels. A result that should not be neglected when weighing

the arguments – allegedly Rawlsian – that insist that inequality, to the point that it encourages a productive vocation of the richest and most talented, also benefits those with fewer resources, who would obtain higher income levels in absolute terms than in an egalitarian framework. However, surveys show that, whether the – debatable – beneficial effect of inequality is true or not, citizens prefer an egalitarian society (Alesina, Di Tella, MacCulloch, 2002). (The results of what has been called the economics of happiness, all are doubts, also show that while happiness increases with income beyond a given level, that increase is not significant (in rich countries) and that unemployment is one of the major sources of unhappiness (Layard, 2004, Luigino, Porta, 2005). The same can be said, to extend the range of variables to ponder, when it comes to welfare; we would have to include the observed positive relationship between hours of work and dissatisfaction with life (Alesina, E. Glaeser, B Sacerdote, 2002). In short, what people judge as well-being is not directly related with higher levels of income and has to do with a level playing field (which, it is conceivable, in turn, leads to reciprocity, the willingness to engage in tasks that benefit us all).

I shall now continue, to conclude, to another dimension, to the rules, to institutions. Do they display any sensitivity to encourage these provisions? Are they capable of rescuing civil provisions and being vigilant against less public ones? In principle, that does not seem to be the case. As mentioned, our institutions have been designed based on pessimistic anthropological assumptions: individuals never seek public interest and only display an opportunistic behaviour (Goodin, 1996; Brennan, Hamlin, 2000). This is the case of the market, of the invisible hand and the *homo oeconomicus*, and also of our competitive democracies. The institutions that supporting the WS operate under a pattern of widespread distrust in the possibility of virtue: “bad behaviour” is punished and “good behaviour” is not given an opportunity. The basic aspect is a lack of public vocation by citizens and this assumption is confirmed by the apparent indifference of citizens display, without considering the hypothesis that perhaps that indifference is merely the rational response from those who know that the institutions do not take their views into consideration. It is irrational to talk when you know that nobody is paying any attention.

Faced with this “pattern of mistrust”, we should be thinking of designing institutions that, while penalizing bad behaviour, also contemplate the possibility of virtuous behaviour; institutions that can operate with limited public provisions, but that are also capable of recognizing and encouraging virtue. Very briefly, they would have to focus on two principles: a) *principle of realism of virtue*: the institutions would have to be designed assuming that individuals do not seek the public interest in itself. This is what is inspired by the WS institutions. b) *Principle of the possibility of virtue*: the institutions would have to be designed in such a way that they are sensitive to the civil disposition of individuals. In this case, the scenarios would have to be built assuming the possibility – and the culture – of active responsibility (autonomy, common sense) of the actors (Boyens, 1998; Goodin, 1996). The principle of the possibility of virtue leads to the designing of institutions that are sensitive to responsibility, autonomy, practical views and the reasoned justification of decisions.

7. To conclude

The considerations of the last paragraph should be interpreted carefully. We have not attempted to provide a “solution” for the WS, among other reasons, because of what we mentioned at the beginning. The WS is not a social engineering project, but “the remains of all shipwrecks”, as a poet said: the combination

of a series of social processes, of conflicts of interest, that end up leading to a certain redistribution of the economy and power, based on the background of an institutional framework in which competitive democracy would enable the identification of collective demands and the market, meanwhile, would obtain the resources and, through intervention, when appropriate, cater for them in the best way possible. We have seen that the assumptions on which it is built and its own political dynamics do not ensure its survival. That does not mean that the WS will disappear overnight. Although the dynamics at the origin of the WS may disappear, the result will continue: the institution, in the way adaptive configurations survive that no longer meet any function. That's not always bad, on the contrary, it is very good, this institutionalization makes agreements credible: a specific policy, which changes from one day to another, is not the same as a right (to vote, for example) enshrined in generations, but forever. Once constituted, the WS is carried along by the inexorable logic of self-sustainability of any institution, whether or not justified; something that subjects adapt to and, with their behaviour, contribute to anticipating the behaviour of others. But we must learn to distinguish what is defensible of that legacy and what isn't, and what can be defended differently but better than how it has been defended so far.

In any case, we can question the conditions of stability of certain institutions that have emerged in connection with the WS. And, in this sense, some may be useful, if they can be balanced, if they are not understood as what they are not. Of course, if things were different, everything would be different; if, for example, citizens were altruistic or Kantian and institutions responsive to their reasons, we would have fewer problems, even in the case of the WS: citizens would not demand silly things and they would be willing to contribute what they consider fair, which would also be easier for the simple reason that they would perceive that resources are not misused.

But as we have seen, these are not the only problems; we cannot ignore the pathologies of their own system or the unmanageable implications of globalization. The final counterfactual considerations have been brought here for the sole purpose of showing that, as things stand today – so very different from what is conjectured in the last section – the sustainability of the WS is unlikely. A conclusion that, after all, is not surprising.

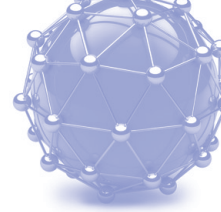
In any case, we must also take other opinions seriously: if the WS cannot be understood as the final crystallization of an ideal, and that is perfectly compatible with the reactive nature of most aspects in its defence, with that “better to remain as we are” recognizable in some of the rougher statements, neither must we take its crisis as proof of the impossibility of the realization of the principles (egalitarian or welfarist) invoked, more or less appropriately, by its defenders. I think it is best to segregate the different fields, recover, when needed, the lexicon of the ideology, of the socialist ideology, egalitarian, democratic, whatever we want to call it, and, in any case, seek the precision of projects in specific proposals, something that inevitably requires detailed exploration by researchers.

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The future of the social state

1. Some preliminary considerations

The proposal I uphold is the end of the welfare state, the replacement of this form of state for another: the market-state, a term I have taken from Bobbitt (Bobbitt, 2002). It is therefore meaningless to speak of the future of the welfare state. The material bases that supported the welfare state have disappeared and, both the political and social subjects, linked to the industrial conflict, and the relations between the public powers and society have changed substantially.

Certain aspects have continued to exist; the State's social policies and economic performance occupy an important role in the market-state, but their significance has changed substantially.

In order to try to explain my proposal I must start from a characterisation of the social state; on that basis the rupture of the integrative model set up by this type of state will be affirmed.

1.1. On the social state

Despite the time elapsed since the first contributions on the crisis of the welfare state (Rossanvallon, 1981; O'Connor, 1981), the doctrine has not provided in-depth studies on the effects of the major transformations registered over the last two decades on this form of government. Perhaps the problem is that, from a constitutionalist point of view, no social state theory has been constructed, in part because the very "form of state" concept is viewed with distrust in the constitutional legal culture. Thus, the social state has undergone a piecemeal approach, linked to state intervention in social protection, or relativized, by characterizing it as a constitutional principle that is expressed with different intensities at different times and that is genetically presented as a malleable concept (Lopez Guerra, 1980: 171-91; Aragón Reyes, 1995: 121-41). In the absence of a sufficiently shared understanding, any reflection on the social state suffers. Therefore, the starting point should be a conceptual approach.

The first distinction to be borne in mind is derived from the different approach that political science and sociology adopt in relation to constitutionalism. The social state and the welfare state (sociological and

political science concept) do not mean the same, the latter is seen as public social protection and its failure lies in this approach. Giannini, noted the difficulty in defining the social state from this perspective, and displayed the futility of the concept itself, given the reductionist implications evoked by the single dimension of public social protection as the central axis of its characterization (Giannini 1977: 139-50). The proposal to define the form of state that arose and consolidated after world war two as a “Multiclass state”, is intended to base the characterization of the social state on the integration of work (Maestro Buelga, 2002, a). Social protection mechanisms, especially social rights, should be inserted in this context. The integration of work as opposed to class exclusion that defined the liberal state, as a Single-class state. Integration was divided into a dual economic and political dimension. The former became evident in two modes through the market and through public intervention. Although we will focus on economic integration mainly, political integration was linked to the democratisation of the liberal state (voting and political association), to the political-constitutional acknowledgement of social agents and to the new conception of politics, of political decision-making, expressed by political science and sociology as corporatism or neo-corporatism (Schmitter, 1974: 85-131). Economic integration requires some further considerations.

Firstly, it establishes a new relationship between the market and public powers in the economy, introducing what could be described as the “social link to the economic system” (Maestro Buelga 2002 b: 35-111). Economic intervention is legitimate precisely because of this link, around which the social state’s economy is conceptually constituted.

The guarantee of a standard level of social welfare was not tied exclusively to public social protection, to social rights, but rested on the said social link. This incorporated a distributive logic in the functioning of the market. Salaries were no longer conceived solely as a counter to the profit of the capital and became part of the circuit of aggregate demand and of wealth creation and economic growth. The legal-constitutional mechanisms that activated the social link to the economy appear in the regulations, which linked the operation of the system to the satisfying of social needs, and in the social rights, which articulated the participation of labour in the economic wealth created. Unionization and strikes, as well as rights to confrontation, and collective bargaining as a right that standardised distribution through the market justified this distributive dimension of the social link. This distribution was completed by a labour market concept aimed at strengthening work as a political element and enhancing its political and social centrality. The protection of labour, articulated in comparative law by various formulas, tended to reinforce a conflictual power that was able to activate distribution through the market.

Public economic interventions not only enabled a broad context of growth that favoured distribution, but linked it to this aspect. The role of the instruments of intervention: the tax system, public enterprise, public services..., assumed that structural logic of the social state. Distribution was not remitted to public mechanisms alone, but became part of the market. Consequently, the market not only lost its autonomy, a matter theoretically concluded from ordoliberalist positions (Di Nella, 1999: 171-228), but became a market governed politically based on the principle of a social link to the economy.

Public intervention in social protection issues complements economic integration through the market, the functioning of the economic system, and becomes part of the virtuous conception of distribution that, in the overall functioning of the economy, will be adopted by these mechanisms. Social protection was not seen as an added economic cost of production, but as part of the demand. The constitutionalization of public social protection is achieved through social rights, which, being a component of the social state, visually the most characteristic, cannot be limited to them.

Social benefit rights, in a social state, are of a complex nature, which can be seen in their double aspect: protective and conflictual. The former, although a weak guarantee, is derived from its constitutional nature and from the regulatory efficiency of the constitution. Tutelage techniques have not been sufficient to ensure a level of protection and the positions of the most favourable doctrines have been received without much enthusiasm by constitutional jurisprudence. This is especially true of the Spanish Constitutional Court. The conflictual dimension relates to the distributive nature of social rights; it is expressed legally by formulas that materialise based on the availability of the content of these rights by the legislative and regulatory powers. The reason for the constitutional weakness of social rights is precisely their connection with distribution and their link to the market. From the point of view of case law, in comparative law, the clause reserving possible rights and the distinction between conditioned and unconditioned rights, articulate the availability of the content of these rights. Normatively, art. 53.3 of our Constitution, expresses this same idea.

There is no technical reason to support the different nature of social benefit rights from other constitutional rights, the different constitutional *status* they acquire is linked to the compromissary nature of the welfare state. Although, in the end, Forsthoff seems to have triumphed (Forsthoff, 1973) in the debate on the nature of the “social state” clause in the German constitution.

The constitutional weakness of social benefit rights is particularly pronounced at present with the rupture of the social state, to the extent that its conflictual character prevails over its protective nature, destroying the precarious balance founded by social constitutionalism.

1.2. A methodological comment

The proposal of my intervention on the breakdown of the social state and its replacement by another form of state: the market-state, requires certain considerations in order to overcome the contradiction with the dictates of the Constitution. Our Constitution is based on the tradition of social constitutionalism, which appeared after the Second World War; Article 1.1 is illuminating in this regard. Although, it is true that certain aspects can be seen that would enable us to define the Spanish Constitution as a constitution of the crisis, hence of the transition (Maestro Buelga, 2002 a: 152-7). This is not the place to study this question in detail, so we will briefly justify our position.

Since the 1990s, a number of changes have materialized that are radically opposed to the contents that characterized a social state. The effect is profound, not just a quantitative review based on opportunity, to the extent that we are talking about the breakdown of the form of state. The new contents that define the market-state express the breakdown with the formal constitution in place and the emergence of a new material constitution. The proposal by Mortati (Mortati, 1941), resolves the contradiction between the constitutional contents of our constitution and reality. The constitutional regulation of the contents of the social state began to recede in the wake of the new material constitution of the state-market, which imposes its effective regulations. By making the legal-constitutional aspect more complicated it contributes to European integration. The treaties, from the founding treaties to the present one in force (the Lisbon Treaty), incorporate contents, essentially constitutional, which are opposed to social constitutionalism and are characterized by a strong market centrality. This affects all European law by imposing an inverse relationship to that established in the social state in the relationship between market and social requirements. The coexistence of two opposing models was possible only until the intensification of European integration,

as defined in the Maastricht Treaty. This marked the end of the independence of the economic and social policies of the States.

“The European constitution”, by imposing the contents of the market-state has resolved the contradiction between the formal constitutions of many Member States, based on social states, and the material constitution of the market-state.

As we have already mentioned, this is not the time for a detailed analysis of the methodological issues involved in this proposal, but it is necessary to outline them to explain the subsequent discourse. This, despite the awareness of the controversial nature of the said positions.

From this perspective, the debate on the future of the social state is no longer of any significance; it is an exhausted debate, as this is a form of state replaced by another: the market-state. It is impossible to retrieve the logic of the social state in the current constitutional moment except as a proposal to recover the role of distribution and management of the market in response to the crisis, as this requires in-depth considerations from the point of view of constitutionalism.

2. Brief reference to the market-state

Claiming the breakdown of the social state requires looking into the contents of the material constitution of the new form of state. Any consideration on the market state must inevitably be based on references to the social state. The contents of the new form of state are established in opposition to the latter.

The first approach, which is part of our proposal, to the definition of the material constitution of the breakdown of the social state is that it dissolves the social ties to the economic system that social constitutionalism had established. It leads to the remercantilization of the State, hence the term “market-state” literally reflects the new state-society relationship established in this phase.

Unlike the liberal state, where the material constitution was hidden, now, the subordination to the demands of the global market becomes visible in the state model. Remercantilization means placing the market at the centre of the state, its unconditional operation, and link public activities to the protection of the market, to its tutelage.

As opposed to the integration of labour, which was a strong constitutional subject in the social state, it is now expelled. Now, it loses its ability to co-determine the integration of conflict and its composition. Therefore, the link to the social interests of the economic system, which revolved around the integration of labour (full employment as an objective of economic policy, social protection and ensuring general welfare) disappears, it loses its ability to legitimize public intervention in the economy. It is aimed at protecting the autonomy of the market and the promotion of the accumulation of capital.

The economic constitution, which was the core of the material constitution of the social state, from which both the system of rights and the organisation of state activities were defined, expresses this breakdown. The apparent persistence of social elements in the new order hides a substantially different meaning, redirected to the realm of legitimacy. However much one wishes to say that economic interests are not considered mainstream values, in the sense that they influence the economic constitution, they are critical to defining the overall project. The economic constitution defined the material constitution of the

social state, in the sense that it determined the whole project of this form of government. What is really novel, what identified the social state, are the changes that were introduced in this field. The relationship between power and society is built on the end of the separation of these areas founded by the economic constitution of social constitutionalism. Therefore, the new economic constitution is the starting point to define the new form of state and its material constitution.

We will focus on five issues to highlight the changes that determine the emergence of the market-state.

2.1. Market governance versus the subordination of the public powers to the market

We have deliberately formulated the question in these terms because the economic governance issue has emerged as a key issue due to the crisis. We are aware that the phrase “market governance” suggests the control of the market in a way that does not correspond to the relationship established in the social state. Rather than market governance, strictly speaking, the economic constitution of the social state established mechanisms that limited the market with a view to achieving politically defined social objectives, which sanctioned the end of its autonomy. The market, in social constitutionalism, is a constrained market; its operation contrasts with the social bond that diminishes the rules of competition and profit. Instruments of intervention: from indicative planning to the public sector, they expressed the primacy of social ties and limited the operation of the market on the principle of compatibility and subordination of private profit and competition rules to this link. The market-state reverses this relationship, it establishes the economic link to the social element and its interests. The determining factor of public action is the market and its protection and promotion become the legitimisation of economic intervention. The result is the abandonment of the intervention mechanisms created by the economic constitution of the social state.

2.2. Intervention versus regulation

There is obviously no sense in stating that the market-state does not intervene in the economy. The old liberal principle of the separation between the political and economic spheres, which guaranteed the independence and the prevalence of the market, have been excluded from the economic constitution of the market-state; however, the meaning of intervention is radically different. We should, although contrasting these two concepts seems excessive, distinguish between two types of intervention: that which seeks to constrain the market and that which aims to guarantee its operation. The logic of each form is different. Therefore it is worth pausing at this distinction, to avoid a formal continuity from hiding the extent of the changes introduced.

When we use the term, *intervention* we refer to the forms of intervention characteristic of the social state, those that constrained the market, while *regulation* internalizes a model that is heir to the principles of the Freiburg school. We have indicated that the Ordoliberalists had buried the myth of market self-sufficiency and independence. The natural aspect of the market is replaced by an awareness of its artificial nature, its political origins and the necessary intervention to ensure its existence. The Anglo-Saxon economic ideas, free from the complex theoretical construction of this school, had, in fact, reached similar consequences developing antitrust regulations, as a form of market protection. What underlies these proposals is that the market needs of public support to survive, but that intervention is not intended to constrain it but to ensure

it operates according to its laws. The protection of competition becomes the axis that controls regulation, the counter-cyclical activity and social intervention are subordinate to this fundamental objective and do not condition the market. The ordoliberal proposal has been collected theoretically in the “regulatory state” formula (Majone and La Spina, 2000), which is becoming the paradigm that articulates the market-public power relationship within the market-state. Certainly, the tutelage of competition does not exhaust the objectives of regulation; we only have to observe the current anti-crisis intervention imposed by the EU, but they all try to launch the operation of the market in accordance with their laws or to restore conditions to avoid distortions in its operation. Ultimately, they respond to the same logic.

2.3. The end of market distribution

Faced with the way distribution adopted in the social state, the market-state recovers the liberal interpretation, one-dimensional, of wages as expenditure, which introduces a contradictory relationship with profit and the market. The Ricardian conception of labour payment, regains the influence that had been banished in the social state that clearly marked the end of the economic integration of labour. The market no longer performs social wealth redistribution functions, and the regulatory mechanisms, rights of social conflict, collective agreements... are unable to regain the functions they had in relation to social constitutionalism. They persist but are confined to a field of weak resistance, they do not operate generating redistributive effects. Moreover, the market state introduces a conflictive relationship with these rights, a relationship of subordination and exclusion. The sentences of the ECJ in the Laval and Viking cases, among others, illustrate the deterioration and mutation of rights that previously contributed to redistribution. The integration of wage demand and distribution in the circuit is replaced by private debts that allow people to maintain levels of consumption that are necessary for growth. Some literature on the crisis (Bellofiore and Halevi, 2010; Fumagalli, 2009:99-124) has highlighted the role of credit and private debt, as a new form of accumulation that expropriates labour income, generating an investment in distribution in favour of the capital. These views of the crisis show the transition to a model that is openly breaking away from the social state. The reforms of the labour markets in the Western world are an example of this trait.

2.4. Public social protection

The change in the form of state manifests itself in public social protection. Obviously this is maintained, preserving, from the point of view of public expenditure, a clear quantitative relevance. However, statistical logic, cannot hide the transformation caused in social protection by the market-state, in parallel with what has been mentioned in relation to distribution in the market. It is advisable to introduce two discourses in relation to this issue. One on the features that public protection acquires in the market-state and another on the impact of these changes in social rights.

Regarding the former, the distributive dimension is replaced by the legitimizing dimension, in its action against exclusion, in accordance with the purpose of the integration of labour. The loss of the protective intensity of public social protection systems (Maestro Buelga and Garcia Herrera, 1999:62-4) and the commodification of the same, display that social protection is now seen primarily as a cost of production (Jessop, 2000:95-125), thus establishing a contradiction between protection and market. The decrease in the

intensity of protection and its commodification are displayed differently depending on the different sectors, but is clearly affirmed as a trend.

If the reality of the fading of protective intensity can be explained itself, the affirmation of commodification may seem less obvious. The principle, on pensions, self-financing, that supports the discourse on the crisis of the system incorporates a commercial logic in relation to protection that is complemented by the widespread provision of protection as a field of the market. Sociological literature coincides in pointing out the progressive transfer of risk and protection to private individuals as an increasingly consolidated feature of social protection (Hacker, 2006) distorting the social protection features that were acquired in the social state.

With regard to social rights, the emphasis on the conflictual dimension of the transition to the new form of state has occurred; by weakening the protective aspect, it has brought about their deconstitutionalization (Maestro Buelga, 2006 a: 63-90; Cantaro, 2006: 91-13). Earlier, we said that Forthoff had finally won, distorting the nature of social rights, genuine contribution of social constitutionalism, which marked a shift in the conception of rights constructed by liberal constitutionalism. The regulatory-constitutional effects of the state social rights system due to the European economic constitution and to changes imposed by the new material constitution of the market-state increases the political availability of rights placing them, in fact, at a sub-constitutional level, that can be seen legally in the imposition of a subordinate compatibility with the market.

3. On the European social model

It seems that any reference to the future of the social state cannot do without a reference to the “European social model”, not only because the contents of the social state are conditioned by European integration, especially at this stage, but because the “European social model” has become an alternative formula that covers up the dismantling of the social systems of core EU countries. Certainly, in the EU law, a definition of the social model is missing; this is a political term. The attempt to include it in the Treaties, during the preparation of the failed Constitutional Treaty, was unsuccessful and the attempt was abandoned in the Lisbon Treaty. Its inclusion in EU primary law would have given rise to a regulatory possibility, frankly weak, of introducing it in the comparison and composition of principles of European constitutionalism, but the “European social model” has not gone beyond the political threshold.

In any case, it is advisable to try to approach its contents. Actually, the term is intended to take on the prestige of the European social states of Union members prior to the extension of 2004. Its contents appeared linked to the recent historical tradition of the recent EU-15, but lacked the contents derived from EU law. And fulfilled a legitimising function of the new order that was imposed by European law. From the point of view of models, the difficult to define “European social model” has been opposed to the social state (Streeck, 2000: 3-32), defined by the term: competitive solidarity. The contrast between the models illustrates how it is not based on the logic of the social state but on its break-up.

It is difficult to talk about the European social model in view of the diversity of situations between Member States (Scharpf, 2002), especially after the recent enlargements, since the incorporation of the countries that formerly belonged to real socialist world introduces a model that is substantially different from the model linked to the social state. Making the issue more complicated helps the institutions of the

Union to concentrate their references on the social model to demands for its modernisation. As it has not been defined, demanding its modernization is not only a paradox, but seems to allude to the reform of what remains of the protection systems created in the EU-15 until the 1980s. The “European social model” is based on overcoming the remnants of the welfare state, setting out the political contradiction between protection and market.

The regulatory references that European institutions mention when referring to the European model relate to the expansion of competencies in social policy that have arisen since the Maastricht Treaty, in particular in relation to the employment policy introduced in Amsterdam. (Conclusions of the Presidency of the Council of Nice in December, 2000). The new elements that the Lisbon Treaty has contributed: the introduction of the “highly competitive social market economy” formula (Art.3.3 of the consolidated version of the Lisbon Treaty) and the introduction of the CFREU in the Treaty does not solve the contradiction between the “European social model” and the social state (Maestro Buelga 2006 b, 2008 and 2010). The political definitions introduced by the Council on the proposals for the failed Lisbon agenda, specified in the conclusions of the Barcelona Council in March 2002, do not present anything new with respect to the points already made. In fact, we could say that the greatest political contribution of European institutions to the “European social model” consists in the concept of flexicurity, linked to the repeated demands for reform of the labour markets in Member States. The proposed settlement between labour market flexibility and employment security for workers is based on specific European experiences: the Danish and Dutch, hardly transferable to other countries. Flexicurity, as defined by the Commission (see document COM (2007) 359 final) and as implemented, shifts the emphasis to the flexibility of labour markets without protection. Intervention is limited to training and promoting employability. This has justified the response to flexicurity, which has progressed from the apparent goodness suggested by this formula to another closer to reality: flexicurity as flexploitation (Gray, 2004).

The “European social model” cannot be taken as a formula of continuity, of adaptation of the social state to enable its survival; on the contrary, it sanctions the market-state social model, as opposed to the tradition of social constitutionalism (Maestro Buelga, 2006 b: 7-44).

4. Some thoughts on the crisis

Obviously, I not intended to propose an interpretation of the crisis; that would be going beyond the purpose of this paper, but it would be advisable to establish certain facts that will be the basis of the following sections.

The first is that the crisis, which I believe is of a systemic nature, displays an accumulation model, developed over the last two decades, based on the deepening of inequality. Wages fell during the said period as a requirement to improve profits, establishing a contradictory relationship concerning the role they played in the social state.

Economically, inequality is now a need to accumulate that leads to: a) a fall in the living standards of the population. Over the last thirty years, wages have fallen significantly if compared to capital based revenue. b) The review of welfare systems, which have been weakened as the result of abandoning their distribution facet. c) The abandonment of full employment as an objective of the system and job insecurity.

Financialisation operated in this context, shifting the risk and protection from the public sphere to the private sphere. The mechanism was based on private debt which had to grow to tackle inequality. While private debt made it possible to absorb significant financial resources (wages) that went into the financial circuits, establishing the new financial capitalism accumulation model.

The crisis reveals the social unsustainability of the accumulation model conceived by the market state. This unsustainability demands, due to the crisis, the redistribution of wealth. If the social state provided a response to this issue, the crisis re-opened it; it re-proposes the relationship between private profit and social distribution, but the responses to the crisis affect the continuation of the model.

The second is that the crisis has highlighted the market's inability to act as a social and economic regulator. It has re-opened the debate on the political governance of the market, linking it to the former issue. Beyond the grand claims of the first moments of the crisis predicting the end of the market, the exit policies only introduce residual corrections and waive the governance of the market. The responses to the crisis have led to the political recovery of the market by restoring the model that gave rise to the crisis. Faced with these two issues, we must confront any discourse on the future of the social state.

5. Crisis, redistribution and European Union

The crisis has become a key field of analysis for the issue at hand. Beyond the regulatory discourse, there should be a physical verification of the asserted conflict between Community law and social redistribution. Without being exhaustive, we shall refer to two documents. The first is the “European Economic Recovery Plan” (CON (2008) 800 final) prepared by the Commission in late November 2008 and, the second is the communication from the Commission “Europe 2020. A strategy for smart, sustainable and inclusive growth” (COM (2010) 2020) from March 2010, once the Treaty of Lisbon had come into force.

The EU tackled the first moments of the crisis with a strategy that has been defined as the “reverse distribution Keynesianism” formula. The social effects of the crises were added to the radical asymmetry caused by subsidies to the banks. Interventions aimed at maintaining the economic activity (Keynesianism) have indirect effects on distribution and only narrowly alleviate the effects of the crisis. Moreover, the recovery of fiscal discipline, as a key principle of the economic policy introduced in the second part of the crisis, emphasized the reverse distribution radically conditioning the social policies of States for the future.

The metaphor of the relationship between social distribution and the EU, at present, is Greece. The pressure on welfare systems and labour markets in member countries illustrates the tension between social justice and market in the crisis. Budgetary discipline acts as an disciplining argument in relation to the withdrawal of the social state, to decreased social policies, imposed by the European management of the economic recovery. But this goes further, it directly affects the wages that are subject to direct intervention in this reverse distribution. The crisis produced a sort of wage expropriation, transferring it to the capital and, therefore, increasing inequality in relation to distribution.

The crisis had opened the debate on economic governance, considered as the recovery from market intervention, and distribution. Issues that should be used to assess the responses of the public powers, to the extent that the crisis itself was the result of the market paradigm imposed by the economic

constitutionalism of recent decades. The first was the assumption aimed at reintroducing the social link in the market, recovering a principle of the economic constitution of the social state found in many member states (implicitly connected with shared constitutional traditions). The second sought to correct the effects of policies pursued in the process of dismantling the social state: The transfer of social risks to citizens and families, as a strategy for the privatisation of welfare. The restoration of the role of the public powers in ensuring general welfare. This recovery was required by the delegitimising effects caused by the radical asymmetry of reverse distribution caused by the aid given to the financial markets.

The economic recovery plan does not include any references to distribution or to maintaining social welfare. They indirectly refer to the social effects of the crisis as a reflection of the sustainability of economic activity. The financial and bank rescue measures, together with suggested tax measures based on the reduction of taxes, confirm the reverse distribution programme. Besides, the regulatory framework, referred to in the Plan, is the Stability and Growth Pact, that establishes that the economic stimulus budget measures must be reversible, imposing a return to the discipline once the most acute moments of the crisis are over. Similarly, the Lisbon Agenda, now buried as an unsuccessful experience, acts as a framework for intervention. In this sense, the appeal to structural reforms and improved competitiveness are set as objectives to be linked to interventions to stimulate demand. This brief reference to the recovery plan confirms the marginality of the social objectives included in it and the continuity of the social model concept.

It is more interesting as project for the future defining the economic strategy over the next decade, the Europe 2020 proposed by the Commission, replacing the Lisbon agenda. At least formally, it addresses the two issues mentioned: economic governance and the social dimension. The outline contained in the subtitle of the proposal reveals its inspiration: intelligent growth implies insisting on innovation, sustainable refers to energy efficiency and renewable energies and integrating means, in its own words, “give prominence to people through high employment levels, investing in skills, fighting poverty and modernising labour markets and social protection systems”.

The bases for overcoming the crisis, as the first stage of the Agenda 2020, are: financial reform, the recovery of budgetary discipline (“consolidation of public finances”) and economic coordination linked to the previous element. If we provide a summarised description of social intervention and economic governance, they are limited to the following.

Social intervention is defined based on two “flagship initiatives”: new skills and jobs and the European anti-poverty platform. The first initiative rediscovers the paradigm of flexicurity, employability, as the intervention of social policies in reforming labour markets. The flexicurity debate has revealed that the emphasis is on flexibility rather than security. The demand for flexibility has led to the weakening of labour protection, while training has only generated a mere reflection of policies seeking an increase in technological competitiveness. It is insisting on a failed strategy that is characterised by insecurity. Flexicurity is increasingly a management paradigm of the labour market; the idea of flexicurity as flexploitation is closer to reality than some of the proactive approaches of the labour law doctrine. The second, the Platform against poverty implies pinpointing distribution in the fight against social exclusion, acting on the margins of the system. Distribution does not operate as a form of protection of general welfare, rather in situations when there is a risk of exclusion, in extreme situations. Distribution as a means of social assistance within the framework of transferring social risk to citizens and their families. The European economic and social policy strategy upholds the material contradiction between market and social integration.

The reference to economic governance, which appeared on the lips of European leaders, has been embodied in the phrase “stronger governance.” What is the scope of this formula? The Commission document does not innovate anything in terms of economic governance, as could not be otherwise in view of the regulatory provisions of the Treaty governing the Functioning of the Union. But more importantly, following the logic of the treaties, economic management appears to be a mystification of sanitary measures for the preservation of macroeconomic balances and fiscal discipline with footnotes referring to objectives related to the EU 2020 proposal. The high point of discipline and the lack of European instruments of economic governance (budget) depreciate the intention of introducing economic governance. The “new” instruments are the reports prepared by each State relating to compliance with the SGP and Europe 2020 objectives. The establishment of specific recommendations aimed at given States and deadlines for compliance and the threat of “warning” the defaulting State, under art. 121.4 of the Treaty on the Functioning of the EU. With these innovations, the reference to “strong governance” or to economic governance seems empty of content, purely naive. The regulatory framework, the paper of the commission reminds us, is defined by art. 126 (formerly 104) of regulation 1466/97, which reflects the commitments of the SGP and the BEPGs in art 121. In other words, the previous outline has been repeated; the one we qualified with the formula of “weak governance and strong control” that ensures the unconditioned functioning of the market, focusing intervention on discipline and macroeconomic rationalisation. The Union’s strategies for the future continue to ignore the demands of the crisis: market governance and distribution, confirming the material contradiction with relation to social integration. However, the Europe 2020 proposal has been instantly overshadowed by the responses to the emergency situation caused by the effects of government deficits and the sovereign debt issues. The Greek metaphor has spread and is affecting increasingly significant core elements of the Union: United Kingdom, Spain, Ireland, Portugal, Italy and Greece are the first that need to apply “brutal adjustments”. However, except Greece, the situation of the others is not as a result of fiscal and budgetary corruption. They simply express the proposed solution to the crisis proposed by the EU. The Greek metaphor is not primarily an emergency situation, but a strategy. The Greek metaphor displaces Europe 2020, stripping it of all rhetorical support, placing fiscal discipline and reverse distribution as core elements.

6. The Treaty of Lisbon: a failed treaty

The Treaty of Lisbon came into force within the context of the crisis caused by the operation of the financial markets but its scope is undoubtedly greater.

Constitutionalism must respond to the crisis in three dimensions: as constitutionalism of distribution, constitutionalism of governance and constitutionalism of nature. It is true that the first two issues had shaped the constitutional core of the Second post-war period; from this perspective, the crisis proposes once again, brings to the fore, content driven out by the material constitution of the post-social State (market-state) and imposed by Community law. The third features, from a non-market perspective, the protection of nature as a guarantee of human survival. Both issues, distribution and stronger environmental protection strengthen the policies that confront the market, they reject the subordination of the market to the economy imposed by the material constitution affirmed in recent decades. It is therefore necessary to confront the European economic constitution with the requirements for the crisis. An economic constitution that, in the case of European law, takes on a central concept that overcomes the objections to the legality of its use.

The regulatory instruments incorporated in the Treaty are typical of the pre-crisis period, aimed at managing a capital accumulation model that had been consolidated over the previous two decades and that, now, has shown signs of fatigue. The Lisbon Treaty remains oblivious to the crisis; it represents continuity in key decisions that is contrary to the solutions that the crisis requires. Its concept of social integration is, as in the founding treaties, linked to the market, confining it to a subaltern, functional compatibility with the market, on which the regulatory contradiction between economy and distribution is built. Lisbon, by placing the market at the core of European law, entrusting it with the provision of social needs, establishes a horizontal subsidiarity in this field that confines distribution to marginal levels. Both the central nature of the market, as the founding principle that has remained unchanged in the Treaty of Lisbon, and the regulation of social policies and social rights embrace this principle: social intervention that is exceptional, limited and based on the functioning of the market. Only that this principle has not be articulated in a contradictory manner in European law; it is, as we have already said, its core element.

On the other hand, we would like to make some concluding remarks about social policy and social rights in the Treaty of Lisbon. It sanctions a fragmentation of social intervention that conceptually distorts the category of social rights. This question is even more topical to the extent that the ruling by the German Constitutional Court on the Treaty of Lisbon has given rise to reactions on the deepening of the asymmetrical nature of European law, sanctioning the difficulty of building a single European project.

The influence of the ruling on the social dimension would come from the view upheld by the Constitutional Court of the German constitutional identity as a limit to integration. Articles 249 and 252 explicitly seem to introduce the social dimension of this identity; “may not be realised in such a way that the Member States do not retain sufficient room for the political formation of the economic, cultural and social circumstances of life.” (249); “the fundamental fiscal decisions on public revenue and public expenditure, with the latter being particularly motivated, inter alia, by social policy considerations” (252). Considering, as some doctrines have pointed out, the social state as a constitutional identity to be preserved, given the contradiction between European law (Treaty of Lisbon) and the social state, places the relationship between legal systems in a new light, other than that which led to the tensions in the 1970s. The social dimension of integration would emerge as an important aspect of integration in the inter-legal-system relationship. This interpretation seems obstinate and hardly probable, not because it cannot to formally implemented, but because it is contradicted by reality. The contradiction between the principles of the social state and European law has been mentioned repeatedly but it has not been raised as a contradiction that compromises integration as the core element of a possible conflict within the framework of the counter limits. The question, in my opinion, should be approached methodologically; a concept already abandoned by prevailing doctrine should be considered: the material constitution. The material constitution of the market-state has imposed itself over the formal constitutionalism of the social state in EU Member States; European law, through the principle of supremacy, has only provided a vehicle for the transformation of social constitutionalism, restoring normal relations between the material constitution of the post-social State (market-state) and European law.

Another issue is European fragmentation as a result of asymmetries now enhanced by inter-legal tensions introduced by the ruling of the German Constitutional Court. The first consideration should be that social fragmentation, social conditions, are genetic signals of Community law since its foundation. The Treaty of Rome, less responsive from a social point of view than previous treaties, ECSC and EURATOM, was preceded by a discussion on this matter. The Spaak report sanctioned the inequality of social situations in the

integration process. The treatment received in the founding treaties, as we have mentioned, was to support the operation of the market which should have tended to homogenize the social situation in the States. The European project entrusted this objective to the market, in the understanding that an economic integration policy was possible within a context of fragmentation, dehomogenization, of the States' social conditions. Market and social fragmentation are, not only compatible, but require each other, to the extent that they introduce social concurrence between legal systems, intensifying the principle of concurrence in Community law. The synergy between the principle of "mutual recognition", the social competition between legal systems and the relationship between fundamental economic freedoms and rights, especially social rights, is based on this genetic identity of the community project, upheld by the Treaties, including the Lisbon Treaty. The official recognition of social asymmetry became clearest during the recent enlargements, since 2004. These led to the integration with an express waiver of actions in the field of social cohesion and confirmed the rupture with the past history of European construction. The economic, social and constitutional asymmetry was naturally integrated in the European project.

The key moment when social rights were recognised in European law represented by the CFREU, confirms this asymmetry. This is much more serious because, in the case of rights, fragmentation, asymmetry, conceptually clashes with the former that cannot withstand, in their legal field, any geographic diversity related to the definition of contents. They either are or are not. We should make some comments on social rights in the CFREU: the recognition of a social right to the provision of services introduces national fragmentation in determining the contents, which makes it difficult to recognize this category in European law. The field of social right to services and benefits in the Charter is shaped by the rights relating to protection against unjustified dismissal, Safety and Welfare, the protection of health and access to services of general economic interest. In these areas, the treaties do not establish powers for the Union or do so under a special regime and establishing intervention conditions that are difficult to implement.

Protection in unfair dismissal cases is subject to the laws and practices of each state, as EU law has only acted marginally in this field. Social Security and Social Assistance are based on the same formula and the content of health protection and access to services depends exclusively on national laws.

The return of the Charter to the Functioning Treaty, to the policies, with the distortion this involves concerning rights, imposes stringent conditions for intervention especially in the two concurrent jurisdictions that come within the field of dismissal protection and Social Security (art. 153.1 c) d)). Firstly, intervention is weak: support and complement. Secondly, action in these matters is subject to a special procedure: the primacy of the Council and unanimity. Having seen the Union's policy regarding the flexibility of labour markets and the procedural requirements laid down, the near future will surely be characterised by inaction. But furthermore, in relation to Social Security, the Treaty of Lisbon sets a national reserve in favour of the States "The provisions adopted pursuant to this article shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof" (art. 153.4), thus sterilizing the right, which has only a relational content from the point of view of European law.

If the contents of rights are defined by national legislation, since the Charter does not extend the powers of the Union, social rights, in Community law, are fragmented rights, asymmetrical, certifying the territorial differentiation of subjects. From a regulatory point of view, the fundamental legal constitutional space certifies this asymmetry, which is conceptually opposed to fundamental rights.

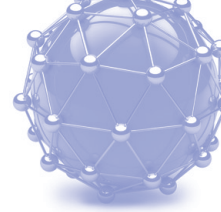
European law sanctions the unity in the market and social asymmetry, as part of the project, because the model of economic integration is not in question.

The three demands that the crisis poses for European integration are generally accepted and have been identified as priorities for intervention in the Union's proposals, the problem lies in how they are addressed, from which perspective. This is none other than the continuity of the project sanctioned in the Treaty of Lisbon. This treaty does not introduce any changes in terms of the non-existent economic governance or of controlling public finances and maintains the tension between distribution and market, present since the formation of the EEC; not even the Bill of Rights has led to any substantial change in this issue. Thus, the Lisbon Treaty, incapable of meeting these demands, can be seen as a failed Treaty, which introduces a regulatory framework that cannot be used to implement a response to the contradiction between European law and social justice noted above.

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Citizenship, property, freedom and material existence

“The right to property is limited, like all others, by the obligation to respect the rights of others.”

(Maximilien Robespierre, 1793)

1. Introduction

People are not free if their material existence is not guaranteed, i.e. if they depend on others on a daily basis to live. While it is true that poverty implies being unable to consume necessary goods, difficulties in integrating into the community and a greater likelihood to engage in certain social pathologies, poverty also embodies the dependence on the eagerness of others; it leads to a fall in self-esteem. That self-esteem without which, according to Rawls (1971: §67), nothing seems to be worth doing; a lack of self-esteem which prevents a person from undertaking certain projects, even when they may be of value for the person, because that person no longer has the strength to pursue them; poverty means, ultimately, social isolation.

If one starts from the premise, as is the case of a person in favour of republican liberty, that equality and freedom are not two mutually independent goals; if one agrees with the fact that whoever is in a position of great inequality with respect to others cannot be free, if one starts from the conviction that social inequalities are a real impediment to the freedom of many millions of people, then it becomes clear that the poor cannot be free. And conversely: the lack of freedom of the poor, the need they have to ask others for permission on a daily basis to survive, in turn, feeds a subsequent increase in inequality.

If X depends on Y *on daily basis to survive*, Y will not recognize any equality (as reciprocity to freedom) with respect to X because this dependence makes X a subject of the rights of others, a *alieni iuris*, i.e. someone who has been “alienated”. And a poor man is always an *alieni iuris* due to the lack of the material bases for existence. There are many reasons, and rather powerful, to end poverty; but there is particularly

strong one for the republican concept of freedom that will be explained later: it points to the need to provide the material conditions that allow the social existence of people who have not had access to it, precisely due to their poverty.

I propose to explain in this paper¹ the proposed Basic Income (hereafter BI) of citizenship and, more extensively, its Republican justification. The BI proposal should be taken into account when addressing the future of the welfare state, citizenship and social policies. Especially in an economic and social situation characterized by a frontal attack, from early 2010, on the achievements of the welfare state under the pretext of dealing with public deficits.²

The BI proposal, i.e. a monetary allowance for all people without any additional conditions other than citizenship or residence³ has been taking hold over recent years in a way that may even be surprising.⁴ Indeed, it is infrequent, in the case of major social proposals, and the BI is just that, to bring advocates from disparate political backgrounds, different philosophies and different countries together. Therefore, it is not strange to find BI supporters among individuals with political views that are far from defending the possibility of a radical change in the society we live in, among feminist activists who also offer sympathy to the cause or among social movement activists clearly challenging the *status quo*. Nor is it uncommon to find that academic liberals or Republicans (although talking about “Republicans” and “liberals” in general does not provide much information, as we shall explain later) find the BI proposal interesting.

Is the proposal for BI fair? Others prefer to formulate this in a less precise manner: Is BI ethical? Each person has his/her own morals. Some morals may be very basic, others may be very sophisticated and others hardly defensible. Ethics is closely related to morality, but it is not the same. Ethics can be defined as “critical analysis of content or moral rules and the development of rational criteria to choose between moral alternatives” (Mosterín, 2006: 370).⁵ I think, in relation to BI, it would be more correct to speak of “justice” rather than “ethics”, although the two terms are often used without distinction. And, the so-called social justice theories deal with the justice or the lack of justice of a given social proposal. In any case, the

¹ This paper is based largely on Raventos (2007) and Domènech and Raventos (2008).

² Domènech *et alteri* (2010) and Domènech, Raventós and Buster (2010).

³ We must not confuse this proposal, as I suppose it will be obvious, with the “basic income”, an insertion income that used to exist, although it has now been renamed, in the Basque Autonomous Region.

⁴ In early November 2007, within the framework of the Forum of Cultures held in the Mexican city of Monterrey, a declaration entitled *Universal Declaration of emerging human rights. was adopted*. The third point of the first article reads:

“The right to basic income, which assures all individuals, independently of their age, sex, sexual orientation, civil status or employment status, the right to live under worthy material conditions. To such end, the right to an unconditional, regular, monetary income paid by the state and financed by fiscal reforms, is recognised as a right of citizenship, to each resident member of society, independently of their other sources of income, and being adequate to allow them to cover their basic needs.”

If this article of the *Declaration of Monterrey* is very important it is because it does not speak of a right to subsistence or to guaranteeing minimum conditions or guaranteeing that people will not starve or anything like that; it explicitly defends “the right to basic income” (Raventos, 2008).

⁵ The author adds: “There are religious morals, but there are not (it would be an oxymoron) a religious ethic. Some so-called ethics committees are sometimes mere mouthpieces for a particular religious moral and should be called Catholic moral committees, for example. This would make their fuss about entities that do not deserve moral consideration, such as stem cells or blastocysts from which they come.”

justice of BI proposal is an issue that is clearly relevant. There would be no point in social measures that were politically or economically viable if they were not fair.

There are different normative strategies in relation to the BI. Because, if BI were not fair, it would not be worthwhile to venture into considerations of economic viability. The strongest objection that could be brought against the BI is not that it were materially impossible to finance it, but that it were unfair. Part of this paper concentrates on normative issues.

2. Theories of liberal and republican justice: some clarifications

The theories of justice that have addressed the justification of the BI can be divided into two large groups: liberal and republican. I will concentrate on the second group, the Republican, although I need introduce some conceptual references to the first group.

Let's start with the very word "liberalism". This word can be used to produce many distinctions, divisions and subdivisions. For example, between libertarianism and solidarity (or egalitarian) liberalism or between economic liberalism and political liberalism. These subdivisions of divisions are of no interest here. However, there is one distinction that I do consider fundamental: the difference between political liberalism and academic liberalism. Among academic liberal theories there are notable differences. Such differences as can be found between Friedrich Hayek and the libertarians *à la* Nozick and, for example, John Rawls. But they all have something in common: "a concept that prohibits any hierarchy of the various concepts of good life that can be found in society" (Van Parijs, 1991: 244). While this is true, it says very little. Additional clarification is required.

Political liberalism has existed for two centuries.⁶ It is for historians to continue to analyse its role and its traditional hostility to democracy, freedom and equality.⁷ Academic liberalism, however, is an amalgam that can attract authors that would be politically on the far right, others in the centre and, finally, others from a more or less moderate left.

It is also of interest to retain some alleged "truths" that have been repeated ad nauseam that supposedly differentiate the various liberal theories of justice from republican theories. An alleged truth: academic liberalism is not committed to virtue, therefore, it is not a morally perfectionist political doctrine, and so it may have a neutral view of the state. Based on this reasoning, academic liberalism is a non-sectarian political doctrine, which promotes tolerance. Based on the same reasoning, and symmetrically, republicanism (I shall have a chance to talk about its diversity later) is committed to the virtue of citizens, a fact which makes it morally perfectionist, so it is incompatible with a state that is neutral between different concepts of good.

⁶ "Liberalism' is a word invented in Spain in the context of the Cortes of Cadiz in 1812. Liberalism is a nineteenth century historical phenomenon, and it is an anachronism – no at all innocent, indeed, and fraught with political and ideological implications – to describe authors from the seventeenth or eighteenth century as 'liberals'" (Domènech, 2009: 67). It is common to read that Immanuel Kant (1724-1804), John Locke (1632-1704) and Adam Smith (1723-1790) were liberals. Given the period in which they lived, they could hardly be liberals. For a detailed justification of the republican freedom concept of John Locke: Mundó (2005, 2006); in the case of Immanuel Kant: Bertomeu (2005b); and for Adam Smith: Casassas (2010).

⁷ A masterly analysis can be read in Domènech (2004). "I am anti-democrat, *because* I am a liberal", said the poet Matthew Arnold (1822-1888), quoted in Domènech (2006a: 270).

Finally, republicanism is a politically sectarian doctrine, incompatible with tolerance between different concepts of good.⁸

This reasoning, with different and sophisticated versions, can be read in many books and scholarly articles and can be heard in many universities worldwide. Is that really so?

Let's start with virtue. The historical republican tradition has never raised the issue of un-institutional virtue, i.e. as a mere problem of moral psychology. Since Aristotle, any reference to virtue has been accompanied by institutional considerations relating to social and material bases that make (or not) that virtue possible. Virtue clearly has a moral-psychological dimension, but republicanism has always accompanied the analysis of this dimension with the statement that it can only sprout in a socio-material environment. Aristotle, as will be explained below, denies that the poor have an autonomous self-existence, as they do not have property. This lack of an independent basis, of material existence, prevents them from being free and, therefore, Aristotle, who was critical of Athenian democracy, argues that free poor people should be deprived of political rights. Republican virtue has nothing to do with moral perfectionism, nor does it appeal to a concept of good life in isolation from social institutions. Quite the contrary: the republican tradition argues that when citizens are guaranteed a material basis for their independent social existence by the republic, they can develop a capacity to govern themselves in their private lives. Besides, such a guarantee of a material basis for the independent social existence of individuals enables them to develop their capacity for public activities. It is clear that this material basis can also induce some people to binge on bad beer and saturated animal fats while watching the most perverse television programmes. Advocates of republicanism do not deny such eventualities; they assert that the above-mentioned material basis provides the possibility of developing civic virtue, which is nothing else – I repeat the above formulation – but the ability to govern one's private life and, hence, have access to a public life by fully exercising our citizenship, i.e. physically separate individuals.

Let's now deal with the neutral nature of the State. Academically, state neutrality means that it does not take sides with any concept of good life. Good life concepts must be confined to personal choice. It is recognized that liberal theories of justice are neutral with respect to different particular conceptions of good life. Theories of justice that defend and reward a particular good life conception are perfectionist. Thus it is established in academic discussions. Honestly, I do not think this distinction is of much use, beyond a secondary issue. For the Republican historical tradition, the really interesting point is another. That the State must remain respectful of the different good life conceptions that citizens may embrace is something not discussed among the supporters of republican liberty. "Moreover, the thesis of the neutrality of the state is a typically Republican invention, at least as old as Pericles" (Bertomeu and Domènech, 2006: 74). But historic Republicanism has been concerned with something, in my opinion, much more disturbing. I am referring to the "mandatory" militant interference by the state to destroy (or limit) the economic and institutional base of individuals, companies or any particular group that threatens to successfully challenge the state itself in its right to determine what is of public use. In other words, imagine a private power, increase to such a point that it can afford to impose its will (its private good conception) on the State. This implies that the State's neutrality would be *de facto* destroyed. This would lead, in turn, to much of the population being affected by this private good conception. The republican conception of state neutrality aims, precisely, at the need for the state to intervene to avoid such an imposition. We can mention two examples to clarify the point I am

⁸ Bertomeu and Domènech (2006).

arguing: “The Weimar Republic was fighting for the neutrality of the state when it fought – and succumbed – to the great German private industry *Kartells* that financed Hitler’s rise to power; the American Republic fought – unsuccessfully – for state neutrality when it tried to subjugate, with the Antimonopoly Law of 1937, what Roosevelt called the ‘economic monarchs’, etc.” (Bertomeu and Domènech, 2006: 74).

The problem of state neutrality, for the republican tradition, has nothing to do with the question on whether to respect a good life conception that, for example, links good to the repeated reading of the works by H.P. Lovecraft combined with almost uninterruptedly listening to the songs by John Lennon, or whether such a view must be respected by the State or not. That it must be respected is something that is taken for granted. The problem is whether, for example, the material existence of an individual or of a group of individuals must depend on the investment plans of a multinational company. Or of a group of speculators.⁹ Or whether a country’s energy resources must be made available to the boards of some large companies. In these cases, we are faced with life plans – notions of the good life – that erode the material basis of others, and that infringe on their freedom. A republican state should make the existence of this type of situation impossible.

3. Republicanism

What is Republicanism? How can republicanism justify the BI? I think it is easy to answer both questions.

First, it will be necessary, once again, to set out certain differences. The first is that under the word “republicanism” and even if it refers only to the conception of freedom, there are different versions.¹⁰

Present-day republican academics appeal more to the non-democratic tradition than to the democratic one (Rome rather than Athens). For a good number of defenders of this academic neo-republicanism,¹¹ the connection that is so essential for historical republicanism between property and republican freedom – and hence the basic tension between democracy and property – seems to have been eclipsed.

“Pettit intelligently reconstructs republican freedom as a dispositional concept, in contrast with the negative idea of liberal freedom as pure non-interference. Republican freedom would thus be the absence of domination and of arbitrary interference by other parties (or the State). For historical republicanism, however, the prime source of vulnerability and arbitrary interference is the absence of material independence. (It is no accident that the word ‘domination’ comes from *dominium*, which in classical Latin meant precisely both ‘property’ and the ability to make entirely free use of this property, including slaves). If this basic institutional root of ‘dominate’ is overlooked, then ‘domination’ is denatured and de-institutionalised to the extent that it is stretched so far as to cover aspects of human relations that historical republicanism would never have seen as politically relevant; e.g. a white lie could be seen as a form of ‘domination’ because the person who utters it can arbitrarily interfere in the life of the person being thus deceive.” (Domènech y Raventós, 2008: 195)

⁹ As the great economic crisis that exploded in 2008 is a good example.

¹⁰ The following paragraph is based mainly on Casassas and Raventós (2008), and Domènech and Raventós (2008).

¹¹ Especially in the works of Pettit (1997), but also in the works of Quentin Skinner and J.G.A. Pocock.

The perspective of historical republicanism revolves around the idea, central to that tradition, that individuals cannot be free if their material existence is not politically guaranteed. Historically, there have been two forms of Republicanism: oligarchic and democratic. Both have shared the same conception of freedom – individuals cannot be free unless their material existence is guaranteed –; the difference lies in the fact that the portion of the population whose right to material existence has to be guaranteed is not the same for both forms of republicanism. According to the oligarchic republicanism, freedom can only be achieved – and should only be achieved – by those men who have some form of property, a stock of material resources that make them independent. By contrast, democratic republicanism holds that freedom should extend to all men and women living in the community. All individuals should have their material existence politically guaranteed. Under republicanism, all arbitrary interference limits individual freedom. However, empirical evidence shows that some of this arbitrary interference is normatively more important than others when it comes to understanding how social institutions operate and when it comes to prescribing how they should operate. This is because such interference – and not another – is closely linked to the fundamental mechanisms governing the dynamics of human societies, mechanisms including, for example, certain forms of class struggle. In other words: the scams, bribes and lies are arbitrary interferences that can have negative effects on the lives of the agents affected. However, the structure of contemporary societies is not based on fraud, bribery and lies, but property rights. This allows us to affirm that the main distinction to be made to understand contemporary societies is the distinction between rich and poor. It would then be of interest to return to the Aristotelian distinction between rich and poor people (I shall dwell on this more extensively later). “Rich people” and “poor people” mean, respectively, “independent people” and “dependent people” (on others). This distinction is normatively more important to assess the extent of freedom than distinctions arising from the use of criteria based on income levels, such as 50% or 60% of income per capita, which are the current criteria for defining poor. In contemporary societies, the rich have certain material resources that will guarantee their existence, and the poor often have to sell themselves, five days a week or more, to the owners of such material resources in order to survive, becoming employees.

In capitalist societies today, those individuals or groups of individuals who have large amounts of material resources – especially transnational corporations – have the capacity to interfere arbitrarily in the opportunities of millions of people: they have the ability to shape the structure of markets and determine the nature of entire economies; they have the ability to impose, within productive units and in many parliaments, the working conditions of those who depend on them for a living; they have the ability to deprive millions of poor – dependent – people of the necessary means to sustain, in poor countries and in rich countries, traditional or alternative ways of managing the productive sector; they have, ultimately, the ability to determine the political agenda and policy decisions. As the 32nd U.S. President Franklin Delano Roosevelt, revealed in his “State of the Union” speech in 1935: “We must forswear that conception of the acquisition of wealth which, through excessive profits, creates undue private power over private affairs and, to our misfortune, over public affairs as well.” (Roosevelt, 1935). That is why it is extremely important to understand that the BI may be an integral part of a package of measures to ensure the material existence of all people, and the possibility that they will be able to implement their own life plans.

I shall now turn to the conceptions of some republicans from different periods that I believe are the most decisive, with the dual purpose: 1) go into some historical and particularly relevant aspects of the republican conception of freedom (note that this is an evolutionary statement of freedom, not a creationist statement,

i.e. a conception of freedom is not “created” and discussed, rather it looks at the republican conception of freedom as it has been understood by some of its conspicuous defenders along different historical periods), and 2) provide a republican foundation for BI.

4. Aristotle: material existence as a condition of freedom

No wonder that one of the great historians of the classical world, G.E.M. de Ste Croix (1910-2000), stated that Aristotle was the great sociologist of Greek politics.¹² Let’s have a look at the Aristotelian conception of republican freedom, although first we must take a glimpse at the society that Aristotle criticizes.

Aristotle lived the last period of the great Athenian democracy. It ranged between 507 and 322-321 BC which coincides almost exactly with the death of Aristotle. During this long 185 year period, there were only a few attempts to restore an oligarchic regime: in the years 411 and 404-403. One of the most important transformations that occurred in Athens until the end of democracy in 322-321 were the so-called “Ephialtes reforms”, which were introduced in 462-461. These reforms consisted in the introduction of payments for carrying out political tasks. First, for being a juror in the courts of justice and the Council (the *Boule*), which prepared the affairs to be seen in the assembly; subsequently (in 403) for the mere fact of attending the assembly itself. The pay was not high (lower than the wage of a craftsman), but it allowed the poorest citizens to play an effective role in the political life of the city, if they so wished (Rosenberg, 1921). These Ephialtes reforms led to “the invasion of political life by the poor *demos*. Athens was a republic governed uninterruptedly by the democratic party of the poor” (Domenech, 2004: 51).

This is the period, the last of the Athenian democracy, that Aristotle lived. Aristotle is a great critic, certainly fair, of the Athenian democracy. His political works (especially *Politics*) cannot be understood if it is not from this premise. Although Aristotle often expresses his concern (unjustified, given the magnanimity of democracy at this point) about the danger of the “excesses” of “extreme” democracy, notably the possible expropriation of the wealth of large landowners, democracy was very lenient with the rich. In wartime, it is true, they had to pay the *eisphora*, a contribution to the war of the Republic. The *Eisphora*, in any case, was far from something akin to expropriation.

Aristotle believed, as indeed was common among the Greeks, that the an individual’s economic situation was the decisive factor that guided his political career. He does not argue in favour of this specifically because it is taken for granted; it was something universally accepted in their world.

In addition to rich and poor, Aristotle mentioned, in some passages of his works, the *hoy mesoi*, which were moderately wealthy people. However, Aristotle often uses a dichotomous model: rich and poor. Or in more detail: the landowners and those who possess little or nothing (*hoy aporoi*). For Aristotle, as already

¹² “Far from being an anachronistic aberration, the concept of economic class as a basic factor in the differentiation of Greek society and the definition of its political divisions fits surprisingly well with the approach of the Greeks themselves to this reality; and Aristotle, the great authority on the sociology and the politics of the Greek polis, is always working with a class analysis as his starting point, which is to say, on the assumption that individuals will behave in the political sphere, as in any other field, according to their economic situation.” Ste. Croix (1981: 79).

mentioned, an individual's political behaviour usually depended on this financial situation. An idea that has been shared over the centuries by many authors.¹³

According to Aristotle, there is no doubt that the class that comes to power, whether it is the rich or the poor, will govern with their own benefit in mind: "Tyranny is monarchy for the benefit of the monarch, oligarchy for the benefit of the men of means, democracy for the benefit of the men without means" (*Pol.*, 1279b 5). Aristotle says that those with greater wealth tend to consider themselves superior to others (*Pol.*, 1,301th 31-33) and those with large holdings think it is really unfair for men devoid of all property to be on an equal foot with them politically (*Pol.*, 1316b 1-3).

Aristotle gives great importance to the rich-poor dichotomy. The rich and the poor are the main parties in the city. He says: "the same persons cannot be rich and poor at the same time. For this reason the rich and the poor are regarded in an especial sense as parts of a state. Again, because the rich are generally few in number, while the poor are many, they appear to be antagonistic, and as the one or the other prevails they form the government. Hence arises the common opinion that there are two kinds of government- democracy and oligarchy" (*Pol.*, 1291b 8-13).

What does Aristotle mean by rich and poor, those "essential parts of the city"? Aristotle distinguished between the free poor and the slaves. For Aristotle, slaves are little more than instruments that speak, and so, they are completely separated from civil society. Within the group of the free poor, Aristotle, as his coevals, includes people (impoverished farmers with barely enough land to keep the whole family, labourers, workers, painters, sculptors, masons, founders, dyers, goldsmiths, designers, engravers, teamsters, outriders, rope-makers, tanners, road builders...) who have no property. These poor lived from their work and depended on the employment provided by others, the owners, in order to work.

The rich were the owners, those who had guaranteed material existence, precisely because of their property. In the ancient world, the most important form of property was land, as it was for many centuries. The class of owners comprised those who charged others with the supply "of the necessities (and the luxuries) of the good life" (Ste Croix, 1981). The ratio between citizens without property and those with property was 4 to 3. At the time of which we are speaking, Athens had a population of about 35,000 adult male citizens. Of these, 20,000 did not own property and 15,000 held property. The lower levels of the bourgeoisie, artisans who earned a living without apprentices, were also considered as people without property. The crucial point here is not so much the amount of material wealth, but the possibility of not relying on another to live. The rich – of course those with much higher levels of wealth than others – had their material existence guaranteed.

The government of the rich is oligarchy and the government of the poor is democracy. "The real difference between democracy and oligarchy is poverty and wealth. Wherever men rule by reason of their wealth, whether they be few of many, that is an oligarchy, and where the poor rule, that is democracy" (*Pol.*, 1279b 39 - 1280th 1-3). Thus, it is not just the majority, but the class (the distinction between rich and poor, free property holders and non-owners) what leads to a democratic or an oligarchic regime.

Aristotle did not like Athenian democracy, as is well known. From his point of view, the free poor (*phaulós*) did not have their material existence guaranteed as they had no property. *Therefore* they cannot be free because, as they lack the said guaranteed material existence or "material base for independent social

¹³ In 1852, Marx wrote to Joseph Weydemeyer (1818-1866) that "no credit is due to me for discovering the existence of classes in modern society or the struggle between them."

existence” (Bertomeu and Domènech, 2006: 74), they depend on others to survive. Aristotle sees no sense in giving full political rights to those who, given their material conditions of existence, are not free. Note that Athenian democrats did not deny (nor will the democratic republicans centuries later) the Aristotelian values, but, precisely because they were Democrats, they wanted to extend (“universalize”) them to the entire population. This is why they believed that the political participation of the free poor was made possible thanks to the *misthón*, i.e. the remuneration introduced by the Ephialtes reforms to allow the free poor to hold public office, as they would hardly have been able to accept such positions without this public remuneration. Hence Aristotle’s opposition to the *misthón* and its counterproposal to fine the rich who did not attend public assemblies. Aristotle perfectly captures the role of the *misthón* as a substitute for property, as an element that allows the material existence of the poor. But this corresponds to Aristotle the *realpolitiker* and, therefore, we shall leave it at this point.

The issue to remember is this: for Aristotle, whoever does not have their material existence guaranteed is not free, because then they are necessarily dependent on others to survive.

5. Cicero: an obsession with property

The Roman world was obsessively interested in wealth and *status*. *Status* is provided by wealth. *Dat census honores* (“property confers rank”), said Ovid (*Amores* III. VIII. 55). The Roman *ius civile* is a monument to intellectual rigour that accurately regulated all types of personal and family relationships of Roman citizens. If any issue deserves special attention, it is that concerning property rights, an issue particularly sacred in the view of the Roman ruling class. Cicero, another great Republican (oligarch, no doubt), was obsessed with the sanctity that property rights should enjoy. But first I would like to have a brief look at a revealing distinction that Roman law made, which illustrates how the republican conception of Roman freedom also established that anybody whose material existence was not guaranteed and, therefore, relied on others to survive, fell into a situation that was considered the very antithesis of freedom.

I mean the distinction that the Roman civil law made between two types of labour contracts: the *locatio conductio opera* and the *locatio conductio operarum*. The first was a contract covering work, by which an individual hired another (e.g., a goldsmith) to do something specified in the contract. The second was a service contract, by which an individual hired another for a given period of time to do any tasks required. This latter type of contract was considered unworthy because it calls into question a person’s freedom, while the former was considered worthy because, by means of this contract, a free man offered another free man a service that required specific skills (as in the case of a goldsmith, for example). If the *locatio conductio operarum* was considered unworthy of free men, it is because an individual became dependent on another individual and, therefore, it is freedom itself that is at stake. Offering another individual your labour, for any task that individual may require, implied entering into a situation of dependence. This general availability of a person’s labour and the wages collected “is a situation of servitude”, said Cicero in *De Officiis*. Something almost identical to the “limited slavery” to which Aristotle had mentioned two centuries earlier.¹⁴

¹⁴ Another impressive aspect is, indeed, the similarity in the approach (Republican, no doubt) of Aristotle and Cicero to this issue as that of John Locke: “A Free-man makes himself a servant to another, by selling him for a certain time, the service he undertakes to do, in exchange for wages”. The quote is from Locke (1960) and it was Mundó (2006) who brought it to my notice.

Cicero is one of the key figures in order to understand the core issues of oligarchic republicanism. This author, long before the philosophical champions of libertarianism *à la* Nozick, had an obsession with private property rights. Thus, he wrote on this issue. “The man in an administrative office, however, must make it his first care that everyone shall have what belongs to him and that private citizens suffer no invasion of their property rights by act of the state”, he says in *De Officiis* (Book. II, chap. XXI). This care that statesmen must have in preserving property should be well accompanied by abstaining from any impulse to redistribute it: “... an equal distribution of property... what more ruinous policy than that could be conceived? For the chief purpose in the establishment of constitutional state and municipal governments was that individual property rights might be secured”. Over two thousand years before the Libertarians, Cicero had no doubt that justice is destroyed “if the rights of property are not respected. For, as I said above, it is the peculiar function of the state and the city to guarantee to every man the free and undisturbed control of his own particular property” (Book. II, chap. XXII).

Cicero shows, in line with his oligarchic republicanism, a clear disdain for the working classes. In a passage in *De Officiis* (Book. I, chap. XLII), this possessor of one of the great fortunes of Rome and “the finest expression of Roman hypocrisy” (Ste Croix, 1981: 331) says bluntly: “Unbecoming to a gentleman, too, and vulgar are the means of livelihood of all hired workmen whom we pay for mere manual labour, not for artistic skill.” And he adds a little later: “Least respectable of all are those trades which cater for sensual pleasures: *fishmongers, butchers, cooks, and poulterers* as Terence says” (emphasis in original).

We could go on quoting several passages written by Republican or anti-democratic oligarchs, but let us jump about two millennia to place ourselves before the first democratic republican in history that has had undoubted influence.

6. Robespierre: the right to exist

Maximilien Robespierre (1758-1794) was the central figure of the French Revolution.¹⁵ With his death, this revolution quickly gave way to the reaction that would lead, shortly after, to the Napoleonic Empire. But, obviously, we are not interested in the figure of the revolutionary beyond his contribution to republicanism. Therefore, in the 10 volumes that bring together his works and speeches, published since 1910, we shall only consider the part that directly relates to property, social inequality, freedom and social existence.¹⁶

Albeit very briefly, I think it will be worth mentioning that, for Robespierre, and, as we have seen, for Aristotle, the main parts of a city are those comprising the rich and the poor. Robespierre expresses this 2,100 years later with almost identical words (in his speech dated 2-2-1790) “Without a doubt, France is divided into two parts, the people and the aristocracy.”

What is property for Robespierre? In his speech to the convention of 24/04/1793, this French revolutionary offered a long thought-out answer to this question:

¹⁵ An essential resource, for a balanced assessment of Robespierre, is the work of the historian Albert Mathiez (1874-1932), although a good and relatively brief summary can be found in Mathiez (1988).

¹⁶ Bosc, Gauthier and Wahnich (2005) offer a useful selection of such texts and speeches. In French, you may visit: <http://membres.lycos.fr/discours/discours.htm>.

“Ask that merchant in human flesh what property is. He will tell you, pointing to the long bier that he calls a ship and in which he has herded and shackled men who still appear to be alive: ‘Those are my property, I bought them at so much a head.’ Question that nobleman, who has lands and ships or who thinks that the world has been turned upside down since he has had none. He will give you a similar view of property. Question the august members of the Capetian dynasty. They will tell you that the most sacred of all property rights is, without doubt, the hereditary right that they have enjoyed since ancient times to oppress, to degrade and to attach to their person legally and royally the twenty-five million people who lived, at their good pleasure, on the territory of France.”

This stark and vivid description of the property serves as a backdrop to the regulatory conception that Robespierre offers in relation to property, i.e. what he believes property should be in order to be socially just. He speaks on this, in the form of articles, in the same speech:

“Art. 1. Property is the right of each and every citizen to enjoy and dispose of the portion of goods that is guaranteed to him by law.

Art. 2. The right of property is limited, as are all other rights, by the obligation to respect the property of others.

Art. 3. It may not be so exercised as to prejudice the security, or the liberty, or the existence or the property of our fellow men.

Art. 4. All holdings in property and all commercial dealings which violate this principle are unlawful and immoral.”

Property, for Robespierre, should be limited and should not prejudice freedom, or existence. If property does not meet these requirements at least, it is illegal and immoral. In his speech to the Convention of 2-12-1792, he states: “Why shouldn’t the law stop the homicidal hand of the monopolizer, as it does that of the ordinary assassin?”

Property and freedom are intimately related. At another point, addressing the deputies, he said

“In defining freedom, the main asset of man, as the most sacred of rights inherited from nature, you have rightly said that its limit was the rights of others. Why have you not applied this principle to property, which is a social institution; as if the eternal laws of nature were less inviolable than the conventions of men? You have multiplied the number of articles to ensure greater freedom in the exercise of property, and have not said anything to determine its legitimacy.” (“About the Declaration on the Rights of Man and Citizens”, speech 24/4/1793).

This insistence on the idea that not all property is legitimate appears throughout the works of Robespierre. If it attacks freedom, property is not legitimate. And the great social inequality that enormous and disproportionate fortunes create, threatens freedom. For Robespierre, great economic inequality is the root cause for the destruction of freedom. Great inequality, he said, is “the source of all evil”. In his speech of 5-4-1791, he reprimanded the legislators and told them: “Legislators, you have done nothing for freedom if your laws do not tend to decrease, in sweet and effective ways, the extreme inequality of fortunes.” And on 24-4-1793 he insisted on the same idea: “A revolution was not really required to explain to the universe that extreme disparity of wealth is the source of many ills and many crimes.”

It is interesting to note how, in a speech as early as April 1791, Robespierre already indicated that only those who held property had the right to call themselves citizens: “The rich ... have claimed that only property owners were worthy of the title of citizen. They have termed their particular interests as general and, to ensure the success of this claim, they have taken over all social power.”

Almost as the conclusion of the exposition of his conception of property, freedom and social inequality, Robespierre provided repeated examples of a deep conviction concerning the need for society to ensure the physical existence of the citizens. There are many direct quotes. Perhaps the best correspond to to last year and a half of this French revolutionary’s short life.

A society that does not guarantee the material existence of citizens is unfair and, therefore, does not deserve to continue. In the aforementioned speech on 24-4-1793 he states: “Society is required to ensure the subsistence of all its members...” And he adds a little later: “The aid required for the indigent is a debt of the rich to the poor. It is for the law to determine how this debt must be repaid.” Because society and, more directly sometimes, governments are responsible for hunger, poverty, misery: “The misery of the citizens is a crime of the governments” (speech 10-5-1793). But if there is an excerpt that is repeated in its own right about society’s obligations with respect to the material existence of citizens, it is this one that corresponds to the speech on subsistence on 2-12-1792:

“What is the first object of society? It is to maintain the inviolable rights of man. What is the first of these rights? The right to exist? The first social law is thus that which guarantees to all society’s members the means of existence; all others are subordinated to it. Property was only instituted or guaranteed to cement it. It is in order to live that we have property in the first case. It is not true that property can ever be in opposition with men’s subsistence.”

So far I have focused on three authors (Aristotle, Cicero and Robespierre¹⁷) who can be considered important within the republican tradition for very powerful reasons. We should now recapitulate.

7. Republican freedom

Whatever the differences between the oligarchic conception of republican freedom of Aristotle and Cicero, and Robespierre’s democratic freedom (to name only the three authors to whom I have dedicated special attention), they all conceived the problem of freedom in the same way. What differentiates the two conceptions is the extent of this freedom, i.e. the social groups that should be worthy of this freedom. Only the rich, the oligarchic Republicans would say; or all citizens, the democratic Republicans would say.

Compare Robespierre’s awareness of the dire consequences that great inequalities have for freedom with these two speeches made only a few months after his death at the hands of prominent representatives of the Thermidorian reaction. The first corresponds to Boissy d’Anglas (1756-1826):

¹⁷ And it is true that, together with this French revolutionary, we could also have mentioned Jean-Paul Marat (1743-1793) and the young prodigy Louis de Saint-Just (1767-1794), but focusing on Robespierre, is sufficient for my purpose.

“We should be governed by the best among us; the best are the most highly educated, and those with the greatest interest in upholding the laws. Save for the rarest exceptions, you will find such men among those who, by reason of their owning property, are devoted to the land in which it is situated, to the laws that protect it, to the public peace that maintains it; who derive from that property, and the leisure that it affords, the upbringing and training that render them capable of discussing wisely and reasonably the arguments for and against the laws that will govern the fate of their country. (...) A country ruled by property owners exists in a social state; one ruled by those without property [democracy] exists in a state of nature.”

The second speech is by Dupont de Nemours (1739-1817). This Thermidorian member said:

“It is clear that property owners, without whose permission no-one in the country would be able to obtain accommodation and sustenance, are citizens par excellence. They are the sovereigns by the grace of God, of nature, of their work, of their investments and of the labour and investments of their ancestors.”¹⁸

Dupont de Nemours was a famous Thermidorian who founded the company that bears his name and that has become a powerful multinational chemical company. Boissy d’Anglas was a Thermidorian representative.

Be that as it may, we are now able to offer a detailed vision of republican freedom. Briefly, *X* is free from a republican point of view (in social life) if:

- a) *X* does not depend on another individual to survive. Which means he has a guaranteed independent social existence o, in other words, he has some type of property that enables him to subsist comfortably (remember that traditionally, from a republican point of view, property was mainly land);
- b) no one can interfere arbitrarily (i.e., illicitly or illegally) in the field of *X*’s independent social existence (his property);

Therefore:

- c) the Republic may lawfully interfere in the sphere of *X*’s independent social existence if *X* is in a political relationship of equality with all other free citizens of the republic, with the same capacity they have to govern and to be governed;
- d) any interference (from an individual or from the republic) in the field of *X*’s private social existence that damages that field making *X* lose his social independence, placing him at the mercy of others, is unlawful;
- e) the Republic is obliged to interfere in *X*’s private sphere of social existence if that private sphere enables *X* to successfully dispute the right of the republic to define public well-being. In other words, the republic must guarantee republican freedom to all citizens.

Finally:

¹⁸ Both quotes are from Lefebvre (1957: 199-200). They can also be found in Domènech (2004: 92).

- f) *X* is entrenched in civic and political freedoms by a strict core of *constituent* rights (not purely instrumental) that nobody can take away from him, nor can he alienate (sell or donate) them at will, without losing his status as a free citizen.¹⁹

In the republican tradition (whether Aristotle, Cicero or Robespierre, among many others), *X*'s set of opportunities is clearly defined by those properties that allow him to enjoy independent social existence. This is not any set of opportunities, but this set in particular. Full citizenship is not possible without material independence or without “controlling” one’s own set of opportunities. The republican tradition believes that political freedom and citizenship are incompatible with relations of domination through which rich property owners and the wealthy exercise *dominium* over those who, not being completely free, are subject to all sorts of interference, either in the field of domestic life or in that of legal relations that are typical of civil life, such as employment contracts or contracts covering the purchase and sale of material goods. But at this point, democratic Republicans and oligarchic republicans go their own ways. For the former, the idea is to design mechanisms that lead to this freedom, that make this material existence possible for all citizens, for the entire population. In contrast, oligarchic Republicans always tried to exclude the *sui iuris* from active political life. If the right to vote is what defines a citizen, and if that right presupposes the independence of those who not only want to be part, but also a member of the community, because they interact with others, but by their own devices, then some undemocratic Republicans believed it necessary to draw a distinction between passive and active citizens. Kant, for example, was of the view that those placed under the protection of other individuals do not possess civil independence. Minors, women and servants would not be entitled to civil independence because they cannot maintain themselves concerning sustenance and protection; the same can be said of day labourers, or those who are unable to publicly put on sale the product of their work and depend purely on private contracts or arrangements of temporary slavery, which arise from the unilateral will of the *sui iuris*.²⁰

In the republican tradition, independence conferred by property is not a mere matter of private self-interest. It is, on the contrary, of major political significance, both for the exercise of freedom and for achieving Republican self-government, because a secure material base is essential for political independence and competence.

8. Republican justification for BI

Even at the cost of repeating part of the reasoning, I must insist that the authors who have defended the republican conception of freedom, even if they differ in other aspects, all share at least two convictions:

- 1) To be free means not depending on another individual to survive, not being arbitrarily interfered with by any individual; anyone who depends on another to survive is not free. Anyone who is unable to guarantee the “right to exist” in the fortunate expression of Robespierre, because they lack property is not an individual in their own right – *sui iuris* – and they live at the mercy of others, and are unable

¹⁹ Bertomeu and Domènech (2006).

²⁰ Kant (1989).

to cultivate or exercise civic virtue; and this is because this dependence on another individual makes them subjects of the rights of others: *alieni iuris*, i.e. “alienated.”

- 2) Republican freedom can reach many (plebeian democracy, as advocated by democratic Republicans) or few (oligarchy, plutocracy, as advocated by oligarchic Republicans), but it is always based on property and on material independence derived from that property. And this freedom could not be maintained if the property were distributed unequally and in a polarized manner, in such a way that only a few individuals could challenge the republic and successfully fight against the citizens to impose their conception of public good. When property is very unevenly distributed, there is little space, if any, for the freedom of others, of those who have no property.²¹

Independence, material existence, the autonomous basis (perfectly interchangeable terms here) that property confers is a prerequisite for the exercise of freedom, as I have repeated above. Hence the idea suggested by the Republican defenders of the BI: “universalise property”. Universalising property must be understood metaphorically. Universalising property must be understood here as equivalent to ensuring the material existence of all (Casassas and Raventos, 2007).

The establishment of a BI would imply socio-economic independence, an autonomous basis of existence much greater than at present for much of the population, especially for those sectors of society that are most vulnerable and dominated in contemporary societies (many of the wage-earning workers, the poor in general, the unemployed, women...). In short, the introduction of a BI would make republican freedom more widespread among some vulnerable groups. Let’s take a closer look at this. Vulnerable groups are understood to be people whose common feature is that they are subject to arbitrary interference by other groups of people or by a specific individual.

8.1. The material dependence of women

First, I will refer to this large and diverse group, which are women. It would be an insult to the intelligence of readers to dwell, however briefly, on the evidence that not all women are in the same social situation. Neither does it seem very debatable to claim that a BI would give this large, diverse and socially vulnerable group the economic independence that women do not currently have.²² While the BI, by definition, is independent of any labour contribution, I must note here that, despite not receiving any monetary compensation in return, most women do work. Remunerated labour is only one of existing work systems on the market. But not the only one. There are another two: domestic and volunteer work.²³

Below, I have included some of the reasons that support BI in relation to women from a republican point of view:

Firstly, the economic independence that BI provides leads to a kind of domestic “counter-power” capable of changing the relations of domination between the sexes and of increasing the bargaining power of many

²¹ For this point, see Bertomeu (2005a).

²² Parker (1993); Robeyns (2001); Añón y Miravet (2004); Pateman (2003, 2006); XRB- RRB (2006); Bambrick (2006).

²³ The relationship of the BI with housework and volunteer work is discussed in Chapter 4 of Raventos (2007).

women within the household, especially those that depend on their husbands or that are on very low incomes because they are employed part-time or only occasionally.

Secondly, as this is an individual allocation, the BI would improve the economic situation of many women who are married or living with a male person, especially those in the poorest strata of society. Indeed, many of existing conditional benefits are allocated to heterosexual families. Normally, the recipient and administrator is the head of the household – men, mostly – so that people who occupy the weakest position – women – are largely deprived of access and control of such income. In the words of Pateman (2006: 115): “A basic income is important for feminism and democratization precisely because it is paid not to households but *individuals as citizens*.”²⁴

Thirdly, it should be noted that BI provides a robust response to the fact that social policy should adapt to changes in the ways of living, especially the increase of single parent families headed by women.

Fourth, as many feminist writers have stated over the past decades, the social security system in rich countries was built assuming that women were economically-dependent on their husbands. This meant that the benefits obtained from the social security were thanks to contributions made by their husbands, not thanks to their status as citizens. In a context that is increasingly questioning the *male breadwinner* stereotype, it is not fanciful to suppose that the choice for domestic work could be made in a much more consensual manner than they are today in most cases.

But, together with these four points, there is an even larger reflection on the role of BI in favouring the material existence of women from a republican point of view. This reflection has been suggested by Carole Pateman. In short, it can be exposed as follows. Many of the problems concerning the question of reciprocity addressed in political philosophy in recent years only refer to activities that deal directly with paid work. Is reciprocity violated when a person receives an unconditional allowance,²⁵ BI in our case, even if this person is in perfect conditions to perform paid work but simply prefers not to, miserably becoming a *free-rider*? Pateman believes that this is a very limited way of analysing the problem, since it only focuses on paid work. However, the problem of reciprocity (and the *free-rider*) that occurs in a certain type of unpaid work, mostly performed by women has been ignored: domestic work. An issue which, I believe, links to a much more widespread problem that is cause for attention from democratic republicanism: the dependence in which, historically, even after the abolition of the laws of the Old Regime, women have been subject to men. I will use a historical case to express the point I want to make more exactly. In 1792, Robespierre abolished the distinction between active and passive citizens, i.e. among citizens who might be entitled to vote and those that would not – the said distinction has been based on the amount of taxes that individuals could pay –. In other words, active citizens were those who had a given level of wealth, while passive citizens were those that did not reach this level. This, obviously, referring to men. Women were patriarchally excluded because of their status as subject dependent on men.²⁶ This is where I link to Pateman’s concerns mentioned above. The BI, given the universal nature of citizenship (or accredited residency), is not directed at households or people

²⁴ Emphasis in original.

²⁵ As stated by White (2003a, 2003b).

²⁶ Robespierre himself, at the end of his life, seems to understand “the inexorable logic with which *fraternité* – as a democratic programme for the full and universal *civilising* of social, economic, family and political life – had to bring about the emancipation of women” (Domenech, 2004: 91).

with specific characteristics (being male, for example). For this reason, the BI can be an effective means to ensure the independent basis of a significant portion of women who, today, depend on their husbands or lovers for their material existence.

8.2. The bargaining power of the working class and the de-commodification of labour

Secondly, I will refer to what is of interest for republicanism in the establishment of a BI for the working class, another vulnerable group to which I have referred above.

Let's start with something that has been mentioned by certain authors: BI and the de-commodification of labour.²⁷ In capitalist economies, people who have no land or means of production must sell their labour in the labour market to a landowner or to someone who has means of production, called an employer, in order to be able to acquire everything they need to subsist. This situation has been called the "commodification of labour" (sometimes directly, "commoditization of work"), since this capacity to work, by those who do not own property that may enable them to avoid waged labour, is treated as a commodity. Workers' basic subsistence needs may be covered out of the market through some type of social provision system. In this case, the workforce is de-commodified. We can thus speak of different degrees of commoditisation (and of de-commodification) of the workforce. The BI would have a significant effect as a tool for the de-commodification of the labour force, if the amount allocated were at least such to provide "the freedom not to work" (Pateman, 2006: 104).

But the BI would also have another interesting effect on the working class that, from the republican perspective, would be particularly interesting: the increased bargaining power the members of this class would have against employers or businessmen.²⁸

The income security that a BI would entail, would prevent workers being forced to accept job offers under any conditions. From the moment the possibility of leaving the labour market is practicable, they would be in a much better position to bargain (or resist, as it has sometimes been termed) than workers have at present. It is not the same to force labour negotiations to breaking point when you have, in the case of employers, the real possibility of replacing workers by machinery or other unemployed workers – those filling the ranks of what is currently known as the "industrial reserve army"²⁹ –, than to do it knowing that subsistence depends directly and almost exclusively on the earnings obtained by the individuals sitting on the other side of the negotiating table, as happens to workers today. The employment relationship under capitalism is clearly asymmetric. A BI would not only make it possible for many workers to refuse, effectively and convincingly, unwanted situations, but it would also lead to the consideration of alternative ways of organising work, enabling workers to pursue higher levels of personal fulfilment.

In addition, a BI would be, in the event of a strike, a type of unconditional and inexhaustible resistance resource whose effects on strengthening the bargaining power of workers are easy to calibrate. Indeed, the fact that, in the event of a strike, workers would receive a BI would enable them to face strikes in a more

²⁷ Among others: Pateman (2006); Van Parijs (2006); Domènech y Raventós (2004).

²⁸ Wright (2006); XRB-RRB (2006); Raventós and Casassas (2003); Raventos (2002); Casassas and Loewe (2001).

²⁹ In Kingdom of Spain, in early 2011, the official figures totalled over 4 million people.

secure way than at present: today, depending on the number of days on strike, wages may become depleted to levels that are difficult to sustain if, as commonly occurs for the vast majority of the working class, there are no other resources.

9. Conclusion

What I have tried to explain, borrowing the ideas of three Republican authors, is historic Republicanism's concept of freedom. Equality and freedom are two variables to choose from: more of one implies less of the other – and vice versa –. Great social inequalities are the causes for the lack of freedom. For this reason, democratic republicanism proposes institutional mechanisms for citizens to enjoy fully guaranteed material existence, the foundation of freedom. In a world at the beginning of the second decade of the twenty-first century, where the private accumulation of great wealth coexists with abject misery and, therefore, freedom for hundreds of millions of people is seriously threatened, if not already completely suppressed, the BI appears as an institutional mechanism that, given the socio-economic conditions of the new century, would be able to guarantee material existence for all citizens (and registered residents). Material existence that, as a result of the economic crisis that began to emerge in 2007³⁰ and of the economic policies that have been implemented by many governments, is increasingly under threat for a growing number of people. One of the few economists who predicted the global economic crisis wrote, a few months ago: “Financial crises have a funny way of making radical reforms seem reasonable” (Roubini and Mihm, 2010 339). There is no doubt that BI is a major reform proposal that, in a modern world, can be seen as reasonable for many people who initially came to see it as madness. To bring about a change of attitude, the BI idea has to be studied and compared with the current state of the world.

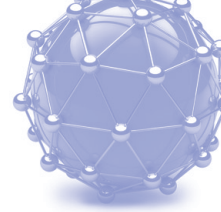
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Rethinking Citizenship and the Welfare State in the twenty-first century

Summary: 1. Introduction.—2. The concept of citizenship in Marshall.—3. Employment, Citizenship and Welfare State. 3.1. The Fordist social norm of employment: the virtuous cycle. 3.2. The current social norm of employment: social and vital precariousness.—4. Erosion of citizenship and the rise of social vulnerability.—5. What future awaits citizens and the welfare state? Alternatives and proposals. 5.1. Maintaining the status quo. 5.2. Renewing the relationship between employment and citizenship. 5.3. Breaking the link.—6. Conclusion: Summary proposal for discussion.

1. Introduction

Throughout this article we shall study the relationship between citizenship and welfare state, emphasizing that the link between the two concepts is a fundamental and guiding principle of modern societies. The cementing or unifying agent for both aspects has been employment, especially regarding the social dimension of citizenship. Consequently, employment has provided, in recent times, the vast majority of society with material and economic sustenance and it has also been the gateway to obtaining social rights, especially during the historical period that is often considered the *golden age* of the Welfare State, which took place primarily in Europe from the end of World War II until the first oil crisis – from 1945 to 1973 –.

However, and as a result of the changes occurring in employment and the emergence of elements such as flexibility and job insecurity, the functions of the welfare state have been eroded in recent years and are putting into question many of the integrating qualities of employment and, therefore, the relationship between citizenship, employment and welfare state. Within this development and as a result thereof, we can highlight phenomena such as social vulnerability or of the *working poor*, i.e. people who, having a job, do not reach the poverty line, something unthinkable a few decades ago.

As one might think, a context like this makes it necessary to rethink the link between employment, citizenship and welfare state, to see if it can still be maintained or, on the other hand, look for new elements

to bring about integration and social cohesion. This scenario, precisely, attracts powerful proposals that envisage a partial decoupling of the relationship between employment and citizenship, as upheld, in part, by the flexicurity model; or more ground-breaking proposals that require the total dissociation of both concepts, as in the case of the Citizens' Basic Income model.

With regard to the structure of the paper, we shall start by delving into Marshall's theory on citizenship, which distinguishes three parts: civil, political and social. The second section will analyse how the relationship between employment and citizenship developed in the heyday of the welfare state, emphasizing the correct combination and the positive impact these elements have had in relation to social integration. On the other hand, this same section will also discuss the relationship between employment and citizenship today, highlighting how the pattern seen over the last few decades has been shattered and how this has meant that more and more groups are in a situation of precariousness and vulnerability, because they are unable to enjoy full and complete citizenship. Finally, after having described the current situation, a number of proposals or alternatives are brought forward that may be useful in the discussion on rebuilding citizenship and the welfare state. More specifically, we shall mention three: maintaining the relationship between employment and citizenship; the flexicurity model and its variants and Citizens' Basic Income.

2. The concept of citizenship in Marshall

The modern idea of citizenship, even when it display certain similarities with the classic concept of the Greek polis or ancient Rome (Schnapper, 2001), was born with the values of the French Revolution and as an element guaranteeing equality in the face of the privileges of the old aristocracy (Heather, 1999). As the link between the individual and the political community or, in other words, between the individual and the state. In the words of Balibar, citizenship is "the institutional framework for democratic policies and the horizon for the articulation of individual and collective affairs" (Balibar, 2003: 184). From these two definitions we can obtain a concept of citizenship understood as a status that guarantees certain rights within a political scenario; rights that are not at the expense of compassion or charity and, as Ignatieff stated, citizenship "is a history of freedom, not a history of compassion" (Ignatieff, 1991: 35). As can be seen, citizenship is the guarantor of individual rights and as such is fundamental in understanding the development of modernity, specifically of the twentieth century (Roche, 1992).

The development of the concept of citizenship in the field of social and political theory is, to a great extent, due to the contributions of T.H. Marshall. In particular, the contents of a number of lectures given in 1949 at the University of Cambridge. In these, Marshall distinguished three dimensions within the concept of citizenship, which in turn coincide with different historical periods: the eighteenth century coincides with the development of civil rights; the nineteenth with political rights and the twentieth century with social rights (Marshall, 1998: 31). In any case, although this classification can help us understand the development of rights in modern times, we must not forget that the said development does not occur in a linear or uninterrupted manner and that, depending on the particular place or time, the historical development of these rights is uneven or takes place in different degrees, or at different speeds.

The civil dimension is connected with a series of individual rights such as freedom of expression, belief or meeting. The political dimension stresses the ability to participate actively in political actions, especially

through election processes – both actively and passively. This second dimension includes the different struggles for universal suffrage or women’s suffrage. Thirdly, and in this instance, the most important, we have the social dimension of citizenship that, in the words of Pietro Barcellona, would be a “set of expectations of each citizen expressed towards the State to obtain the necessary guarantees relating to life and work security, to provide dignity to individual existence. These claims can be summarized essentially as the right to a minimum level of income” (Barcellona, 1991: 29). In conclusion, it would be those social and labour rights that give the individual a certain freedom from the market or, in terms of Esping-Andersen, the degree of de-commodification that occurs in a society (Esping-Andersen, 1993). This third element connects squarely with the welfare state and is an element, as Therborn points out, that is characteristic of modern Europe (Therborn, 1995: 89).

Over time, Marshall’s theory has been criticized or reviewed from different perspectives and ideological currents, such as neo-liberalism (Held, 1991; Mulgan, 1991), the gender perspective or ideas that stress the importance of cultural differences (Bottomore, 1998). In any case, leaving aside the fact that Marshall’s contributions display certain limitations and should be rethought in certain cases to adapt to new realities, it is a widespread opinion that his approach remains in force and that it provides a powerful conceptual framework to discuss the current social scenario and modern day social conflicts.

3. Employment, Citizenship and Welfare State

3.1. The Fordist social norm of employment: the virtuous cycle

As seen in the latter part of the previous section, social rights – the social element of citizenship – became the axis of the welfare states that began after the end of the Second World War. In most European countries, this concept that the state must guarantee a minimum of material welfare to society as a whole (Harris, 1990), was legally sanctioned by the introduction of the *social rule* concept in a number of constitutions: France – 1946 –, Italy – 1948 –, or The German Federal Republic –1949 –. In such a context, employment – paid work –, the Fordist approach to employment to be exact, assumes a vital importance, since it is the key element that connects the individual and the group, which, as already pointed out, are the basis of modern citizenship. Similarly, employment is the gateway to and the guarantor of the social rights of citizenship. Therefore, citizenship, employment and welfare state will go hand in hand in the period that begins more or less in 1945 and runs until the early 1970s in most European countries. As one might think, Spain was left out of this development process and it would not be until much later with the development of democracy when the first steps were taken to place the foundations of a welfare state in Spain.

During this period, employment displayed a number of well-defined features that were encompassed within a social norm in which job certainty, security and consistency were the key elements for the working – male – population, a period when employment was widespread and almost for life (Handy, 1986). The relationship with the labour market began early in life and frequently ended when the legal retirement age was reached. This long working life implied long periods of contributions which provided the possibility for a broad range of social benefits and quality for most of society.

In a scenario such as the one described in the previous paragraph, people’s lives seemed to be clearly established and defined. There was a first educational phase, rather short and that provided access to

the labour market. The second phase would include a person's working life, that was usually the longest period and that coincided with an individual's maturity. Finally, there was the retirement period, with no employment relationship, that was usually linked to a person's social and physical decline. The transit from one phase to another became natural, automatic and not at all traumatic.

This linear type of life, coupled with a long working period in which unemployment was the exception and employment was the gateway to material sustenance – wages – and to benefits and pensions, means that certainty and security were, as mentioned above, the columns that supported western post-war societies. People's working careers usually involved working 8 hours a day, five days a week and 11 months a year for around 40-45 years, which, as can be seen, occupied most of a person's life. It is significant to stress that the said careers usually involved one work place and at least one trade. This implies that employment, not only became the hub of individuals' economic and material lives, but also made major contributions to such aspects as individual identity and social relationships.

The security obtained through employment had clear effects on people's lives and became, in most cases, the backbone that defined and modelled people's personal, family and social outlook. Consequently, a person's working career began with low wages and performing tasks that did not require many skills, but, over time, everything gradually improved (Fitoussi, 1996). This labour improvement was coupled with an improvement in vital and family aspects, to the extent that "one began as a labourer or apprentice and became a foreman in one of the factory sections. In the same way, one began in an old run-down house and ended up in a flat with electrical appliances and other comforts" (Moreno, 2003: 205). In conclusion, employment defined our life story, which, in most cases, was linear, progressive, continuous and improving.

This is why this context has been defined as the *30 glorious years* – from 1945 to 1975 – as the link between employment and citizenship was perfect and also led to the development and feedback of the welfare state, enabling a true *virtuous cycle* where the future appeared to be predictable and logical and where employment for life was linked to certain benefits and social rights established within a social framework based on stability, when tomorrow was always better than today and yesterday and where progress became the driving force.

3.2. The current social norm of employment: social and vital precariousness

Today, many of the aspects mentioned in the previous section have changed dramatically and we can even say that the social rule of employment that exists today is the closest thing to a distorted image of the previous Fordist pattern of employment, especially for younger people in the labour market. A model like the one described above, based on security and certainty can be described by adding the prefixes *in* or *un* to the adjectives that defined the Fordist pattern: *in*-stability, *in*-security and *un*-certainty. This evolution has occurred mainly as a result of the emergence and the rise of temporary and precarious employment.

At present, the content and the relationship between life stages has changed significantly. The training period has been extended, compared to previous periods, and it is becoming more frequent for some people to access the labour market for the first time at the age of 25-30. Similarly, we can see the age at which we leave the labour market is often before 65. Consequently, the length of the working period has

been cut at the beginning and at the end, occupying approximately 20% of our lives, when in the past it occupied around 50% (Anton, 2000: 204). The boundaries between these phases have also undergone major changes and the limits between them are becoming more blurred and porous. Therefore, there are increasing cases of people who, having accessed the labour market, decide or are forced to return to their studies or training; more so in a period such as the current economic crisis in which the market is driving away people who had low skilled jobs. In this context, there are increasingly more people who join and leave the labour market on several occasions, interspersing periods of employment and training throughout their lives, something unthinkable 30 or 40 years ago and that is now becoming increasingly common. There are certainly paradoxical situations where people who are around 40 go through life cycles that are more similar to those of a person who is 20 and, conversely, cases where people who are 40 are already considered too old and cannot be employed suitably to adapt to new labour market. In other words, we can outline a scenario in the labour market where we can find *young people aged 40* and *old people aged 40*.

This reduction in the employment phase, concerning both years throughout life and its quantitative weight in terms of hours, implies that employment is losing quite a few of the elements that guaranteed full and stable citizenship. Consequently, the reduction in the contribution period and the difficulties that frequently occur as a result of the emergence of contracts that do not guarantee suitable contributions, have led to the fact that the coverage and quality of social benefits that depend on contributions – dole, illness, disabilities, age – have declined. In the case of benefits, such as dole money, it is increasingly frequent that people with temporary or part-time contracts fail to contribute the minimum period required to obtain benefits. Moreover, although not yet in a clear and obvious manner, it may occur that, in the future, more people will be unable to contribute, not only the time required to obtain a full pension but even the minimum time required for basic benefits, which currently stands at 15 years, although it remains to be seen what will happen after the discussions taking place at present on these issues, as, in certain cases, a minimum period of 20 years has been considered to obtain a basic pension.

This reduction in the weight of employment throughout our lives, as well as changes in its characteristics, also lead to a lower significance in socialization and social relationships of individual and collective identity. In many cases, the job one gets has no great connection with the training received and, in turn, a person may do several jobs throughout life that are different from each other. This fragmentation of labour is reflected in a study that was conducted several years ago in the Basque Autonomous Region through the narratives of life experiences in relation to unstable working conditions and life trajectories in youth. In one, an graduate in economics told how, after finishing his studies, he had had several jobs as a waiter, representative of a cartridge recycling store, salesperson for a publishing house, worker in a company making aluminium tubes or as a construction worker, and all this at 32 years of age. In another case, a boy who had vocational studies and social education had, at the age of 29, been a advertising delivery man, health assistant in a nursing home, train conductor, a salesman at a clothing store, private teacher, administrative assistant in several companies and he had also had several other jobs through Temporary Employment Agencies, sometimes lasting only one day (Alonso de Armiño, Gómez, Moreno and Zuberó, 2002). In such a context, in which the link and the relationship between employment and education and among jobs is limited or inexistent, it is very difficult to build a stable and strong individual identity based on employment. Decades ago, it was clear that if someone asked you what you did, the answer would be linked to your profession. Today, however, this question is more complicated in a work environment in which a person may have three or four different and unrelated jobs even in the same year.

All these changes in social employment standards are the result of a labour market that is much more flexible and precarious and, in the case of Spain, the temporary nature of employment has become a key element in understanding this insecurity. According to data from the Labour Force Survey, over the past 20 years the temporary employment rate has hovered around a third of the total wage-earning population, a figure significantly higher than in other EU countries or than the European average. According to the latest data from the Labour Force Survey – third quarter of 2010 – the temporary employment rate stands at 25.56%, a figure lower than in previous years and similar to that of 1998 (CES, 2009). However, this is not due to a fall in temporary employment, but to the effects of the economic crisis, which has led to greater job losses in precarious and temporary employment. Neither can we disregard the fact that certain groups have a significantly higher rate of temporary employment than average; in the case of youths temporary employment totals 50.8% and, in the case of women or immigrants, it is even higher (Youth Employment Observatory 2009). Coupled with the temporary nature of employment, we see a high turnover level and, logically, a low level of stability in the workplace. To give an example, the average duration of contracts in the Basque Country was 80 days in the year 2007 (CES, 2008: 315). Another interesting feature has been provided by Boltanski and Chiapello (2002) in the case of a large shopping centre in a French city where, over the period of one year, work rotation reached 100% among unskilled workers.

This fact leads to a scenario in which the Fordist employment system based on security and stability has disappeared for a large portion of workers and, contrary to linear, rising and uninterrupted employment scheme, we have another characterised by the fragility, weak employment or interruptions in work and lifestyle. In fact, there is an interruption of the previous system in which progress – economic and vital – was cumulative and linear and there are increasingly more ups and downs in people’s lives, increasingly more like a *zig-zag*. To cite a more specific example, it is no longer clear that the best working conditions are obtained at the end of a working careers and, in many cases, the future may be worse than the present. In this context, the future is now much more unpredictable and future prospects are losing the great idea on which they were built: *tomorrow will be better than today*. As highlighted by Richard Sennet, “general instability obstructs any chance to create lasting social ties” (Sennet, 2000: 23). It is precisely in this *permanently temporary* scenario (Carnoy, 2001) in which the relationship between citizenship, employment and welfare state is in crisis, as employment no longer guarantees the proper functioning of the welfare state – full quality employment – nor the enjoyment of adequate social rights for all citizens.

4. Erosion of citizenship and the rise of social vulnerability

The crisis of the relationship between employment and citizenship and the weaknesses currently displayed by that *connection* are clearly eroding the social rights of citizenship for large sectors of society, who, although still formally citizens, are encountering great difficulties in enjoying the said rights. Due to this phenomenon, it is becoming increasingly clear that there has been a fragmentation within the public and it is also becoming more common to find different grades and levels. There is still a group of people who enjoy full citizenship, but more and more groups and individuals only have access to a weak type of citizenship, a *lumpen ciudadanía* in the words of Boaventura de Sousa Santos (1999). The ever-lucid Ralph Dahrendorf offers a good definition of this new social reality: “the subclass consists of those whom the full citizens of society do not need: they are either non-citizens, no longer citizens, not full citizens, or not yet citizens” (Dahrendorf, 1994: 13).

This weak citizenship fully connects with a concept that is becoming increasingly relevant in the analysis of social reality in Western societies and this is none other than social vulnerability (Sáez, Pinazo and Sánchez, 2008). The concept of social vulnerability owes its origin largely to the French sociologist Robert Castel, who by the end of the 1980s was talking about this concept to refer to the area that lies between integration and social exclusion (Castel, 1990, 1992; 2004). Based on a possible definition, social vulnerability could be understood as the process whereby increasingly more people who are relatively integrated suffer situations of social instability and insecurity that make it impossible for them to live a more or less full life in most cases” (Moreno, 2010: 173).

Although it is difficult to quantitatively define the contours of vulnerability, because in most cases, this concept does not appear as an operational term; taking into account the various existing studies about poverty and integration we can make an attempt or approach. Thus, if we group the various surveys and researches and assume that what we can qualify as poverty and moderate poverty could be an equivalent to social vulnerability – an assumption perhaps somewhat restrictive – it can be concluded that about 20% of the population in Spain would be in this situation (Caixa Catalunya, 2008; Foessa, 2008, Red Cross, 2009, Basque Government, 2009). It is true that the available data are from before the economic crisis and that therefore we must consider that this figure has increased. In fact, the limited data available so far on the impact of the crisis suggest that the vulnerability has increased significantly. Consequently, and based on data provided by Miguel Laparra, the number of people who are in a precarious situation has risen from 34.9% in 2007 to 46.3% in 2009 (Laparra, 2010), although, as can be seen, Laparra bases his assumption on a broader conceptual definition and, therefore, on higher percentages with respect to social vulnerability than those mentioned above.

We can stress a number of groups included within the concept of vulnerability, groups that suffer a precarious situation more than others, such as, for example, young people, women, immigrants, minors, the elderly or the *working poor*. This latter group deserves special mention because of its features and because of its relationship to the object studies in this paper. Consequently, the working poor or poor workers are people who, having a job, are unable to overcome the poverty threshold. This reality was unthinkable a few decades ago in Europe and existed mostly in the United States and to a lesser extent in the UK. But because of the rise of precarious employment and the decoupling between employment and citizenship, we are seeing more and more people who are workers and poor. In short, the group of the working poor is one of the groups that is most clearly suffering from the increase in precarious employment and social vulnerability and, on another level, they are the paradigmatic example of the erosion of the link between citizenship and employment, that we are studying.

5. What future awaits citizens and the welfare state? Alternatives and proposals

In this section we shall rank the proposals and alternatives that exist around the debate about the relationship between citizenship, employment and the welfare state. More specifically, we will present three options. The first defends the relevance of maintaining the relationship between citizenship and employment. The second would pose a possible reinterpretation of the relationship, maintaining it but introducing changes and adapting it to modern times. And finally, we will consider one last alternative that calls for the total reconstruction of this relationship and which advocates a complete decoupling of the link between citizenship and employment.

5.1. Maintaining the status quo

As indicated by the very wording of the title of this section, this approach advocates the need to maintain the relationship between citizenship and employment as it has been in recent decades. Within this approach, there are two differing views which, starting from different premises and assumptions and that could even be termed antagonistic, reach broadly similar conclusions with regard to maintaining the relationship. One is based on neoliberal premises and the other is closer to progressive and leftist currents.

5.1.1. *The neoliberal-institutional discourse*

This approach is often upheld by public institutions and certain political entities, such as the EU, many national and regional governments or employers. In this view, we can highlight with regard to employment, concepts such as competitiveness, job skills and active employment policies (OECD, 1993, European Commission, 2006). But above all, one idea prevails, which is the key to this perspective: employability, understood as the means to achieve adequate and quality employment through training and qualifications. Today, employability is one of the driving ideas within the European Union with regard to employment (Brunet and Pastor, 2003) and emphasizes the adaptation of the individual to the needs of the labour market. Consequently, it emphasizes the individual responsibility of each person to adapt to the characteristics of the labour market, thus opting for an individual solution rather than a collective or structural solution.

In fact, this latter idea is one of the most criticized in this perspective, as some authors consider that it ignores the existence of a number of structural and social aspects that affect employment and that condition the relationships of power and imbalances within the labour market. In this regard, we can note that individual skills and aptitudes play a role in obtaining employment and in the employability of the individual, but it is equally true that other factors such as the current economic situation and public decisions also have effects. In fact, in general the assessments of the different employment programmes stress that the socio-economic context is a determining factor in the success of such programmes and that the balance that can be achieved between successful employability and the expenditure made, highlights that one must be cautious in this regard (De Graaf, Frericks and Maier, 2003; Daguerre and Etherington, 2009). Neither can we overlook the fact that often the only criterion for assessing the success or failure of a measure is quantitative, i.e. how many jobs have been created. But in many cases, the qualitative element is not analysed and, consequently, issues such as the quality of the jobs created or their inclusiveness are not taken into account. A true and effective assessment of the policies that promote employability should combine both aspects.

5.1.2. *The discourse of the left wing working class*

With certain qualifications and making sure that the classification contributed in this article is introductory in nature, within the option of maintaining the relationship between employment and citizenship, we can also find a vision that draws on the ideological currents of the Left and of Progressive parties and that largely coincides with the perspective of the main trade unions, with some of the left-wing

or centre-left parties and also with an important sector of public opinion. In this case, the main idea is that to deal with the neo-liberal offensive one has to defend the rights obtained in the workplace. Consequently, we can also speak of a conservative vision that is construed from defensive positions and that promotes maintaining the characteristics of the Fordist employment pattern.

While it is true that there is no defined body of theory in this area, it is true that in practice, theses often appear that draw on this logic and this approach, especially from perspectives that emphasize the importance, even at present, of the central nature of employment as the heart of the modern social contract and as a key element in understanding the labour movement and the world of work in general (Gorz, 1986; Aznar, 1994; Lacalle, 2009). From this perspective, and although a conservative position has been mentioned, the goal is to extend many of the characteristics of the Fordist employment rules to the entire working population in order to repeat the *virtuous cycle* that once existed between citizens and employment.

It is also somewhat strange how this discourse and the neoliberal discourse, even based on completely opposite principles, sometimes seem to coincide in relation to certain elements and conclusions. As an example, both discourses include calls for full employment to achieve greater social integration as a constant element and as one of the key elements of this discourse. Therefore, at the XVI National Congress held in 2008, the Popular Party introduced a section within its economic paper entitled *Towards full employment as the best social policy*. In turn, the trade union discourse often emphasized full employment as a goal and as an element that should govern political and trade union activities. It is true that in both cases the content of the idea may vary, but it is also true that both approaches start from the same – or at least similar – analysis of the current context, which is none other than employment – full employment – can achieve the integration of the vast majority of citizens.

However, several authors stress that speaking of full employment is not a great contribution at present (Schmid, 2002). In the era of the Fordist employment rule, full employment was tantamount – almost automatically – to greater social cohesion within a society and to stable and decent working conditions. Thus, more employment, more integration and vice versa was an equation that was strictly upheld in most European welfare states. However, the changes that have taken place in labour relations today require, more than ever, that, together with variables such as the amount of employment created, we must take qualitative aspects into account. Especially in regard to the quality of the employment created, as a full employment situation today does not guarantee widespread social cohesion *per se* and it may be a situation in which apparently good data may hide realities like that of the working poor. In the words of Imanol Zubero, for example, we should speak today of *full underemployment* rather than full employment (Zuber, 2000). In other words, the full employment concept still maintains its outward meaning but the content has varied substantially, resembling a *zombie concept*, in the words of Beck (2002) or a *shell institution* according to Guiddens (2000).

5.2. Renewing the relationship between employment and citizenship

This vision displays the shortcomings of current employment in ensuring full citizenship and therefore stresses the need to adapt and rethink the role of employment in this case, adapting it to the new features of economic and labour market. Within this perspective, we can highlight the contribution of a concept, such as flexicurity, which, as the name implies, attempts to combine and reconcile job flexibility on the one

hand and social security on the other. From this perspective, the temporary or flexible nature of work need not invariably lead to greater precariousness in work and life. It attempts to break with the discourse that has historically existed between flexibility and security and is committed to a vision that is able to build a virtuous cycle between the two concepts within labour relations.

Within the European Union, flexicurity is becoming increasingly relevant. In November 2006, for example, a Green Paper on flexicurity was introduced. This paper later led to the commitment to this model by the European Commission in 2007, through a comprehensive report. Similarly, the Treaty of Lisbon – December 2007 – stresses that flexicurity “will strengthen the European Employment Strategy and will create more and better jobs, while modernizing the labour market and promoting quality employment in a context of flexibility and security, improving adaptability, employment and social cohesion” (European Council, 2007). This proposal has also crossed our borders and, for instance, the PSOE in its Federal Congress in 2008 defended this model. Although in most cases – and more so in our environment – the debate is presenting theoretical and normative connotations, at a practical level we can also highlight some experiences that may serve to better appraise this debate on flexicurity. In particular, the policies developed by Denmark and the Netherlands are almost always mentioned (Polus 2005; Klammer, 2007), although there are some differences between them (Keune, 2008).

In 1999, the Netherlands passed a Law on Flexibility and Security to promote different types of flexible employment, but above all, there has been a major boost in part-time employment, which now accounts for 40% of the total, well above the European and the Spanish averages. In the Netherlands, unlike Spain, having a part-time job does not involve any reduction in social and labour rights because these rights are similar to those enjoyed by a person working full time (Wilthagen and Tros, 2004). Therefore, they have the same coverage concerning benefits and rights, such as holidays, pension contributions, unemployment benefits or maternity leave (Wilthagen and Rogowski, 2004). Within the flexicurity framework, since 2006, the possibility of saving part of the salary – a maximum of 12% annually – has been established in order to be able to use it at a later date when a person needs money and/or time. In real terms, this option implies that if you have saved the maximum amount possible, every six years you could have one year of leave (Klammer, 2007).

This is not the system used in Denmark, as they have opted for a model in which labour mobility – especially through some effective and active employment policies – together with minimal labour regulations and a wide coverage of social benefits forms what is known as *the Golden Triangle* of the Danish model (Madsen, 2006) and a sort of middle path or third way between the flexibility of the British model and the Nordic social protection model (Zuber, 2007). One of the cornerstones of this model is the rotation and mobility at the workplace, which is achieved through adequate benefits for years of absence, which ensures that people who have a job can train and adapt to new needs while unemployed people get a job. This model, in which dismissal is virtually not penalised, is shielded by extensive social coverage, which, in the case of unemployment benefits, covers four years at 90% of the last salary.

Given the nature and size of this article cannot delve deeper into these two models. In any case it may be interesting to discern whether or not they can be extrapolated to other areas and countries. In the case of the European Union, for example, the Danish model is seen as the one to follow. In this regard, first we should stress that Denmark has 5.5 million inhabitants, well below other European countries like Germany – 82 –, France – 63 – or Spain – 46.6 –. We should also note that public spending on social policies or the Danish tax burden are quite different and significantly higher than those of other European countries. To mention

just one example, social expenditure in Denmark in 2005 was 30.1% of GDP, while this figure was 20.9% in Spain (Petrasova, 2008: 1). Therefore, it is difficult, at least at first sight, to automatically and successfully transfer the Danish model to other countries, such as the Mediterranean countries (Algan and Cahuc, 2005), especially when the social coverage – the security part of this concept – is very weak.

Together with the previous aspect, one of the key issues in the debate on flexicurity is to define how much *flexibility* and how *security* the model will have. As noted above, if the safety *aspect* is not strengthened, the model will obviously be born *crippled* from the outset and that it will continue increase flexibility and precarious in today's labour market. This is precisely one of the most pointed criticisms by the people opposed to this model, among which we can include most European trade union officials. They stress that, under a seemingly attractive and interesting approach, ideological interests that advocate greater job insecurity may be hidden. This is not a trivial matter, because the social, political, economic and cultural differences are very large between different countries in the European Union.

Therefore, it is necessary that the debate on flexicurity be properly outlined and that, at all times, it is clear what we mean, to avoid tilting the debate between innovation and ambiguity (Keune, 2008). If these preliminaries are taken into account, the approach on flexicurity may prove attractive and provide fresh air to the current debate, with a view to adapting to changing times. In this sense, it looks like one job for a lifetime is not going to be possible for most of the population. But must this fact invariably lead to the assumption of greater social instability? If an approach to and the praxis of flexicurity is appropriate, this model may answer these questions and others, in the line indicated by Giddens when he stressed that we must “protect the worker, not the job” (Giddens, 2006: 17).

5.3. Breaking the link

This third option is perhaps the most *ground-breaking* and innovative about the debate on citizenship, employment and the welfare state as it raises the total dissociation of the bond that has traditionally existed between employment and citizenship. And within this perspective we need to stress, no doubt, a proposal such as the Citizens Basic Income – BI hereafter –, which is the idea that, in recent years, has become more consistent within this third postulate. The idea of the BI began to be established and understood as it is today during the 1970s and 1980s as a result of the crisis of the welfare state and Fordist employment model. At the beginning, the idea focused on the academic field but it has gradually been gaining ground in other areas as well, such as social or political fields. In any case, it is an idea with which the general public is not yet familiar.

Turning to the definition of BI and based on the definition for the Basic Income Network, the BI is “a payment made by the State as a right of citizenship to each full citizen or accredited resident of the society regardless of whether he or she wishes to engage in paid employment or is rich or poor or, in other words, independently of what his or her sources of income might be, and irrespective of his or her cohabitation arrangements in the domestic sphere” (Basic Income Network, 2001). Put more briefly, the BI would be a universal unconditional payment issued to all citizens, regardless of issues such as income, employment or the number of people living in same household.

After reading this definition, doubts or critical questions may arise regarding this idea, as it calls into question some aspects that have important historical roots in our society. Below, I have included a brief

overview of the main criticisms, but without going into great depths¹ due to the nature and object of this paper. One of the *trickiest* issues is often the idea of receiving a cash payment without having a job – or wanting to have one –, an idea rooted in our societies and that does away with the reciprocity and responsibility of individuals with society (Galston, 2000; Anderson, 2000). Proponents of the BI stress, in the case of this criticism, that a distinction must be made as to what employment is and what work is. The former is a mode within the latter, but together with employment we can also find housework or volunteer work, both, like employment, of use to society. Another typical criticism when talking about the BI is that all citizens can receive it, regardless of their income and of the economic differences that exist within the same society. As noted in the definition of BI, it is universal and, as such, it is logical that everyone should receive it, in the same way they receive health care or education, areas where provision is not based on income levels either. In the case of BI, as is the case with health and education, people with the highest purchasing power will be able to access and enjoy the benefit, but then through the tax system – if that system is progressive – they will contribute more than a person with a lower income level. In this sense, what matters is the final balance rather than receiving the BI or not. Therefore, those who defend the BI also stress that giving it to wealthy people does not involve, in itself, any act of justice or injustice, as long as the tax model is progressive and these people pay taxes accordingly. They also stress that its universal nature shields and facilitates the dissemination and acceptance of the proposal, especially in the case of the middle classes, who, as displayed in several surveys, are in favour of public health care and education, because they enjoy the services and benefits, but, on the other hand, are much more reluctant to other types of policies, such as those directed at people living in social exclusion. Feasibility – in a broad sense – is another aspect that is often criticized in relation to the BI and both for those who support or reject BI, it is one of the *Gordian knots* in the dispute. Within the feasibility aspect, we might differentiate political and social feasibility, on one hand, and technical and financial feasibility, on the other (Moreno, 2008b).

With regard to political and social viability, the BI, as any other proposals for social reforms or innovation requires broad support by the public opinion and the political class. In this respect, advocates of the BI should understand that the idea of receiving money without having the obligation to get a job is not well received by most European societies (Andersson and Kangas, 2002; Liebig and Mau, 2002). This statement should lead to a quiet reflection on how to sell the *product* and justify a proposal like the BI, taking into account aspects such as political realism and pragmatism, at least if one wants the idea to enjoy the greatest possible level of acceptance (Bellvís, 2005).

Regarding the second feasibility aspect – economic and technical –, it is also essential to provide an adequate response that is realistic and credible. Thus, any proposal for BI must be based on feasibility and must not be based on maximalist proposals that require, for example, unaffordable expenditure at a given time and in a given area (Iglesias, 2002). More so at a time like the present economic crisis. In this sense, there are proposals today for the practical implementation of the BI that involve implementing it without leading to any great additional public expenditure. Most of them raise the need for progressive tax reform to formulate a BI through a Negative Tax, which would establish a BI and that would require higher taxation of capital income (Atkinson, 1995, 2001, Oliver and Spadaro, 2004; Sanzo and Pini, 2004). In any case, in order to detect the true effects of such a proposal would require the implementation of a pilot programme

¹ To go into greater depths in relation to the main criticisms of the BI: Moreno, Gorka (2008), *Crisis y reconstrucción del Estado del Bienestar. Las posibilidades de la Renta Básica de Ciudadanía*, Gobierno Vasco, Vitoria-Gasteiz.

in order to detect the consequences that a reform of this magnitude could have in areas such as tax collection (Groot, 2004) or the labour market.

In short, along with the proposals outlined in this article, the BI is one of the alternatives currently being considered in the discussion on citizenship and employment, since it refers to income from sources other than employment. However, the level of general awareness on this proposal is rather limited and issues such as its feasibility must be taken very seriously by its proponents, if it is not to be limited to certain social and academic areas. In this sense, and as a proposal to continue the debate, it may be more helpful if, instead of selling BI as something totally revolutionary and ground-breaking, greater emphasis was placed on the connection between BI and the driving ideas behind the Welfare State, among which we can mention the guarantee of basic financial conditions outside the labour market, and that, today, are more or less directly provided by means of aid, subsidies and benefits of financial nature that already exist and that people accept. In other words, perhaps we should emphasize that BI is not really iconoclast and revolutionary, and that it is rather a tool that can be used to update and renew the welfare state.

6. Conclusion: Summary proposal for discussion

As we have seen throughout this paper, the relationship between citizenship and employment, and, if we understand the social element of citizenship as an equivalent to the welfare state, the relationship between employment and the welfare state is very close. Consequently, the changes that have occurred in recent years in the social rules of employment are affecting basic aspects of the Welfare State itself. Thus, it is notable that the dispute between employment and citizenship is now a fundamental debate (Dore, 1996; Edwards and Revauger, 2000; Roche, 2002; Taylor-Gooby, 2008; Gordon and Lenhardt, 2008). The relationship between the two is currently *sensitive* and where once there was a virtuous cycle and a number of potentialities, they now appear eroded and weighed-down, mostly due to the precarious nature of employment and to social vulnerability. In this context, one can speak of a citizenship fragmentation process, or put another way, first and second class citizenships.

Precisely such a scenario is necessary to reconsider and rethink the relationship between employment and the welfare state, at least if we start from the premise that the rights of citizenship form the axis of the modern social contract and are the guarantors of a decent life for all of society. In this task, it is essential that, from the outset, we correctly distinguish between the means and ends. Until now, the means to guarantee the rights of citizenship had been employment and it seems plausible that, for all citizens, it will continue to be so now and in the near future. However, it is true that for some groups employment no longer guarantees adequate basic material conditions and that it has, therefore, lost some of its integrating capacity. The case of the working poor is symbolic.

In this discussion, the different proposals have often been presented in a separate and exclusive manner. This paper has also offered and listed three options for rebuilding the relationship between employment and citizenship. In any case, this does not mean that there are no points in common between these options. Moreover, to enhance and advance in this discussion, we would have to analyse the convergence and the similarities rather than stress any divergences. Except for the institutional neoliberal discourse, which, from our point of view, does not make a clear commitment to an inclusive and cohesive concept of citizenship; the other proposals present similarities and points of agreement that may provide grounds for an interesting

and enriching dialogue and even for formulating some common strategy around a common goal, the reconstruction of citizenship.

In the left-wing-labour approach and in the concept of flexicurity – when developed from a progressive perspective – or in the Citizens’ Basic Income approach, there seems to be a common element that is the idea of guaranteeing full citizenship for the entire population and guarantee with a view to generating a decent society (Margalit, 1997). In this regard, there may be differences in the means but not in the final goal. Equally, some elements that facilitate the search for means that are more or less suitable for different strategies or alternatives can be highlighted.

In the case of the idea that advocates maintaining the relationship between employment and citizenship – left wing labour approach –, the idea of *Decent work* is a very interesting aspect, as it engages with a view that is perhaps more traditional but that, in turn, introduces new elements that also emphasize the qualitative aspects of employment, job quality and not only quantitative aspects – job creation. This concept was coined by the International Labour Organization – ILO – in 1999 through a report by the Director-General, Juan Somavia. The ILO defines this concept as employment that takes place in conditions of freedom, equality, security and dignity and the report itself contextualises and accurately defines Decent Work when he says “...not just the creation of jobs, but also the creation of jobs of acceptable quality. The level of employment (quantity) cannot be divorced from its quality” (ILO, 1999). Decent work is a concept that is having more of an impact, especially in trade union and political fields and this fact has meant that, since 2008, October 7 has been appointed the World Day of Decent Work. In short, it may be a concept that, from a perspective focussing on employment, is capable of coping with the unstable working conditions that exist today (Sen, Stiglitz and Zuber, 2007).

On the other hand, and halfway between flexicurity and the BI, we may stress that there are a number of existing measures that could sow the seeds for the implementation of more innovative alternatives. The extension of certain benefits and providing them with a universal nature could be a good tool in this regard. To give an example, the current minimum insertion income, through certain reforms, could cover the new requirements that are emerging in the social field, such as job insecurity, work and family reconciliation or dependence. In other words, through a certain level of universalising existing benefits, it would be possible to work on the BI idea without directly applying it, but working towards it *de facto*. In addition, this type of strategy could fully connect with the prevailing public opinion approaches and could counter the criticism of its feasibility or realism that often arises in relation to the BI.

In conclusion, the search for a diversified strategy and one that combines forces to seek the common ground and leave aside the exclusionary discourses may be a good starting point for launching a serious debate about what should be the future relationship between citizenship, employment and the welfare state. At least, if we start from the idea that citizenship as a guarantor is necessary – essential – to guarantee an integrated and cohesive society.

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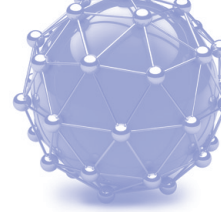
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Social policies and the social impact of the global crisis

Introduction

In order to discuss the future of social policies and the social impact of the global crisis, I thought that this paper should start with some data collected from a report prepared by the Commission on Social Determinants of Health of the World Health Organization (WHO); according to this report “a girl born in Sweden will live 43 years longer than a girl born in Sierra Leone”. The mortality differentials among countries are enormous. But such inequalities also appear within each country, including the so-called rich or developed countries. Once again, quoting from the report of the said Commission: “In Glasgow, an unskilled, working-class person will have a lifespan 28 years shorter than a businessman in the top income bracket in Scotland”. I might add here some data from the U.S.: in East Baltimore (where my university, The Johns Hopkins University, is located) an unemployed young black man has a lifespan 32 years shorter than a white lawyer working in a large firm. As I have also documented in another article, [1] an African American youth is 1.8 times more likely to die from cardiovascular disease than a young white American. Race mortality differentials are large in the United States, but class mortality differentials are even larger. In the same study, I showed that a blue-collar worker is 2.8 times more likely to die from a cardiovascular condition than a businessman. In the United States, as in any other country, the highest number of deaths could be prevented by interventions in which the mortality rate of all social classes was made the same as the mortality rate of those in the top income decile. (i.e., the top income level of the country). These are the types of facts that the WHO Commission report and other works have documented. The evidence that quality of life (among which health, life and death are very important) is socially determined is undeniable and overwhelming. These concepts are basic to any discussion of human rights. The rights to life, health and social welfare are basic rights that are the basis for the development of all other human rights. A discussion on human rights must begin, therefore, with an analysis of the social, economic and political context of the said rights.

The political, economic and social context of human rights over the past 30 years

The most noticeable changes that have taken place over recent years are those that were initiated by President Reagan in the United States and by Prime Minister Thatcher in Great Britain in the late 1970s and early 1980s. During the period 1980-2008, we have seen the promotion of public policies based on

the narrative that: (a) the state (or what is usually referred to in popular parlance as “the government”) must reduce its interventions in economic and social activities; (b) labour and financial markets must be deregulated in order to liberate the enormous creative energy of the market; and (c) commerce and investments must be stimulated by eliminating borders and barriers to allow the full mobility of labour, capital, goods, and services. These policies constitute the neoliberal ideology.

The implementation of these policies in the welfare sector has led to policies that emphasize (a) the need to reduce public responsibility for the quality of life and the social welfare of populations; (b) the need to increase the markets and the marketing of public services; (c) the need to transform national health services into private insurance-based systems; (d) the need to privatize the social security; (e) the need to develop a discourse in which the users of public services (patients in the case of health care services or students in the case of schools) are referred to as clients and planning is replaced by markets; (f) the improvement in the quality of life is an individual’s personal responsibility; (g) health promotion and quality of life understood as behavioural change in people; and (h) the need for individuals to increase their personal responsibility by adding social capital to their endowment. In the past 30 years we have witnessed the implementation of these policies and practices worldwide, including in the United States, in the European Union, and in international agencies such as the International Monetary Fund, World Bank and even in the WHO. Such policies have appeared in the *Washington Consensus*, in the *Brussels Consensus*, and, indeed, in the *WHO Consensus*, as evidenced by the WHO Report 2000 on health systems performance. [2, 3]. And the International Monetary Fund and World Bank have been promoting such policies with great zeal and intensity.

The theoretical framework for the development of these economic and social policies was the belief that the world economic order had changed, with a globalisation of economic activity (stimulated by these policies) that was responsible for unprecedented worldwide economic growth. In this new economic and social order, states are supposed to be losing power and are being supplanted by a new, worldwide market based on multinational corporations, which have become the main units of activity in the world today. This theoretical scenario became, until recently, dogma, applauded by the *New York Times*, the *Financial Times*, the *Economist*, and many other media outlets that heralded neoliberal wisdom around the world.

While these organs of the financial establishment applaud and promote this neoliberal interpretation or scenario, others (those on the left of the political world, such as Susan George, Eric Hobsbawm, and large sectors of the anti-globalisation movement and the World Social Forum) that lament it. But both sides interpret the reality in the same way: that we are all living in a globalised world in which the power of states is being replaced by the power of multinational corporations; the only difference is that while the establishment forces applaud globalisation, the anti-establishment forces regret it. The problem with this interpretation of the reality is that both sides are wrong!

Look at the practice, not the theory of neoliberalism

We need to analyse the ideological assumptions underlying these interpretations of reality. To start with, contrary to the claims of neoliberal theory, there has been no reduction of the public sector in most OECD countries. In many countries, public expenditure as a percentage of gross national product (GNP), and as expenditures per capita, has grown. In the United States, the leader of the neoliberal movement, public expenditure increased from 34% of GNP in 1980, when President Reagan started the neoliberal revolution,

to 38% of GNP in 2007; with a cost increase from \$4,148 per capita in 1980 to \$18,758 per capita in 2007. We have also seen that in most OECD countries, there has been an increase rather than a decrease in taxes as percentage of GNP: in the United States, an increase from 35% in 1980 to 39% in 2007. This situation started under President Reagan, in the United States, which resulted in an increase in federal public expenditure from 21.6% to 23% of GNP, while taxes increased not once, but twice. As a matter of fact, Reagan increased taxes for a greater number of people (in peace time) than any other U.S. president. He reduced taxes for the top 20% of earners but increased taxes for everyone else. As John Williamson, the father of the neoliberal Washington Consensus, wrote: “We have to recognize that what the U.S. Government promotes abroad, the U.S. government does not follow at home” [4].

And what we have witnessed recently are mass U.S. federal interventions to resolve the banking crisis created by the deregulation of the banking industry. This is just one more example of how wrong the thesis that states are being replaced by multinationals is. States are not disappearing. What we are seeing is not a reduction of state interventions, but rather a change in the nature of these interventions. This is evident if we look at the evolution of public federal expenditure in the U.S. In 1980, the beginning of the neoliberal revolution, 38% of this expenditure went to programmes that targeted persons, 41% to the military, and 21% to private enterprises. During 2007, these percentages had changed quite dramatically: expenditure on persons declined to 32%, military expenditure increased to 45%, and expenditure in support of private enterprises increased to 23%. And all of this occurred before the massive assistance now going to the banking community (as a way of resolving the financial crisis) as approved by the U.S. Congress.

A similar situation is evident in the welfare state. Thus, we have seen further privatisation of health services, with an expansion of the role of insurance companies in the health sector supported by fiscal policies, from tax exemptions to tax subsidies, that have increased exponentially. Similarly, the private management of public services has been accompanied by an increased reliance on private co-payments and co-insurances. There has also been a massive growth of both public and private investment in biomedical and genetics research, in pursuit of the biological “solution” that will resolve today’s major health problems, with the main emphasis on the biomedical model – and all of this occurs under the auspices and guidance of the biomedical and pharmaceutical industry, clearly supported with tax money –.

The changing nature of public interventions: the importance of social class analytical category

A characteristic of these changes in the nature of public interventions is that they are occurring in response to changes in the distribution of power in our societies. Changes have systematically benefited some groups to the detriment of others. Public interventions have benefited some classes at the expense of other classes, some races at the expense of other races, one gender at the expense of the other, and some nations at the expense of other nations. We have seen a heightening of class as well as race, gender, and national tensions. We need to stress here the importance of speaking about class inequalities as well as about race, gender, and national inequalities.

One element of the postmodernist era is that class has almost disappeared from political and scientific discourse. Class analysis is frequently dismissed as antiquated, a type of analysis and discourse for “ideologs,” not for serious, rigorous scientists. As “class” has practically disappeared from scientific literature, it has been replaced by “status” or other less conflictive categories. The disappearance of class analysis and class

discourse, however, is politically motivated. It is precisely a sign of class power (the power of the dominant class) that class analysis has been replaced by categories of analysis that are less threatening to the social order. In this new scenario, most citizens are defined as middleclass and the vast majority of people are placed in between; i.e. between “the rich” and “the poor”.

But social classes do exist. And there are data to prove it. Two of the most important sociological scientific traditions in the western world are the Marxist and Weberian traditions, and they have contributed enormously to the scientific understanding of our societies. Both traditions consider social class a major category of power, and class conflicts and struggles a major determinant for change. To define class analysis as antiquated is to confuse antique with antiquated. The law of gravity is antique, but it is not antiquated. If you don't believe this, test the idea by jumping from a fourth floor window. And I am afraid that many analysts are jumping from the fourth floor. Forgetting or ignoring scientific categories carries a huge cost. One of them is an inability to understand our world today.

Neoliberalism is the ideology of the dominant classes in the North and in the South. And the privatisation of welfare state public services is a class policy, because it benefits high income groups at the expense of the popular classes. Neoliberal public policies benefit the dominant classes to the detriment of the dominated classes. The development of these neoliberal policies has hugely increased inequalities, not only between countries but within countries.

Another example of the cost of forgetting about class is that the commonly used division of the world into rich countries (the North) and poor countries (the South) ignores the existence of social classes within the countries of the North and within the countries of the South. In fact, 20% of the largest fortunes in the world are in so-called poor countries. The wealthiest classes in Brazil are as wealthy as the wealthiest classes in France. The poor in Brazil are much poorer than the poor in France, but there is not much difference among the rich. And let's not forget that a young unskilled worker in East Baltimore (U.S.A.) has a life expectancy as short as the average life expectancy in Bangladesh. There are classes in each country. And what has been happening in the world over the past 30 years is the forging of an alliance among the dominant classes of the North and South, an alliance that has promoted neoliberal policies that go against the interests of the dominated classes (the popular classes) of both North and South. There is an urgent need to develop similar alliances among the dominated classes of the North and South.

Class alliances as a determinants of “non-change”

I must say, I became fully aware of this situation when I was advisor to the Unidad Popular government presided over by Dr. Salvador Allende in Chile. It was not the United States that imposed the fascist coup led by Pinochet (as was widely reported at the time). I was in Chile and could see what was happening. It was the Chilean economic, financial, and land-owning elites, the Chilean Church, the Chilean upper and upper-middle classes, and the Chilean army that rose up against the democratic government, in a fascist coup supported, not by the United States (the United States is not a country of 300 million imperialists), but by the U.S. federal government, headed by the highly unpopular President Nixon (who had sent the U.S. Army to put down a general strike in the coal mining region of Appalachia). One should never confuse a country's people with its government. And this is particularly important in the United States where no less than 82% of the population believes the government does not represent their interests, but rather the

interests of the economic and financial groups (known as the corporate class in the United States) that dominate the behaviour of the U.S. government and Congress.

I am aware of the frequently made argument that the average U.S. citizen benefits from the imperialist policies carried out by the U.S. federal government. Petrol, for example, is relatively cheap in the United States (although increasingly less so). This, it is said, benefits the working class of the United States. But this argument ignores the heavy dependence of average Americans on private transport and the costs of this transport for the popular classes, who would greatly benefit from (and would much prefer, according to most polls) public transport, which is virtually non-existent in much of the country. It is an alliance between the automobile industry and the oil and petrol industry that is responsible for the failure to maintain and develop public transportation. There is a lack of awareness outside the United States that the American working class is the first victim of the U.S. economic and political system. The health sector is another example of this. No other working population from any other developed country faces the problems to access health services as those experienced by popular classes in the U.S. In 2006, 47 million Americans did not have any form of health coverage. And people die because of this. Estimates of the number of preventable deaths vary from 18,000 per year (estimated by the conservative U.S. Institute of Medicine) to a more realistic level of over 100,000 (calculated by Professor David Himmelstein of Harvard University). The number depends on how one defines “preventable deaths”. But even the conservative figure of 18,000 deaths per year is six times the number of people killed in the World Trade Center on 9/11. This event outraged people (as it should), but the deaths resulting from lack of health care seem to go unnoticed. These deaths are not reported on the front pages, or even on the back pages, of the *New York Times*, the *Washington Post*, the *Los Angeles Times*, or any other U.S. newspaper. These deaths are so much a part of our everyday reality that they are not news.

But besides the problem of the uninsured, the United States has another major problem: the underinsured. One hundred and eight million people had insufficient coverage in 2006. Many believe that because they have health insurance, they will never face the problem of being unable to pay their medical bills. They eventually find out the truth, however: that their insurance is dramatically insufficient. Even for families with the best coverage available, the benefits are much less comprehensive than those provided in Canada and in most European Union (EU) countries. Paying medical bills in the United States is a serious difficulty for many people. In fact, the inability to pay medical bills is the main cause of family bankruptcy, in spite of the fact that most of these families do have health insurance. Furthermore, 20% of families spend more than 10% of their disposable income on insurance premiums and medical bills (the percentage is even higher for those with individual insurance: 53%). In 2006, one of every four Americans had problems paying medical bills, in spite of the fact that most of them had private health insurance. And the cruelty of the system appears quite brutal with this fact: 42% of people with a terminal disease state their concern about how they or their families are going to pay their medical bills. No EU country faces this dramatic situation.

The situation of developing countries

The dominant classes and the class alliances existing in the world today are at the root of the problem of poverty and of the absence of the most basic human rights. These alliances reproduce the exploitation responsible for poverty and for the underdevelopment of quality of life. The *New York Times*, in a rare moment of candor, analysed the poverty in Bangladesh, as the “poorest country in the world” [5]. But Bangladesh is not poor; quite to the contrary, it is a rich country. Although most of its people are poor (with

very poor health conditions and quality of life), the country is not. It has enormous resources. The root of the problem is who controls these resources. as the *New York Times* acknowledged:

“The root of the persistent malnutrition in the midst of relative plenty is the unequal distribution of land in Bangladesh. Few people are rich here by Western standards, but severe inequalities do exist and they are reflected in highly skewed land ownership. The wealthiest 16% of the rural population controls two-thirds of the land and almost 60% of the population holds less than one acre of property... The new agricultural technologies being introduced have tended to favour large farmers, putting them in a better position to buy out their less fortunate neighbours. The government is dominated by landowners – 75% of the members of the Parliament own large tracts of land – and, therefore, no-one foresees any official support for fundamental changes in the system... Food distribution NGOs in Bangladesh privately concede that only a fraction of the millions of tons of food aid sent to Bangladesh has reached the poor and hungry in the villages. The food is given to the government, which in turn sells it at subsidised prices to the military, the police, and the middle class inhabitants of the cities.”

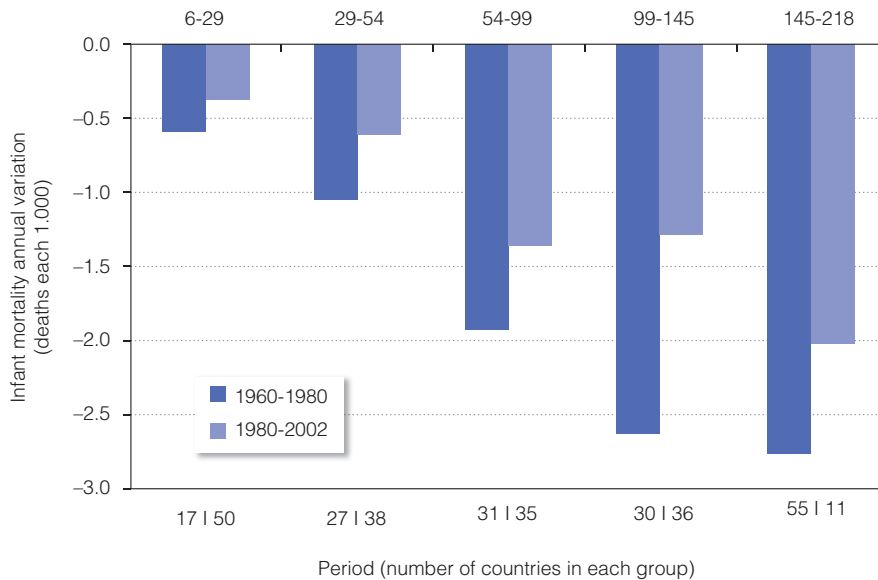
Finally, the *New York Times* concluded:

“Bangladesh has enough land to provide an adequate diet for every man, woman and child in the country. The agricultural potential of this lush green land is such that even the inevitable population growth of the next 20 years could be fed easily by the resources of Bangladesh alone.”

As described in the *New York Times*, the conflict in the world today is not North against South. Nor is it globalization or the scarcity of resources. It is the power differentials between social classes in these countries and their influence over the state that are at the root of the problem. *These are the root causes of poverty and of the lack of human rights*. In most developing countries, the dominant class is in alliance with the dominant classes in developed countries, and they control the organs of the state. The cases of Egypt, Tunisia and the Arab countries is one example, among many others. And historical experience shows that when the population that does not have land or other resources revolts against this situation to force a change, the dominant classes, both in the South and the North, unite to oppose change by any means available, including brutal repression. This is the history of populations that try to break with the underdevelopment of their quality of life. An example is the hostility in the mainstream media of the United States and of the European Union against governments of Chavez in Venezuela or of Evo Morales in Bolivia that are implementing reforms that affect the economic interests of those class alliances.

The failure of neoliberalism

Another assumption made in the neoliberal discourse is that the development of neoliberal policies has stimulated tremendous economic growth and improved the health and quality of life of entire populations. Here again, the evidence contradicts this assumption. The average growth of real GDP per capita in Latin America was an impressive 82% between 1960-1980, but fell 9% in the liberal period from 1980 to 2000 and, then another 1% in between 2000-2005. This decline explains the rebellions against neoliberal policies when they were implemented in Latin America. Regarding health indicators, as Figure 1 shows, for countries with similar levels of development at the starting point of the study period (e.g., in 1980 having



Source: M. Weisbrot, D. Baker and D. Rosnick (2006), "The scorecard on development: 25 years of diminishes progress", *Int. J. Health Serv.*, 36(2): 211-234.

Figure 1

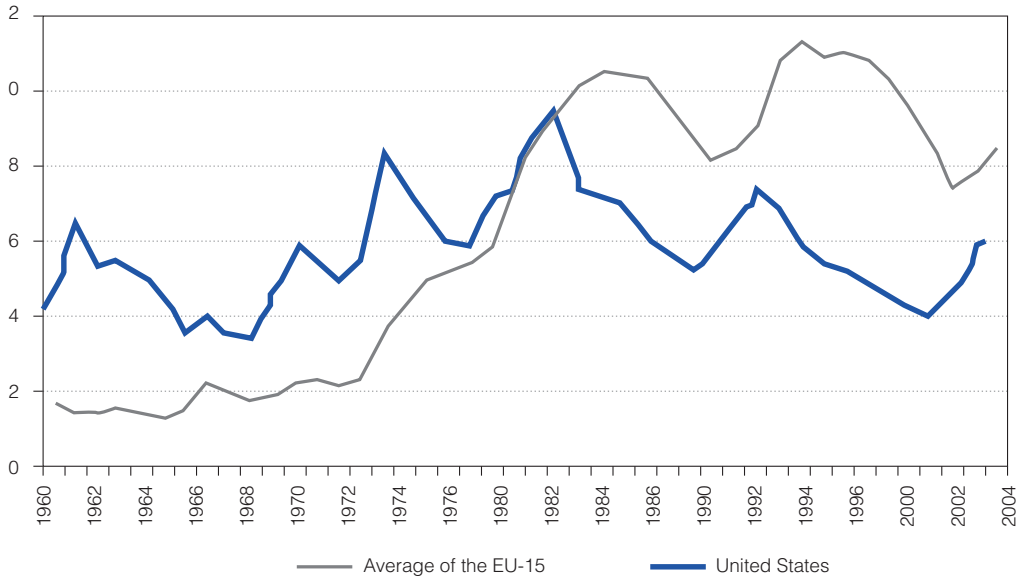
Infant mortality rate

the same level of development that others had in 1960), there was a much lower level of improvement in infant mortality during 1980-2002 than during 1960-1980. A similar situation appears in developed countries. In the United States, there has been a large increase in mortality differentials by social class and a steady deterioration in the health benefits coverage of the population. One million people have lost health benefits coverage every year, over the last ten years.

The social situation in Europe

To determine what has been happening in the European Union, we must see what has been happening in the labour market, unemployment, salaries, working conditions, social protection, social benefits, and business profits in the EU-15. We will focus on the EU-15 because these countries have been in the European Union for the longest time and thus exposed to EU policies for the longest periods.

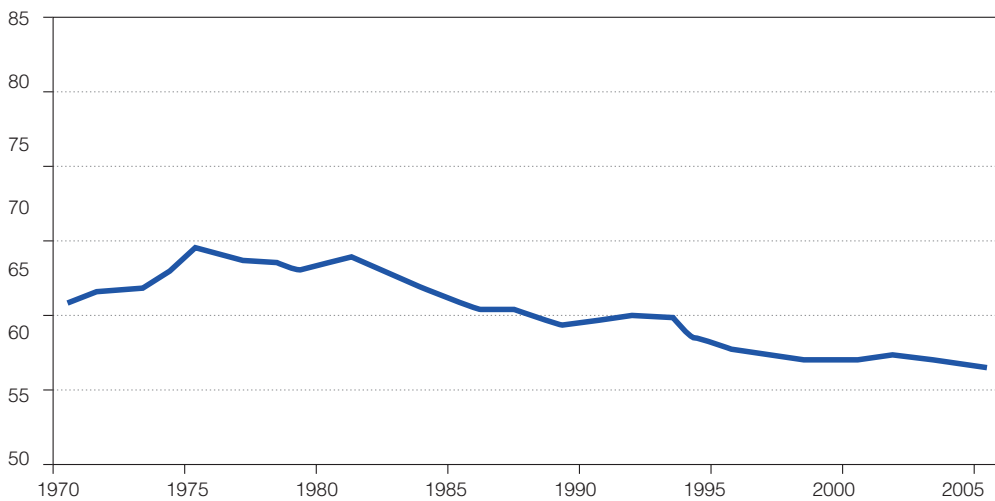
Figure 2 shows how unemployment has increased in the EU-15 since the early 1970s, coinciding with the development of policies aimed at establishing the European Union. Notice that Europe had lower unemployment rates than the United States between 1960-1980, and much higher unemployment between 1980-2003. In Figure 3, we see how earned income (which includes payment for work, social protection of workers, contributions to retirement allowances, and unemployment benefits), as a percentage GNP (Gross National Product) in the EU-15, declined from 1975 to 2005. This reduction took place even though the number of workers increased. Moreover, it was independent of the economic cycle.



Source: Annual Macroeconomic Database (AMECO), European Commission.

Figure 2

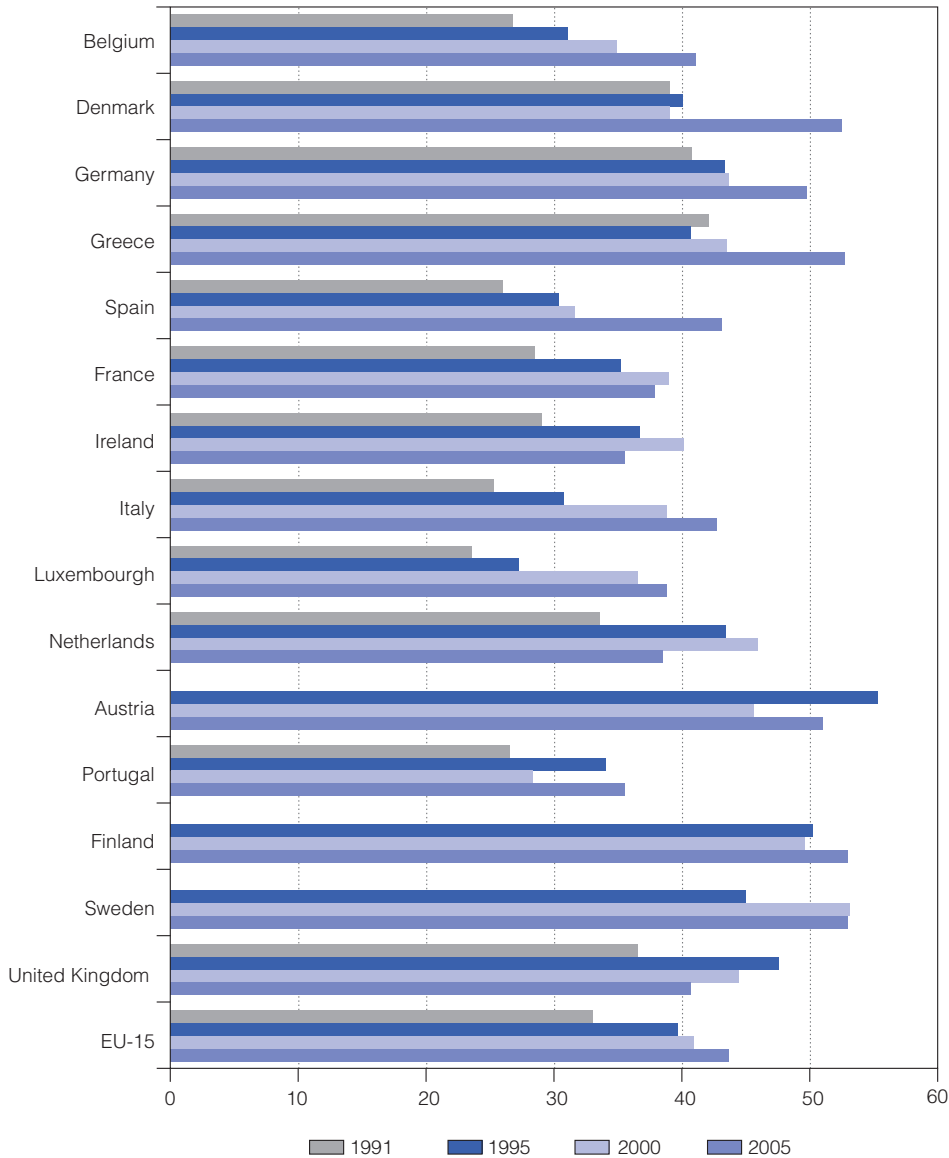
Unemployment. Evolution of unemployment (as percentage of population), average of the E.U. 15 (gray, lower left to upper right) and United States (blue), 1960-2003



Source: OECD estimates, using OECD Economic Outlook database.

Figure 3

Salaries. Percentage of labour compensation in national income in EU-15, 1970-2005. Total compensation for work, including social protection of workers, contributions to retirement allowance, and self-employment



Note: 1991 data for Austria, Finland, and Sweden are not included, because they were not part of the European Union in 1991.

Source: Eurofound.

Figure 4

Work intensity. Evolution of work intensity (percentage of population working under stressful conditions), EU-15, 1991-2005

Figure 4 shows how intensity and stress at work increased in practically all EU-15 countries. On average, the percentage of workers living under pressure increased from 32% in 1991 to 45% in 2005. A consequence of this is that, in the workplace, work-related illness also increased.

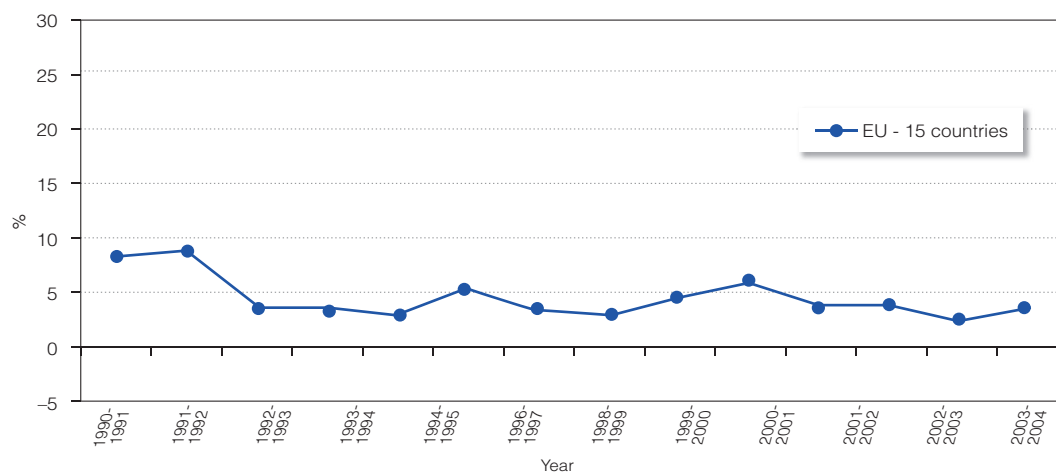


Figure 5

Decrease of the rate of growth in public social expenditure per capita

Table 1

Social benefits: substitution rates in sickness insurance, occupational accident, and unemployment, and percentage reduction of substitution rates during 1975-1995 (five-year periods)– data for 16 countries, classified by political tradition

Political tradition	Country	Social Insurance Program								
		Sickness		Occupational accident		Unemployment				
		Level	Reduction	Level	Reduction	Level	Reduction			
Liberal	Australia	48.4	-10.1	a			48.4	-10.1	a	
	Canada	62.9	-15.4	a			72.7	-13.1	a	
	United States						59.8	-12.8	a	
	Ireland	56.3	-33.5	c	64	-31.5	c	56.3	-34.9	c
	New Zealand	57.5	-34.7	c	94.3	-16	a	57.5	-25	a
	United Kingdom	63.4	-43.1	a	71.6	-51.3	a	63.4	-39.9	a
Christian democrat	Germany	100	0		100	0		74.3	-6.4	a
	Austria	99.2	-4.6	c	100	-3.4	c	47.4	-10.1	c
	Belgium	91.9	-0.3	a	100	-3.7	a	76	-28.1	b
	France	55.7	-6.8	a	66.8	0		41.1	-7.2	c
	Italy	68.1	0		74.1	0		86.8	-23.8	b
	Netherlands	84.7	-14.7	b	84.7	-14.7	b	81.6	-13.2	b
Social democrat	Denmark	74.7	-21.4	b	74.7	-21.4	b	81.9	-24.5	a
	Finland	86.1	-10.3	d	100	0		59.1	-5	d
	Norway	55	0		55	0		73.5	-10	a
	Sweden	90.3	-13.8	c	92.6	-21.8	c	77.1	-7.3	d

Note: Years of last maximum: a = 1975, b = 1980, c = 1985, d = 1990.

Source: W. Korpi and J. Palme. "New politics and class politics in the context of austerity and globalization: Welfare state regress in 18 countries, 1975-95". *American Political Science Review* 97(3):425-446, 2003.

The rate of growth of social public expenditures, as shown in Figure 5, also decreased during the period 1990-2004. And Table 1 shows how social benefits (sickness insurance compensation, occupational accident compensation, and unemployment insurance) declined in all EU countries between 1975-1995. The Anglo-Saxon liberal countries (Australia, Canada, United States, Ireland, New Zealand and United Kingdom) saw the largest cuts in benefits, followed by Christian Democrat countries and Social Democrat countries; the fall was not linear, with some cuts more accentuated in some Social Democrat countries than in liberal countries. But, social benefits declined in all EU-15 countries.

As these figures and tables show, the conditions of work and of social benefits coverage for the working class and other sectors of the popular classes have deteriorated, in stark contrast to the exuberant profits enjoyed by the employer class. From 1999 to 2006, their profits increased 33.2% in the United States and 36.6% in the Eurozone. Labour costs, however, increased only 18.2%.

In summary, during the years when the EU-15 was being established, while capital income increased, the income of workers decreased; salary inequalities increased, fiscal regressivity increased, social benefits decreased, and social protection decreased – all resulting in an increase in social inequalities. This has been accompanied by an increased percentage of the population that see these income inequalities as excessive (78%, the largest percentage since World War II). It is also worth noting that a growing number of people in the working and popular classes believe that the deterioration of their social situation is due to the public policies developed as a consequence of the establishment of the European Union. Are they right?

What explains the anti-European feeling among Europe's working classes?

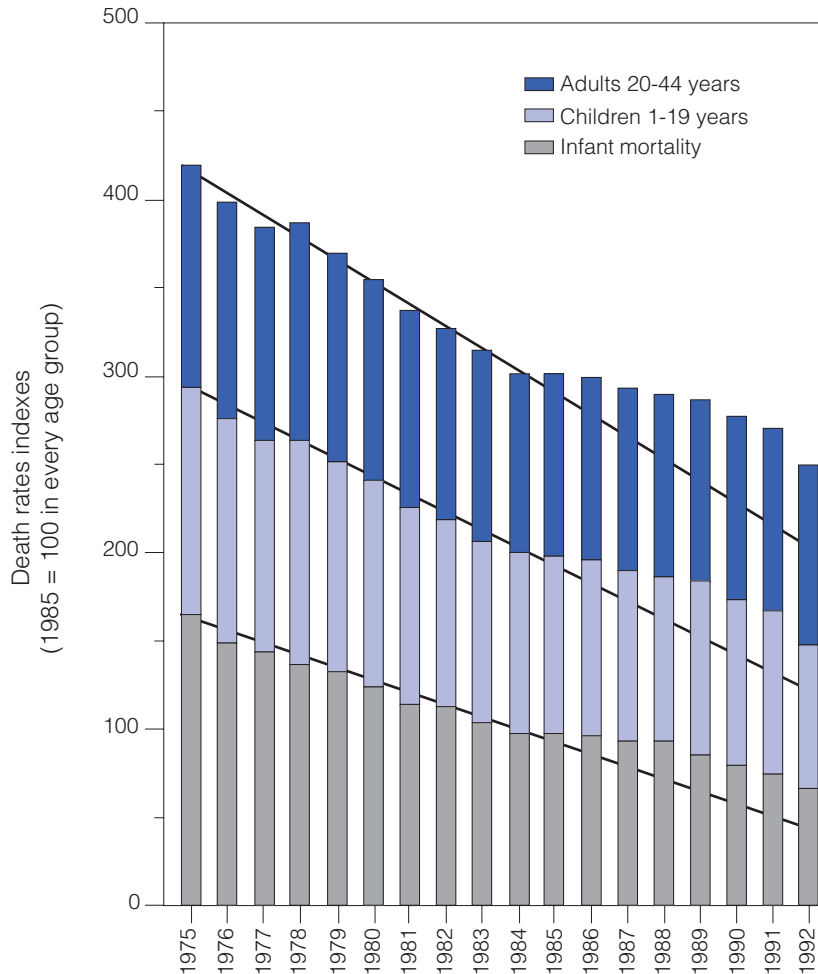
To answer this question, we must first look at the reasons given by the European establishment – the Brussels Consensus – for the growth of unemployment in the EU-15. The EU establishment has attributed the increased unemployment to three factors:

- a) excessive regulation of the labour markets,
- b) excessive generosity of social benefits, and
- c) excessive public expenditure.

As a result, the policies promoted by the Council, the European Commission and European Central Bank (the major components of the EU establishment) have included measures that:

- a) deregulate labour markets,
- b) restrain and/or reduce public spending. One example, among many others, is the statement by Pedro Solbes, for many years the commissioner of Economic and Monetary Affairs of the EU-15 and now Minister of Economy of the socialist government in Spain: “the policy that I am most proud of is not to have increased public expenditure in Spain,” a declaration made in the country with the lowest public expenditure (after Portugal) in the EU-15; and
- c) reduce social benefits, which has reached its maximum expression in the proposal to increase allowable working time to more than 65 hours per week.

These policies have been instituted within the framework of the monetary policies established in the Stability Pact, which requires austerity in public expenditure, together with the prioritizing of European Central Bank policies, that have led to the control of inflation over economic growth and job creation. In the United Kingdom (the first country that developed those policies, under Thatcher), a consequence of these policies has been a slowing down of the mortality rate for all age groups, as shown in Figure 6.



Source: R.G. Wilkinson, *Unhealthy Societies*, Figure 5.10, Reproduced with the kind permission of the author and of Taylor and Francis Publishing.

Figure 6

Indexes showing changes in death rates among young adults, children, and infants (male and female combined), England and Wales, 1975-1992

What are the main components of a national programme aimed at improving the quality of life and social welfare of the population?

Public interventions should have the empowerment of people as their first objective. Therefore, national quality of life policies should focus on the structural determinants of welfare and should have as their primary components:

- a) Public policies that encourage participation and the capacity of society to influence them. The real democratisation of society, including representative institutions, is a key element to ensuring human rights.
- b) Economic and social determinants that provide citizens with safety and protection.
- c) Cultural determinants with a full diversity of values and programmes in the media.
- d) Working life interventions to ensure a satisfactory job that is challenging and well paid.
- e) Environmental and consumer protection interventions.
- f) Secure and favourable conditions during childhood, adolescence and during retirement.
- g) The provision of services and the transfer of the welfare state to allow the human development of citizens.

Let me stress that empowering people is of paramount importance. We are witnessing on both sides of the Atlantic, in the United States and in the European Union, a crisis of democracy. The representative institutions are widely perceived as controlled and instrumentalised by the dominant economic and financial groups in society. In the United States, confidence in the political establishment (referred to as “Washington”), perceived as captive to the corporate class, is at an all-time low. All political candidates in the 2008 presidential primaries, even John McCain, presented themselves as anti-Washington.

A similar situation is occurring in the EU, where in country after country the working classes are clearly rejecting the European project that has been constructed by economic and financial groups with a minimum of democratic participation. It is not just that France, the Netherlands, and Ireland have rejected the European Constitution, but polls also show that the working classes of Denmark, Sweden, Germany, and many other countries are against the European Constitution. What is extremely important and urgent is a public health and quality of life project capable of recovering the representativeness of political institutions. It is urgent to make representative institutions more responsible and accountable to the people they represent. And this leads me to criticise the WHO Commission’s report.

As I mentioned at the beginning, I saluted the establishment of the WHO Commission on the Social Determinants of Health and welcomed its analysis and recommendations. As a matter of fact, I wish the Commission could receive the Nobel Prize in Medicine, or the Peace Prize, for its work. The Commission has produced a solid, rigorous, and courageous report, and it goes a long way in denouncing the constraints on the development of health and quality of life. A phrase in the report, “social inequalities kill”, has outraged conservative and liberal forces, which find the narrative and discourse of the report too strong to stomach.

But it is not only social inequalities that kill, but those responsible for those inequalities (and who benefit from them) that kill. The Commission avoids the category of power (class power, as well as gender, race,

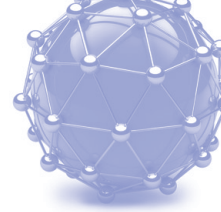
and national power) and how power is produced and reproduced in political institutions. This is the greatest weakness of the report. And this reproduces a widely held practice in international agencies that speak of policies without touching on politics. These institutions emphasize, in generic terms, the need to redistribute resources, but they remain silent on the topic of what resources, and how and through what instruments, and who controls them. They want to be profoundly apolitical, and therein lies the weakness of the report.

My comments here are not so much a criticism of the Commission, as a criticism of the WHO – and other such international agencies that deal in these issues. These agencies always try to reach a consensus, and consensus always gives the most powerful the power of veto. Any conclusion or subject or terminology that may offend the powerful groups seated at the table, must be dropped. The Commission's report focuses on describing how social inequalities are killing people. But we know the names of the killers. We know about the crime, the process by which it occurs, and the agents responsible. And we must denounce not only the process, but the forces that do the killing. The WHO has never done that, but we can and must do so.

Recall that it was Chadwick, one of the founders of Public Health ideals who, as Commissioner of the Board of Health of Great Britain in 1848-1854, declared that the poorer classes of that country were subject to steady, increasing, and sure causes of death: “The result (of the social situation) is the same as if twenty or thirty thousand of these people were annually taken out of their wretched dwellings and put to death”. A century and a half later, millions of people, in both the North and the South, die in this way. And we know the economic, financial and political forces responsible for this. And we have to denounce them by name.

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Multilevel citizenship and social policy

1. Introduction

After the financial crisis triggered in 2007 by the US credit crunch, European welfare states faced the challenge of renewing the covenant between social welfare and economic progress, the basis of the satisfaction level of Europeans and the cohesion of their societies. The idea is to recalibrate the welfare state institution, a “European invention.” The aim is not only to preserve the social rights of a distinctive European model – compared to the U.S. or China, for example – but to extend the social citizenship ideal to fields of welfare open to further changes.

The resistance of the Spanish WS against the pressure in favour of a decline in social policies, a typical prescription of the Anglo-Saxon capitalist paradigm, is uncertain. Spain has a relatively extensive social protection system concerning coverage (health, pensions, unemployment protection), but it is scarce regarding the protection of the family and personal social services. Its level of protection is limited, with a certain tendency towards privatisation and to transferring welfare costs to families and citizens (Moreno and Rodríguez-Cabrero, 2007).

The second section of this paper examines the general framework in which social policies are developed in a situation of social cost containment. We put forward the idea that, despite claims of a retrenchment in social rights, the expansion of social citizenship is possible and desirable with respect to the action of the regions and sub-state levels of government. The effects of the so-called “new social risks” (NSR) are felt in areas closest to citizens, which calls for increased emphasis on providing personal care services and “last resort” benefits based on principles of proximity and proportionality. Subsequently, we will have a look at the phenomenon of multilevel citizenship and governance. In Spain, “multi-level citizens” share collective identities and loyalties among the various levels of government. This legitimises regional aspirations in the implementation of social policies, based on the principles of territorial subsidiarity and democratic accountability. The third section of this paper identifies two major challenges in the future development of social policies in Spain: the first, exogenous in nature, concerns the viability of the *welfare state* within the context of economic globalisation and Europeanisation; the second, endogenous in nature, highlights the growing participation of women in the formal labour market and the effects this has on equality of gender rights. The

concluding remarks stress the importance of preserving social human rights if the European Social Model should manage to overcome the challenges it is facing.

2. Cost containment and the expansion of welfare

During the years of transition to the third millennium, social policies have been subjected to fierce examination by the neoliberal ideology and by neo-conservative politicians. As has happened in many developed OECD countries, we have seen the “contagion” in Spain of an ideological offensive widely prevalent in the Anglo-Saxon world and related countries (Australia, Canada, USA, Ireland, New Zealand and United Kingdom, mainly). Such neoliberal proposals have been associated with a paradigm shift in the formulation and implementation of public policies, based, among other proposals, on: (a) deregulated labour markets and wage polarisation, (b) individualisation of key expectations, (c) financial control of production, (d) unrestricted movement of speculative capital. When the financial crisis erupted in 2007, the Anglo-Saxon model of capitalism was strongly criticised in the “Old Continent” as the major factor responsible for the financial excesses seen. However, the reluctance of EU member states encumbered a coordinated European response and has led to questions about future developments concerning the social and economic sustainability of European welfare states.

In general, after the transition to the third millennium, the development of the welfare state in Spain has been characterised by cost containment, viability reforms, territorial decentralisation and the transfer of provision to civil and non-profit agencies. This provision takes up, as in other member states of the European Union, about 50% of total public expenditure. In particular, the emergence of so-called “new social risks” sets a new challenge for welfare states that require new reconfigurations, still in their infancy and without defined performance profiles.

2.1. New social risks

Socio-economic developments in so-called post-industrial societies – or advanced industrial societies – have led to the emergence of “new social risks” (NRS). These relate primarily to changes in the labour market, to the balance between work and family life and to the consequences of reforms implemented in Welfare States with respect to the “old social risks” (such as health care or pensions). NRS are linked to four main developments:

- (1) Changes in the role of women, seen in the increased participation of women in the formal labour market. In addition, demands for gender equality in education and training, as well as in salaries and employment conditions have intensified.
- (2) Demographic transitions and changes in the composition of households and families, as reflected in the increasing number of elderly dependent people and on increased care requirements for children and young people, as well as the greater number of single parents and single people.
- (3) Changes in the labour market with increased social exclusion of workers with lower educational levels and with “atypical” jobs with low wages and limited labour rights. The concentration of unemployment in groups with low qualifications and subject to relocation, subcontracting or outsourcing processes.

- (4) The expansion of private services, and deregulation of services and utilities. The maturation of pension systems and their higher costs often result in a lower level of services. The “crowding out” effects of welfare policies related to “old social risks” may be reflected in production divestment, pre-empting skilled labour or disincentives to paid work.

As a result of this, various groups of vulnerable citizens face new needs in situations such as: (a) Balancing paid work and family responsibilities (especially child care, being called on to care for a frail elderly relative, or becoming frail and lacking family support); (b) Lacking the skills and training to gain access to secure and appropriate employment, or having obsolete skills and being unable to improve them through continuous training processes; and (c) Using private means that offer unsatisfactory social services or insecure or inadequate facilities and services (Esping-Andersen *et al.*, 2002; Taylor-Gooby, 2004; Bonoli, 2005).

The NSRs greatly affect the very conceptualization of contemporary citizenship. In addition to translating them into the positive law of modern democracies, citizenship refers to a set of practices and customs that grant individuals the quality of active components in their reference community. Citizenship is primarily a status based on access to basic resources for the exercise of rights and duties. Non-discrimination in the access to these resources constitutes the necessary and sufficient entitlement to citizenship. As a result, the implementation of citizen-related policies is essential to give substance to mere legal and constitutional statements (Moreno, 2000).

In fact, the emergence of the NSRs has uncovered the obsolescence of many of the instruments of public welfare policies which were effective, when introduced, to cover, for example, situations of illness, unemployment or old age pensions (rights which are consolidated and secured in the legal systems of European countries). Now the “old” passive protection policies have proved less capable of responding to new situations, such as the work-home balance, the de-skilling of work, inter-generational imbalances or the commodification of public services such as education, health or personal care (Naldini, 2006; Moreno, 2009).

It has been argued that with the maturing of welfare states, and the “crowding out” effect caused by the coverage of the “old” social risks, social spending has become too expensive. Neoclassical “orthodox” economism has spread the theory of the inevitability of a decline in social welfare (*welfare retrenchment*) and even the dismantling of protection systems. Thus, it has been stated that an explosion in demand can only be matched with an implosion of decision-making (due to lack of resources) and, consequently, the inability to fund new government programmes to cater for NSRs. Certainly, the financial difficulties of sustaining welfare states has made “sustainability” and “cost containment” priority objectives for governments of different ideological persuasions (Kuhnle, 2000; Pierson, 2001, Esping-Andersen *et al.*, 2002, Taylor-Gooby, 2005).

Regarding the latter, the effects of so-called “new social risks” are felt in areas closest to citizens, which calls for increased emphasis on providing personal care services and “last resort” benefits based on principles of proximity and proportionality. Below, we have examined several aspects that underline this importance.

2.2. Citizens and multilevel governance

The principle of subsidiarity was formally proclaimed in the European Union Treaty of 1992, known as the Maastricht Treaty. In general, it states that decisions are taken transnationally (by Community institutions) only if they are not in a better position to do so at state, regional and local levels. In other

words, the preferred scope for decision-making on public issues must be the one closest to citizens.¹ State political elites, wary of the loss of power and influence due to the evolution of Europeanization, have insisted on interpreting the principle of subsidiarity as a safeguard to preserve the internal “sovereignty” of member states and, thus, their exclusive role as the political players in their respective countries and in the entire EU.

In parallel with the Europeanization process, decentralisation faces the challenge of optimising the allocation of resources and competencies on the basis of the principles of territorial subsidiarity and democratic accountability. The modernising strategies of sub-state levels of government – and governance –² have encountered, in territorial subsidiarity, a renewed impetus for experimenting with new policies to adapt the “old” programmes to “new” risk situations. In many cases the units of government closer to citizens have become “laboratories of democracy” and “layers of accountability” (Goodin, 2008). It has been argued that the reward (*payoff*) of innovation exceeds the advantages of the characteristic uniformity of vertical “command-and-control” national models. In other words, the greater the need for innovation – for a “new” problem or solution – the greater the rationale for that function to be assumed by a sub-state administration (Donahue, 1997). Among the preferred reasons for sub-state social policies to address the array of situations caused by the NSR, we can include the following:

Optimality. Often due to a matter of size and economies of scale that are regarded more appropriate to the nature of the social policies provided (e.g. personal services).

Accountability. Democratic accountability at sub-state levels, and especially at intermediate level political communities favours citizen participation in governance and government (e.g. by programmed networks and the formation of regional “coalitions of support”).

Legitimacy. Supported by funding from the European Union for the needs of the less developed regions through the Cohesion Fund.

Partnerships. Result of the growing inter-dependence in policy implementation processes and the optimisation of public and private resources (e.g. welfare mix).

Recalibration. Regions with a perspective of “cosmopolitan localism”³ do not require the imperative “guidance” of central nation-states elites.

As already noted, the unique feature in the democratisation and modernisation process of post-Franco Spain has been an intense political and administrative decentralisation which has led to multi-level governance (Hooghe and Marks, 2001; Moreno, 2003). The progressive and inductive Spanish federalisation process has

¹ In fact, the Maastricht Treaty contains two definitions of subsidiarity. The first is substantive and is contained in the Preamble and in Article 1, which express a comprehensive and conceptual political idea regarding the proximity and proportionality of decision making. The second definition appears in Article 5 (previously 3b) and is of a procedural nature and its legal implementation has continued to be a problem (van Hecke, 2003).

² “Horizontal” subsidiarity has mobilised a considerable number of stakeholders, which affect the decision making and governance of policies at regional level.

³ The expansion of European cosmopolitan localism is based on the view that members’ interests are directed toward developing a sense of local community while also playing an active role in the international context. This leads to an adjustment between the particular and the general (Moreno, 2005).

generated an imitation effect – or “regional mimesis” – in relation to the “unfairness” perceived between national territories and regions. This can be seen in the desire for equality between them in the same way as Spain has sought that equality in relation to the most advanced European countries.⁴

In addition, the said demonstration effect has not only served to level *ex post* returns in the production of public policies, but it has provided *ex ante* stimulation for innovation programmes and experimentation in the field of social welfare. The minimum insertion income was an early exponent of such actions.⁵ Subsequently, the Spanish Autonomous Regions have taken a leading role in the provision of social policies. Their innovative policies have been implemented by mesogovernments that have taken into account the preferences of citizens. We must remember that one third of Spanish citizens believe that the Autonomous Regions should not only provide social services but also health and education services. Only in the case of pensions do a majority (58.2%) consider that the central government should be responsible for their management. We must also note that 15.2% of people interviewed agree that municipalities should be the main providers of social services, a percentage that, added to the 33.6% who think they should be the responsibility of the Autonomous Regions, indicates that almost half of the Spanish population agree with sub-state accountability (regional and local) for the crucial services required to meet the challenges of the NSRs (CIS, 2005; Arriba, Calzada y del Pino, 2006).

The socio-demographic features, the political identity, the management skills or perception of those skills at regional level are not determining aspects in relation to the differences due to the introduction of social policies at different government levels. Voters of nationalist or sub-national regional parties do prefer a greater degree of sub-state involvement in the provision of social policies, suggesting that cultural and historical components of Spanish social preferences are primarily responsible for a desire for a greater level of “devolution”.

3. Challenges of social citizenship

A view of Europeans as workers rather than citizens is still widespread. The case is that the social rights of those workers can be exercised, in most cases, with respect to the laws of the countries to which they belong, which is not always consistent with a common understanding of the European citizenship status. Nor does this labour-based view correspond with a coordinated continental economic government, as the crisis that began in 2007 has made painfully clear. It is difficult to imagine the dissolution of the social realities of each European country in a super-state or United States of Europe in a top-down hierarchical manner, as some neo-functionalists seem to suggest. The territorial aspect will continue to be

⁴ This desire to match the European average largely explains how Spain has displayed greater economic growth than countries in central Europe over recent decades. Remember that in 1945, the per capita income in Spain was 49.3% of the European average (in purchasing power parity (PPP)). In 1985 it increased to 69.8%, reaching 95.2% in 2009 (EU-15). In the same year, Spain had reached 102.6% of the EU-27 average (González-Temprano, 2003, Moreno, 2004, Eurostat).

⁵ The first minimum insertion income programme was introduced in the Basque country in 1989 following the guidelines of the French *Revenu Minimum d'Insertion* (RMI). The last of the 17 regions where it was implemented was the Balearic Islands in 1995. The minimum income programmes run by the Autonomous Regions share the same general purpose, but differ in scope, coverage or insertion formulas for beneficiaries (Arriba and Pérez-Erasmus, 2007).

decisive in the further development of their different political systems. But we can envisage a united Europe in concurrence with itself. Given this eventuality, not only the nation-states as we know them today will be the protagonists of the European civilizing genius. The force of sub-state political communities and their mesogovernments will display their prominence in a way that can be comparable to that of the plural states to which they belong.

In the case of Spain, immigration, especially regarding the social integration of second generation immigrants and access to Spanish WS social benefits, will become a priority issue in coming years concerning the development of social welfare policies. The ageing of the population, in its different facets, will also become a significant element in the future provision of social policies. However, coordinating the challenges posed by ageing populations and immigration will not only depend on the legitimacy with which Spanish citizens continue to consider Welfare State (Arriba *et al.*, 2006). In particular, among the many challenges to be faced by the Spanish WS in coming years, two can be identified as decisive challenges for the Spanish WS in relation to future reforms. The first is exogenous and European, and is related to the viability of the *welfare state* within the Europeanisation context. The second is endogenous in nature and concerns the role of women in welfare provision and its consideration as a “closed doors” issue or one for which Spanish society as a whole is responsible. Below, we have briefly reviewed both aspects in relation to their future development.

3.1. Europeanisation and the activation paradigm

In the 1990's, European policies were primarily implemented with a view to achieving greater economic integration within the European Union, following the implementation of the Single Market and the subsequent introduction of the single currency. At the same time, EU institutions safeguarded and promoted competition within the internal “open market”. EU countries adopted sweeping changes in their economic policy outlook and accepted the limitation of their national debts, while also “rationalising” public finances. In addition, inflation remained low, which led to wage moderation and the stabilisation of contributions to public social security systems. Apart from arguing the need for changes in European economies, the discourse of globalisation was also manipulated to try to change internal welfare solidarity pacts in member states (Palier and Sykes, 2001; Moreno and Palier, 2005; Guillén and Gutierrez, 2008).

A departure from the traditional Keynesian economic policies was implemented by the governments of EU member states to encourage consumption and economic growth. In the midst of acute fiscal crises, the erosion of ideological consensus established after the Second World War⁶ led to a type of neo-corporatist commitment – increasingly volatile – between the logic of capitalism and welfare solidarity⁷. Despite their diversity, the different welfare “varieties of capitalism” began to share common strategic objectives and a

⁶ “The Mid-century Compromise” was an implicit agreement reached between private ownership and social rights (or between capital and labour) in advanced industrial countries with capitalist welfare systems. Through mutual concessions, the institutionalisation of latent conflicts between the inequalities inherent in capitalism and the inequalities arising from the mass public became possible (Crouch, 1999).

⁷ According to “*O’Goffe’s tale*”, which refers to the theses of O’Connor (1973), Gough (1979) and Offe (1984), there is an insurmountable contradiction in the maintenance of welfare solidarity. This is due to the opposing social legitimization processes of a liberal system and to the preservation of capitalist mechanisms of accumulation (Moreno, 2000).

common concern for the optimisation of human capital within domestic markets to try to achieve positions of comparative advantage in the global market⁸.

The new economic paradigm assumed the *enabling* state guidelines of Schumpeter with the prioritisation of market freedom as a *sine qua non* condition for economic success. The purpose has been to strengthen the competitiveness of national economies, subordinating welfare policies to the demands of flexibility and encouraging the self-responsibility of citizens for their own welfare (Jessop, 1994; Moreno and Serrano, 2007). Policy changes and reforms were justified by most governments as essential requirements to meet the criteria set out in the Maastricht Treaty. Thus, the economic, political and social dynamics became a “single” integrated aspect in the political discourse and in the preparation and provision of public social and welfare policies. As a result, reforms were seen as inevitable as part of the Europeanisation process (Scharpf, 1996; Moreno and Serrano, 2009).

European Welfare States, largely due to the political discourse of neoliberalism and the offensive from the Anglo-Saxon variant of capitalism, still face a recurring question: Which is the economically sustainable level of welfare? The answer depends on the very concept of “sustainability” in relation to social protection systems. The dimension of shared social values and of citizenship takes on critical importance as a guide to institutionalising social policies and securing their funding. For example, the legitimacy of progressive tax systems belongs to the system of values shared by European societies. Not surprisingly, a version known as “*trickle down economics*” finds its limits in the European axiological universe.

However, the response given by European “co-ordinated” capitalism in the face of the effects of the crisis induced by Anglo-Saxon neoliberal has been – up to the date of writing – anything but “coordinated”. In recent decades, the recommendations of EU institutions had insisted on strengthening national welfare systems in order to promote the necessary social cohesion. This would not only lead to the socio-technical changes of the information society, but would also facilitate a competitive European economic response to the multinational power of the U.S. and Japan and to the productive strength of emerging countries, such as China and India. These responses have been mostly implemented at member state level, in the belief that they could preserve their competitive advantages in global markets and maintain their social protection systems. However, the evolution of financial flows seems to indicate a preference towards the individual “pro-market” model typical of the Anglo-Saxon world, or to the social *dumping* model of Asia.

The future development of the European social model, with a common axiological element, will depend on the prevalence of the national interests of member states and on the persistence of social policies that: (a) adapt to flexible and open labour markets, (b) rationalize social spending policies through cost

⁸ The “varieties of capitalism” approach considers welfare systems as labour market regulation systems based on specific political and economic interactions. The main difference exists between the Anglo-Saxon economies, which are liberal and essentially unregulated (USA and UK), the continental “Rhenish” model, and the Nordic model where negotiations and agreements between employers, unions, financial institutions and public institutions prevail (Soskice, 1999; Hall and Soskice, 2001). Linked to the liberal political theory, the term, “Anglo-Saxon capitalism”, has been generalised by Michael Albert (1993) relating it to the liberal version of contemporary capitalism.

⁹ This approach, which is typical of the so-called *Reaganomics* and “neocon” proposals has postulated that any money made available to the wealthy and to the upper business class (by paying less tax) will promote economic growth and generate further investments and economic prosperity to society as a whole. The 2007 crisis has prove such ideas wrong. One of its early followers now criticizes the results of such policies that widened inequality and fiscal deficit, while also causing inflation, stagnation and limiting general prosperity (Stockman, 1986).

containment, (c) selectively transfer the provision of services to the private sector, and (d) transfer part of the responsibility for social protection to the individual and family spheres. All this will affect the future configuration of welfare policies in Spain.

A paradigm shift has transversally affected all European welfare regimes and which should be studied, even if briefly, as the promotion of employment activation. The discussion about the nature and scope of the activation paradigm also refers to individualisation and contracting, aspects which we shall review below:

- a) *Individualisation*. This concerns the intervention in individual behaviours, motivations and attitudes, rather than establishing the correct political conditions for a fair redistribution of wealth. Activation policies encourage a greater personalisation of interventions and call for greater participation by the person affected. The reference point, both from a normative and legitimising point of view, for these policies is the individual subject.
- b) *Employment*. The objective of activation policies is participation and economic autonomy through employment. These policies aim at influencing the conduct of individuals in relation to the labour market (to encourage, persuade, motivate). Therefore, they focus on the economic – rather than the political or social – dimension of people’s lives as they exercise their right to citizenship
- c) *Contracting*. Contracts become the core metaphor in guiding and legitimising the activation paradigm. But it also involves a mutation in the terms of the *social contract* that traditionally articulated the citizenship concept. It becomes a moral contract primarily. Thus, citizens’ entitlement to their rights becomes conditional, dependent on the attitude and behaviour of these in relation to their participation in the economy.

The European institutions have been particularly active in spreading the activation paradigm, which is translated, however, into different policies. In some cases social citizenship seems to be strengthened, while in others the law of the market has priority over other considerations, which exacerbates the asymmetric nature of wages (Serrano Pascual, 2004). The impact of the new activation paradigm in Spain has been very intense in recent decades, as reflected in the massive incorporation of women into the formal labour market, a matter we shall take up in the next section.

3.2. Incorporation of women into the labour market

The dramatic increase in female employment rates is the most significant endogenous process for the future development of social policies in Spain. After the death of the dictator, Franco, the participation of women in the work market entered a growth cycle that has intensified in recent decades. Remember that in 1977, women employment rates were less than half those of men. As can be seen in Table 1, the percentage of employed women between 1976 and 2009 almost tripled in the 25-49 age group. This evolution reflects a crucial societal change in a “familistic” welfare regime such as the Spanish system, as it affects women in a period of their lives when they not only have to face demanding professional requirements, but also dedicate more time at home bringing up children. In 2010, about 3 in 4 women aged between 25 and 54 were “active” in the formal Spanish labour market. In addition, contrary to other behavioural patterns in

Table 1

Female employment rate in Spain (1976-2020)

Age groups	1976	1980	1985	1990	1995	2003	2010	% population by age group
16-19	48.57	39.97	31.97	30.25	21.77	18.4	19.64	4.49
20-24	53.49	54.71	54.53	61.20	57.95	56.36	64.25	6.57
25-54	29.07	30.40	35.62	47.87	56.47	66.01	77.90	53.81
+55	13.84	11.24	10.05	8.99	8.46	9.68	15.22	35.13
Total	28.53	27.77	28.96	34.56	37.86	43.15	55.22	100.0

Source: *Encuesta de Población Activa* (INE, www.ine.es).

central and northern Europe, Spanish women are employed full-time¹⁰, which implies greater difficulty in “conciliating” domestic and professional tasks.

A well-know fact is that the family penetrates all areas of the Spanish welfare system. Within families, the generous role of women has been the social dampener of the shortcomings of public welfare policies. The context is changing decisively with the increased participation of women in the formal labour market. This will result in profound readjustments in the responsibilities related to welfare benefits and services. An example of these challenges is the progressive implementation of the Dependency Law. Social protection for dependent persons, together with increased life expectancy and an increase in the population aged 80 or over, as well as changes in the size and functions of Spanish families and the difficulty Spanish women (85% of informal caretakers) have to reconcile domestic and professional work, will make the traditional model based on non-paid and informal care provided by women impracticable in the medium term.

In the future, it is unlikely that this generation of Spanish working mothers will play the same roles as their mothers or grandmothers, many of whom belong to the generations of the so-called “superwomen”, did.¹¹ The sacrifices and activities of this type of *mater familias* have been essential in the social cohesion of Mediterranean societies, in relation to their economic growth and greater gender equality. However, as the hyperactivity of the “superwomen” gradually decreases, and the “ambivalent familism” changes, a growing gap in the family provision of personal social services emerges, with transversal implications for the Spanish WS and its uncertain future development.

“Behind closed doors”, gender equality and women-friendly policies refer to the cultural redefinition of households and the division of household tasks (Moreno and Salido, 2005). This aspect is often overlooked

¹⁰ According to data from the year 2000, women worked part time in only 8% of Spanish couples with children, which contrasted with rates of 53% in the Netherlands, 40% in the UK or 33% in Germany (Moreno, 2007).

¹¹ “Superwoman” is understood to refer to a type of woman who has been capable of reconciling unpaid work at home with their ever growing and demanding professional activities in the formal labour market. Cohorts in the 45 to 66 age group are representative of those “superwomen” (Moreno, 2002).

in labour activation and social service provision proposals, but it is of the utmost importance because it affects all future scenarios in the development of Mediterranean welfare regimes.¹²

The increased outsourcing of personal care in families has taken a particular twist, as has happened in other southern European countries. The employment of immigrants at low cost – sometimes in the called “underground” economy – to look after elderly people (Da Roiter *et al.* 2008; Moreno-Fuentes 2009b). With regard to child care, a mixed strategy has arisen that comprises the assistance of family members, mother-grandmothers, while there is also a greater demand for and use of child care centres, whether formal or informal, and a greater use of extracurricular activities (Marí-Klose *et al.* 2010). The process as a whole has become widespread in the decade between 2000 and 2010, which displays the preference in Spain and in other southern European countries for contingent solutions in line with the Anglo-Saxon model based on the private and circumstantial provision of services, and different from the institutionalisation of structural reforms typical of some continental and Nordic countries.

In Spain, the three levels of government (central, regional and local) have followed the expansion of the private personal care market with caution, but also with relief as they can “save” public money and dedicate it to other actions and policies that are not always related to welfare and social issues. Thus, the pro-market status of family care and personal services may be considered as a specific response in southern European countries to the welfare reform processes.

As noted above, the greater labour activation of women in Spain will have far-reaching effects not only in regard to the realization of gender equality rights, but also in regard to the recalibration of the Spanish WS. The dilemma that has to be solved is how to reconcile societal expectations regarding the role of women as mothers and workers. The adaptation of the Spanish “familist” WS to the double challeng of increasing economic productivity and preserving social cohesion greatly depends on the solution and organisation of this aspect (Salido & Moreno 2007).

4. Final Comments

Social citizenship in the European Union is based on a value system that considers solidarity and human rights as a the prevailing principles in contrast to individualizing discretion and self-interest. Progressive taxation, for example, marks a net *cleavage* between the attitudes and perceptions of Europeans and North Americans regarding the redistribution of income, which is in the economic basis for the maintenance of social protection systems.¹³ However, while nation-states have attracted a high level of legitimacy in the

¹² Changes in the gender-related division of work in Spanish homes, for example, have been slow: in 1996 Spanish women worked 4 hours and 30 minutes longer than men on household chores on average, and in 2001 the difference had narrowed by 17 minutes. Based on this rate, it will take 80 years for Spanish men and women to share housework on an equal basis (MTAS, 2003). Consider also that 75% of housework was done by women in 2004; similarly, 96.38% of leave of absence for child care went to women and 98.46% of maternity/paternity leave corresponded to women (www.fecyt.es/).

¹³ Over half North Americans believe that a wealthy person should not pay a higher tax rate than a poor person. The notion of a *flat-tax rate* has gained ground among U.S. taxpayers. Despite the introduction of income tax as a national programme in the U.S. (provision of the Sixteenth Amendment to the Constitution of 1913), its progressive model receives minority social support in public opinion polls conducted in the country (Lewis-Beck and Nadeau, 2009).

pursuit of social and welfare protection, the fourth phase in the development of the “European model” still faces the challenge of interweaving the decentralization and subsidiarity processes effectively with the aim of new *boundary-building* in the European Union at sub-state government and governance levels.

European citizenship can be conceptualized as the result of “overlapping identities” from several contextual backgrounds (supranational, national and sub-state). Multiple identities, as can be seen among European citizens, are subject to a continuum of aspects and customs of community and territorial essence that are of a variable nature, but grounded on values of egalitarianism, solidarity and human rights. In line with this understanding, the manifestation of the civic culture of multilevel Europeans can be conceptualised as “compound civility”. This justifies the implementation of social policies in accordance with the principles of general interest (European), and proximity (local/regional). It remains to be seen how the adjustment between the functional and territorial aspects of multilevel citizenship can lead to the development of a renewed welfare system in which the key role – almost exclusively to date – has fallen to the national member states of the EU.*

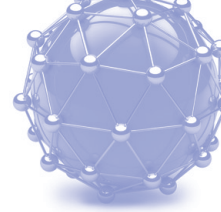
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The future of social policies: fallacies and other catastrophe theories

When asked about the evolution of social policies in the future, the answer might seem obvious at first; it will depend mainly on who is governing in the time, however, experience has shown us, especially in the current crisis, that other factors also come into play, some of which push States to adopt certain measures that paradoxically even go against the ideological basis on which they have been developing their social policies to date. But governments are not the only one that accept such measures, but also the citizens assume the need for such measures, accepting, as unquestionable truths, the reality presented, for example: “The public pension system is unsustainable and is heading for bankruptcy”, “it is necessary to reduce wages to increase competitiveness”, “the welfare state is too generous and cannot sustain this level of social welfare”... and we could go on filling pages and pages with such arguments that have repeated in over time in almost the same manner and with the same power of penetration when presented.

The question is, why do we give them the status of undisputed facts when by doing so leads to solutions that damage and reduce both our social rights and our quality of life and that of future generations, in a clearly negative manner? What is it that leads to this irreversible situation in which we accept what they are – in fact, pure ideological positions that are safeguarding the interests of certain social groups, and not precisely those of the majority?

As was well noted in a national newspaper, it is difficult to hear other voices, among this “monotonous clamour”, that point to other ways of responding to the challenge of maintaining the welfare state without implementing cuts that will end up distorting it. But we have long been deafened by this clamour.

Looking at past crises and in an attempt to organise the response given from the public powers chronologically, I read: “The Prime Minister is aware of the problems that still remain unresolved such as the adaptation of the shipbuilding industry, the rationalisation of public companies, the losses of which are out of control, the reform of a “bloated” pension system, wage moderation, the flexibility of the entire production system...” a statement of the then Prime Minister to *La Vanguardia* in its Friday edition of March 30, 1984, page 41. If we eliminate the adaptation of the shipbuilding industry, the formula for

solving the crisis seems to be the same then as now, twenty years later. It is interesting to see how the problems change but not the solutions; we do not tire of listening to and reading about the new challenges that we face in the XXI century, new social realities, the new problems arising from these realities, new social relations, new forms of work organisation, new forms of family structure... and a long list of new, new, new... And for all these new elements there is an endless list of new proposals, however, there is one area, the economic policy, in which, although there are “new aspects”, the answer seems to be the same: control the public deficit, tax cuts, deregulation of the labour market, reform of the social welfare system.

Faced with such reiteration, we might think that this is the solution but the truth is that other voices are pointing to new horizons in which the answer is not necessarily trimming social rights, and this is where those recurring solutions become fallacies and prophets of doom.

1. Are there other alternatives?

It is always good to go to the dictionary to understand the full extent of the content and, therefore, the power of words. Fallacy is deception, fraud and lies used to try to do harm to someone. Therefore, fallacy in terms of economic policy implies not only not telling the truth but the purpose behind hiding that truth is to harm someone for personal gain. Fallacy is not a “white lie” to save someone, it is a tool used in the global strategy in the battle for power. And along with it, is catastrophism, an attitude typical of those who, with a view to intimidating, exaggerate or forecast very serious evils, thus paving the way for a fallacy to be taken as true.

Both fallacy and catastrophism, working together, give rise to a type of social environments and scenarios that give credence to the assumption of certain theses as natural realities. And the origin, the mother of all fallacies from which the rest have derived, is the idea that the limits of the welfare state are of an economic and fiscal nature, and not primarily political and ideological, irretrievably linking social policy to economic development. However, as noted by several authors¹ there is no definitive research or indicators or analyses that enable us to state objectively that there is a significant relationship, either positive or negative, between social spending and economic growth, nor between the latter and tax systems, therefore, even if there are objective factors such as demographic aspects, especially changes to the ageing of the population, that do increase social spending and raise limits to social coverage, “the management of the resulting situation depends on essentially ‘non-economic’ factors in the formulation of policies, such as a balance to be struck between public and private pensions, employment policies and the labour market, the level of taxes and acceptable contributions for citizens” (Antón, 2009:152).

Nobody can deny that economic growth is a key element in financing social expenditure, and that economic boom periods correspond to periods of increased social investment, however, it is also true that the leeway states have is also an essential element in the equation and the fact that each country chooses one or another social welfare management model is fundamentally based on a political and ideological decision, not an economic decision (Mishra, 2000).

¹ Authors, including Mishra (2000), Rodríguez Cabrero (1991, 1996), Navarro (2004, 2006), Antón (2009).

Of course, at this point, one might think that perhaps the fallacy is actually related to this approach; so let's compare these proposals and see how possible and realistic other alternatives are.

One of the situations that we shall be facing in the future is the ageing of the population. The pension system needs to sustain the balance between income and expenditure. So far, in addition to intimidating us with the inability of sustaining the said system, all proposals have focused exclusively on spending, without thinking about alternatives that would have an impact on the opposite: i.e. on revenue. And, therefore, the most widespread idea constantly repeated over the last two decades has been *the increase in spending on pensions* together with the idea of *containing or stopping that increase and streamlining the system*. The solution; block or reduce social security benefits and eliminate the possibility of transferring funds from the state budget to the pension system. Thus we find that the acquired right component has been weakened and that pension payments are dependent on the sustainability of the system, in which the evolution of employment becomes a key element in defining the said pensions.

And, with this in mind, complicated justification and legitimisation processes are built, introducing supposedly scientific approaches that invariably diagnose the inevitability of spending cuts in relation to pensions.

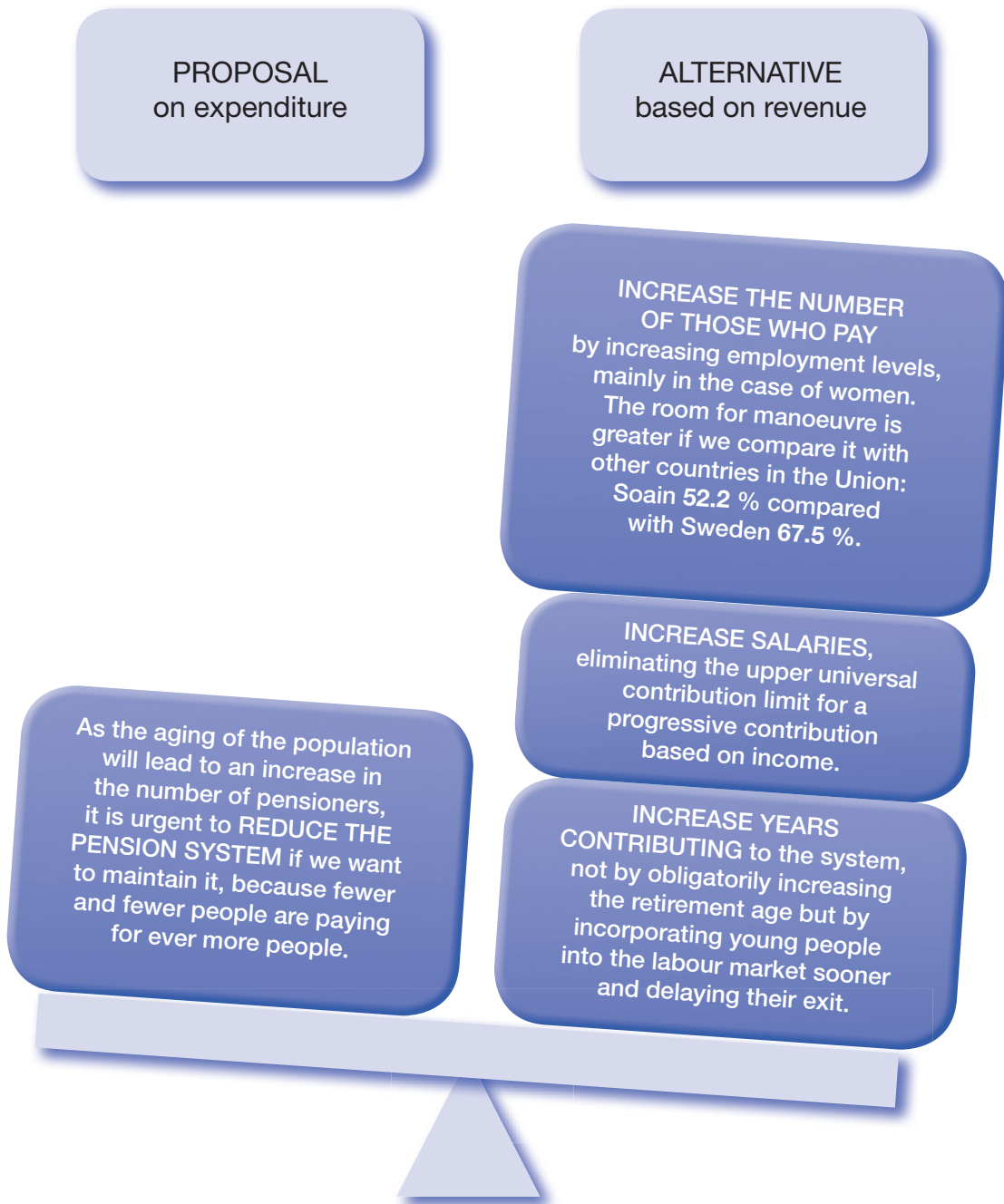
However, according to Antonio Antón, “to meet pension costs – along with other welfare state components – and to discuss the economic and financial feasibility of the system, we must take another key component into account: the performance of the economy as a whole, represented by the evolution of GDP, along with fiscal and distributive policies. This is even more ineluctable when the technological factor and labour organisation is every more important in relation to economic growth and productivity rather than the amount of labour” (Anton, 2009: 352).

Other authors also suggest other alternatives (Zubiri, 2006 y 2009; Blackburn, 2010; Etxezarreta et al, 2010; de la Fuente, 2007; Navarro, 2010; Martín Seco, 2010; Rodríguez Cabrero, 2004 and 2005).

Zubiri, for example, believes that the current pension system is sustainable if we accept the fact that part of pension payments can be paid from a State's general budget. “This implies having to implement a set of measures and commitments that specify that, if necessary, the said resources will be provided and what resources will be provided. At the same time, it is also necessary to improve the fairness of the system and guarantee that people will collect their future pension payments” (Zubiri, 2009: 53).

Navarro believes that the key variable governing the sustainability of the system, especially in countries that finance the pension system from social security contributions, is the number of contributors (and size of the contributions) versus the number of beneficiaries (and size of the benefits). This author thinks that alarmist discourses ignore that fact that the increase in the working population and rising wages and prices, based on increased productivity could cover future needs. “The increase in the workforce and of productivity is the basis for the expansion of the welfare state” (Navarro, 2010: 66).

We can see, therefore, that the balance tips towards other alternatives:



If the balance is in favour of revenue-related alternatives, why should we give more credence to the proposals based on expenditure? You could say: this is not the case. But the truth is that since the 1990s, especially in the middle of that decade, many reports began to emerge from the World Bank and other international organisations on the ravages that an ageing population will have on the economy in Western

countries; the idea that individual pension plans were a necessary complement to state pensions has gradually taken over the collective imagination and, consequently, devaluing the right to a general pension system. But let's have a look at other ideas of this kind:



In fact, Sweden, Denmark and Finland are the 4th, 5th and 6th countries worldwide, respectively, according to the latest World Economic Forum's competitiveness ranking for the financial year 2009-2010². The economic efficiency and fairness binomial is, therefore, possible. In the case of these countries, their

² Consult the World Economic Forum ranking at www.weforum.org/pdf/GCR09/GCR20092010fullrankings.pdf

economic policies stress employment policies based on three pillars: a) flexible labour regulations agreed between the social parties, b) a strong social protection system for the unemployed, and c) active labour market programmes to find jobs for the unemployed by changing or improving their skills.

For many experts, the case of Denmark may be the most paradigmatic, to the extent that speaking of flexicurity practically means speaking of the Danish model, as this is the model that achieves the best combination between sustained economic growth and social welfare, especially since the mid of 1990s, when neo-liberalism sharply questioned the Scandinavian model, accusing it of hindering economic progress and competitiveness, especially in the new global economic framework.

If Denmark is an example to be followed, why do centre-left governments accept the liberal dogmas, mainly the need to lower taxes? Raising taxes is unpopular and requires, in order to avoid a negative electoral impact, governments to respond to the needs and demands of their citizens efficiently, clearly and not excessively protracted in time; this latter variable is the most difficult to control because the positive effects of a given policy are not always appreciated immediately, they require time; something that the political class may not have.

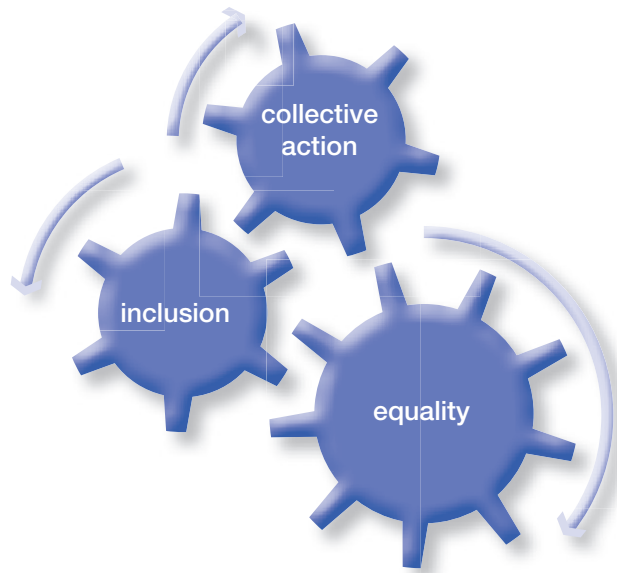
On the other hand, within the context of the EU, it is difficult to escape the tide of economic liberalism, as it requires an attitude which fosters socio-economic measures that promote:

1. mutual trust between different social actors;
2. a firm belief in social rights;
3. honesty and
4. a will for public service.

At the V International Professional Training Congress held in San Sebastian in June 2007, Gorm Oteen Johansen, representing the Confederation of Danish Employers, outlined, in his speech on the Danish labour market model, that the high level of flexibility his country's labour market was based indirectly on welfare state services, such as the educational system, including vocational and adult education, the child care system, the health system and public funding, and that, from the labour market, these welfare systems were seen as investments in structures that fostered the correct functioning of the system and not merely as costs.

He also pointed out, and perhaps this is one of the most important issues, that the level at which Danish lessons could be applied in other countries would depend on the political and institutional legacy of each country and on the specific circumstances that trigger the need for reforms; in any case, Nordic countries in general and Denmark in particular, he said, are very homogeneous, with a preference for equality, inclusion and collective action, and that this could be a key reason why their societies worked well.

And here is the origin of one of the fallacies that even uses these same terms to justify economic policies that contradict the actual dimension of the application of these principles, whose goodness resides in their immediacy and not their future potential; we are talking of the need to take "painful" measures now for the sake of the future, when the future is built in the past.



The Danish case serves, again, as a reference point as it is not the result of a grand, well-defined scheme but the result of a particular historical development. For example, the origins of employers' freedom to hire and fire workers were accepted by the unions as part of the so-called September Commitment signed by the social partners in 1899. On the other hand, the decentralisation of labour negotiations is supported by an agreement from 50 years ago known as the "Cooperation Agreement" which sets out the conditions to study all the relevant issues between the social partners in the workplace, based on general respect and trust between the two parties and on a high degree of responsibility to try to find constructive solutions to problems that otherwise would become labour disputes. A key factor of great influence in this system is the role the workers themselves have taken on. Almost 80%, i.e. approximately eight out of ten workers, belong to a trade union.

2. Paving the way for fallacies and catastrophism

In any case, the mechanism used by those who use fallacies to ensure they are treated as indisputable truths that do not need any proof or verification includes three processes: a) universal self-interest; b) naturalising the present; c) the denial of social contradictions.

Perhaps the ideal way of using fallacies to contribute to the belief in the goodness of certain strategies is to present them as if they were of interest for the entire community and as if they were a natural course of action required by the nature of the situation, as something "logical", "normal" – phrases like "this country has a future if you have a government that does normal things"³ constantly repeated pave the way for the reification of reality.

³ Excerpts from an interview with the opposition leader, Mariano Rajoy, on June 13, 2010 in *El País*.

Reification consists in assigning a specific attribute to something that is abstract. The reality of everyday life is understood as organised, already objectified, i.e. comprising an order of objects that have been designated as such before most of us came on stage. Language establishes the coordinates of social life and fills that life with meaningful objects; therefore, reification is the apprehension of human phenomena as if they were super-human aspects. It is the apprehension of the results of human activity as if they were something other than human results, as if they were facts of nature, the result of cosmic laws, or manifestations of divine will.

The aforementioned expression is a clear example of reification. It is not an innocent expression or even one that is a bit silly as it might seem at first, but one that is full of symbolism and causal attributions with a view to paving the way for the acceptance of fallacies and catastrophism, because we can use the word “normal” to refer to usual occurrences that involve nothing unusual or extraordinary, or it can appeal to a sense of norm or rule, so that behind these “normal things” we can be arguing that there is a correct, natural way of doing things, which is beyond any ideological position, that at this point the Government is unable, or unwilling to perform. There is nothing wrong with using reification as a figure of speech; it is perfectly acceptable and fine when used in poetry, for example, but when used as part of a logical argument it becomes a fallacy.

Another very common example of reification in the social policy debate is when phrases of the type – “the evidence speaks for itself” – are used. It is clear that the evidence does not speak at all; people derive conclusions from the evidence and put thoughts into speech, but with this type of reification we provide the evidence we present with inherent qualities that seem unrelated to any verification.

This situation is something that has not gone unnoticed by the Nobel Prize for Economics, Paul Krugman⁴ who, in one of his articles in *The New York Times*, translated and published in *El País* in January 2010 under the title “Learning from Europe,” categorically stated that oddly enough, what everyone knows is not true.

As Krugman goes on to argue, Europe has economic problems but the story we are constantly hearing of a stagnant economy in which high taxes and generous welfare benefits have eliminated incentives and stemmed growth and innovation bears little resemblance to the facts. The lesson of Europe is actually the opposite to what the conservatives are telling: Europe is an economic success, and that success proves that social democracy works.

So, Krugman wonders, why do so many experts paint such a different picture? His answer is that, based on the dominant economic dogma in the U.S., European-style social democracy should be a complete disaster. And people tend to see what they want to see. So, if there were any truth in the economic assumptions that dominate U.S. public debate – especially the belief that tax rises, albeit moderate, for the rich and an increase in the benefits for the poor would radically eliminate the incentive to work, invest and innovate – Europe would be the stagnant and declining economy of the said assumptions. But that is not the case. Europe is often presented as a cautionary tale, as proof that if one tries to make the economy less brutal, to take better care of fellow citizens going through bad times, one will end up destroying economic progress. But what the European experience really displays is the opposite: social justice and progress can go hand in hand.

⁴ From the article “Learning from Europe” by Paul Krugman published in *El País* on 24/01/2010: www.elpais.com/articulo/economia/global/Aprender/Europa/elpepueconeg/20100124elpnegeco_4/Tes

Another element used, when we mentioned that they prepared the ground for the acceptance of fallacies and catastrophism, is the negation of the social contradictions inherent in the system, presenting the situation as a result of human nature and attributing what is, in fact, the result of the very nature of the economic and political system to personal factors. Thus, the causes of the crisis, the inconsistencies, are not sought after within the system or in the way it evolves; instead, other factors such as the inability of certain political and economic leaders, the ambition of certain businessmen or the lack of a sense of reality of the popular and middle classes are indicated.

Therefore, we can see how, soon after the outbreak of the crisis, specific culprits began to appear worldwide⁵, 25 to be exact, but we also saw how the “we all take advantage of the pie” idea began to gain strength, and idea supported by some political leaders with phrases, such as: “The economic crisis has been accompanied by a crisis of values. We must make an effort in relation to values, pedagogy and tell people that not everything is free and, in life, one is the product of one’s work and effort”⁶.

However, what began as an earthquake that would shake up, or destroy, the foundations of capitalism, has become a return to the ideological confrontation between neo-liberal proposals and various emerging alternative forms of socialising social functions; a struggle in the centre of which the welfare state is being brought into question.

In the pre-crisis period a number of concepts such as coordination, cooperation, and responsibility were gaining prominence. The idea was to promote co-ordination to work together to achieve goals that would benefit all, and therefore, the governments rushed to the rescue of the financial institutions for the common good. And that was when the foundations were laid for the path along which fallacies and catastrophism, which would appear later, would circulate without any problems together with their vehicles: fear and need. Months later, the development of the situation and a feeling of a progressive worsening of the situation generated a feeling of helplessness and distrust, especially when it became clear that the response to a financial crisis was not a financial reform, but labour reforms, spending cuts, social protection cuts, austerity policies for those who had not caused the crisis and, of course, a new slimming of the welfare state, this time through reforming the pension systems.

3. Accepting the unacceptable: parables, conceptual frameworks and other metaphors

At this point we are “accepting the unacceptable”. And, the fact is that extremely strange things have happened during the current crisis, among the most paradoxical is that what began as an earthquake that would shake up the foundations of capitalism has led to a massive attack on the welfare state, to in a fierce review of the ideological bases on which social policies have been developed until now.

Do not forget that just over two years ago, in September 2008, more specifically, Nicolas Sarkozy proposed to re-establish the ethical foundations of capitalism and proposed to summon the world’s top leaders before the end of the year to rebuild the international financial system “from scratch”. Self-regulation

⁵ See the lists of culprits in newspapers like *The Guardian* or *Time*: www.guardian.co.uk/business/2009/jan/26/road-ruin-recession-individuals-economy www.time.com/time/specials/packages/article/0,28804,1877351_1878509,00.html

⁶ Excerpts from an interview with the opposition leader, Mariano Rajoy, on June 13, 2010 in *El Pais*.

to solve all problems is no more; *le laissez faire, c'est fini*, he proclaimed; and he never tired of repeating diatribes against salaries and benefits for big cats, ensuring the implementation of legislation to regulate their privileges. However, over the past two years the actions against the crisis developed by the different European governments have not been precisely in that direction. Once the banking industry had been rescued, what has happened is not a recasting of capitalism but the contrary; the consequences of the crisis are not being paid by the banks but by the welfare state by adopting measures such as pension reform, controlling public deficit, the liberalisation of labour markets. This shift is evil, as it obscures the fact that the origin of the financial crisis was not the public deficit but the lack of prudence and the financial excesses of the private sector, “taxpayers are paying the profits of the bankers that have led them to this disastrous situation” (Attali, 2009:16).

The other paradox is the stage where these measures take place, a scenario in which the feelings of inevitability and acceptance are the protagonists. It seems that the challenges that the welfare state are facing due to this crisis can only be addressed in a certain way even when the existence of alternatives has been proven, and the paradox is that while the measures proposed include cutting social rights and the other alternatives imply maintaining those rights, governments are inclined to prefer the former; the social agents, including trade unions, accept this and the middle class and people at risk of exclusion are preparing for the storm.

The question is, why do we accept solutions that damage and reduce both our social rights and our quality of life and that of future generations, all of which is clearly detrimental to us? This really is unnatural, illogical, abnormal, and yet, possible.

Clearly, the answer is neither simple nor can it be attributed to a single cause; there are several key factors but, in an attempt to explain how these factors operate, I shall use a parable to help me explain the mechanisms involved in this acceptance in a easy and visual manner.

I am going to imagine that instead of a human being I am a being from another planet and I have the technology to see what the inhabitants of the earth are doing at any moment, a sort of Big Brother. I am also going to pretend to be fascinated by humans’ capacity for doing things that are apparently useless, involving a large expenditure of energy but that appear to produce great pleasure and so I will be distracted following the adventures and misadventures of a couple of pilgrims on the way to Santiago de Compostela. At one point along the way, my pair of humans comes to a crossroads. As they are old-fashioned pilgrims, they do not have a map, GPS or guide; they are following the signs, the yellow arrows. The problem is that there are arrows pointing to the road on the left and to the one on the right at the crossroads. Which one should they take? I do know which road will take them directly to Santiago, and yet I note, with amazement, that my pilgrims take the opposite road. And I ask myself, using my extra-terrestrial logic, why have they chosen the longest road? The reasons for their choice may be due to different causes:

1. **They don’t know:** lack of information. They do not have the means to obtain any information that will help them compare alternatives. They have no guides, no maps, no GPS, no internet.
2. **They are forced:** power struggle. There are groups at the crossroads putting pressure on them, even threatening them physically, to take a given road. Those groups are not prepared to give up the benefits that the passage of pilgrims through their village involves.
3. **Someone convinced them that that was the best alternative:** fallacies and catastrophism. The night before, at the restaurant where they dined, someone convinced them that this road was not only the

best but that there was really no alternative, since the other road was blocked and they had also heard of assaults occurring, even though there was a group of pilgrims on their return journey who assured them that this was not true, that they had verified it themselves.

4. **They really believe that it doesn't matter:** learned helplessness. The experience of previous pilgrimages has convinced them that no matter what they do, in the end, if they are meant to arrive, they will and, if not, they won't. It is useless to try to control what is beyond their comprehension.

Now applying the parable to the historical and social context in which we find ourselves, we can imagine that these roads are new alternatives in social policy and that the end of the road is the future of the welfare state.

Concerning the information we can access, and although it might seem paradoxical, we are not really living in the *Information Age*, rather the *Disinformation Age*, not in an informed society, but rather in an uninformed society⁷, i.e. it is not a question of the quantity of information but rather of the quality of information.

More and more people are starting to mention the widespread confusion that the alternatives to neo-liberal social policies seem to present; confusion fed by the mainstream media which aims at creating such a feeling of confusion, insecurity by cooking the data, introducing fallacies, giving false explanations (Millet and Toussaint, 2009). The formal channels through which contrasted information can flow are becoming fewer and fewer. How many left-wing newspapers, for example, exist in Europe compared with 30 years ago? Who controls television channels and newspapers today? (Martín Seco, 2010).

For Jacques Attali, “every crisis is the result of the lack of information, because there will always be asymmetric information between the present and future. And this asymmetry causes crises” (Attali, 2009: 114-115). The problem for this author is not so much that asymmetry as the unequal access to information. Asymmetry will always occur because information on the future cannot be perfect; we have to resign ourselves to handling the crisis, and this requires thinking, anticipating and acting. But unequal access to information is something that can be avoided, that can be regulated and should be regulated.

This issue is particularly important for Attali in the relationship between markets and democracies, because while democracy is headed by a majority that changes and occupies the State apparatus, the markets are dominated by those who control the means of production, particularly those that can allocate capital based on information that only they possess, and that the author calls *experts*. For Attali, if democracy were perfect, if it were able to impose fairness, we would all receive equal information, we would all be *experts*, but the absence of fairness implies that the *experts* will benefit from a particular item: economic and financial information on the profitability of projects. “In modern society, *experts* are more important than people who have the capital. They have a temporary income (information), from which they obtain profit that they know how to increase” (Attali, 2009: 118-119).

And in this battle, therefore, what we have to look for, according to Castells, is the independent construction of meaning but this “can only be done if we maintain the communal communication networks that Internet has made possible, a free creation by freedom enthusiasts. It will not be easy because those in power in the society network must fence the communication network using commercialised and monitored

⁷ I use the prefix “un” with the meaning of: un- “negation”: *uninformed, unable*.

networks in order to close the public mind by programming the connection between communication and power” (Castells, 2009: 525).

For this independent construction of meaning, Castells (2009) proposed the reorganisation of social values that sustain the structures of power, and this requires, in his opinion, the building of alternative communication networks and the critical reconstruction of our own mental frames.

Mental frames are perhaps the fundamental key to understanding the penetration of fallacies and catastrophism, to understanding the irrationality of acting against your own interests, of accepting the unacceptable.

Research in neuroscience has shown that the concepts that structure our way of thinking in the long term are embedded in the synapses of our brains. “Concepts are not things that can be changed just because someone tells us a fact. We may be presented with facts, but for us to make sense of them, they have to fit what is already in the synapses of the brain. Otherwise facts go in and they go right back out. They are not heard, or they are not accepted as facts, or they mystify us” (Lakoff, 2010: 39).

Cognitive science has discovered that we think in terms of frames before entering analytical reasoning. These frames are physically structured in neural circuits, so that when we are presented with a fact or information that does not fit the frames recorded in our brain, we ignore it; everything that comes into collision with our frames has little chance of becoming a conscious decision.

For Lakoff, frames are mental structures that shape the way we see the world and, as a result, they shape the goals we seek, the plans we make, the way we act. In politics our frames shape our social policies and the institutions we form to carry out those policies. You can’t see or hear frames. They are part of the structures in our brains that we cannot consciously access, but that we know by their consequences: the way we reason and, fundamentally, through language. All words are defined relative to conceptual frames. When you hear a word, its frame is activated in your brain (Lakoff, 2010: 17).

The author in his popular book *Don’t Think of an Elephant: Know your Values and Frame the Debate* offers, perhaps, the best example of how frames are activated through language. Lakoff tells how after the arrival of George W. Bush to the White House, they began to use the term *tax relief* and he explains the framing of *relief*. For there to be relief there must be an affliction, an afflicted party, and a reliever who removes the affliction and is therefore a hero. And if people try to stop the hero, those people are villains for trying to prevent relief. When the word *tax* is added to *relief*, the result is a metaphor: Taxation is an affliction. And the person who takes it away is a hero, and anyone who tries to stop him is a bad guy. This is a frame. It is made up of ideas, like affliction and hero. The language that evokes the frame comes out of the White House, and it goes into press releases, goes to every radio station, every TV station, every newspaper. And soon the New York Times is using tax relief. And it is not only on Fox; it is on CNN, it is on NBC, it is on every station because it is “the president’s tax-relief plan.” And soon the Democrats are using tax relief – and shooting themselves in the foot. That is what framing is about. Framing is about getting language that fits your world-view” (Lakoff, 2009: 24-25).

In this respect, for example, the term *globalization* is very interesting. For many authors, including Martín Seco (2010), globalization is really a modern phenomenon. Until the Single European Act, without going any further, there was no talk of the free movement of capital in Europe, i.e. it was a political decision and, therefore, the idea that globalisation is a reality that cannot be avoided is not true. Carlos Taibo maintains

the same line of reasoning. He understands that “the word *globalisation* is now among us, apparently with a vocation to remain, but that we were not given the chance to objectively weigh whether it was of interest to us or not” (Sampedro and Taibo, 2009: 27). For this author, globalisation is anything but neutral or improvised; it is well orchestrated operation linked to the need of legitimising a new international order that did not want to be linked to words like imperialism and capitalism. “It was necessary to find a positive word to portray positive economic relations, even though they had not changed at all, and to block the force of terms such as imperialism and capitalism”. In his opinion, “those who decided to revive the word *globalisation* displayed great talent in their purpose: overnight a set of very negative associations, which by no means had changed, came to be portrayed with gentle view, as if they would generate a spasm of excitement around the globe” (Sampedro and Taibo, 2009: 28).

Similarly, José Luis Sampedro states that language is used to discuss rational issues but really aiming directly at emotions. In his view, the success of the term *globalisation* is due to its association with *globe*, which “immediately conveys an optimistic vision: a globe (balloon) is something round, beautiful, often coloured, that rises majestically, without effort. That is very attractive” (Sampedro and Taibo, 2009: 29).

At the moment we are already talking in terms of metaphors. Metaphors are like the switches that connect language to brain circuits. Metaphors are used to build narratives and narratives are made up of conceptual frames that correspond to brain structures. The frames are neural networks of association that can be accessed via language through metaphorical connections. Framing means to activate specific neural networks. In language, words are associated with semantic fields. These semantic fields relate to conceptual frames. Thus, language and mind communicate via frames that shape narratives that activate brain networks. Metaphors frame communication by selecting specific associations between language and experience from the brain map (Castells, 2009: 197).

For Lakoff and Johnson (2009), metaphors go beyond language and also permeate thinking and actions, consequently, everyday life. For these authors our ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature. “The concepts that govern our thought are not just matters of the intellect. They also govern our everyday functioning, down to the most mundane details. Our concepts structure what we perceive, how we get around in the world, and how we relate to other people. Our conceptual system thus plays a central role in defining our everyday realities. If we are right in suggesting that our conceptual system is largely metaphorical, then the way we think, what we experience, and what we do every day is very much a matter of metaphor” (Lakoff and Johnson, 2009: 39).

Let’s consider, for example, the metaphors used to talk about the deficit in the terms used by Lakoff and Johnson (2009).

The public deficit is attacking the foundations of our economy.

The public deficit is putting us up against the wall.

Our biggest enemy now is the public deficit.

The public deficit has given birth to a generation of dependent people.

In this case the object is identified as a person, which is, according to Lakoff and Johnson (2009), the most obvious ontological metaphor, since it allows us to conceptualise a wide variety of non-human entities

in terms of human motivations, characteristics and activities. But the process of personification is not a single, unified and general process, each personification differs based on certain aspects that whoever uses metaphor wants to highlight.

In the public deficit scenario, the metaphor being used most is that the *public deficit is an adversary* and, as such, it may lead to certain things that are harmful for us. The conceptual frame it connects to consists of ideas such as harm, opposition and enemy, which does not only provide us with a way of thinking about the public deficit but also a way of acting. If we think about the public deficit as an adversary that can attack us, hurt us, even destroy us, we will accept and even justify the political and economic actions taken by our government: declare war on the deficit, set goals, request sacrifices, establish a new hierarchy... What has happened is that the metaphor, in this case a metaphor of personification, has enabled us to make sense of this complex phenomenon in human terms, terms we can understand on the basis of our own motivations, objectives, actions and characteristics. Seeing something as abstract as the public deficit in these terms is how many people make sense of it. When these people see their quality of life impaired due to complicated political and economic factors that are difficult to understand, the metaphor by which the *public deficit as an adversary* can provide some consistency as to why we are affected by something so far beyond us that has nothing to do with us.

We can see that metaphors help us to make certain aspects of our experience coherent, but they can also create realities for us, especially social realities. “A metaphor may thus be a guide for future action. Such actions will, of course, fit the metaphor. This will, in turn, reinforce the power of the metaphor to make experience coherent. In this sense metaphors can be self-fulfilling prophecies” (Lakoff and Johnson, 2009: 198).

The idea that the rationality or the calculation of self-interest is not the central determinant of behaviour is widely accepted, as shown in the success of the analyses in terms of emotional intelligence. But in the realm of politics, there is more resistance to accept this because the liberal or Marxist ideology of progress through reason has been blocking the values and identity as sources of motivation in the public space. And yet, if the people from country after country often vote for those who represent interests opposed to theirs, there must be other mechanisms that determine power⁸.

4. Social paralysis

According to Floyd Allport (1954) when a society or group exerts strong pressure for people to accept an attitude or to behave in a certain way, the distribution of behaviour in the population does not follow the normal curve between total acceptance and total rejection, but rather the curve takes the form of an inverted “j”. This type of curve indicates that most people accept the required attitude or behaviour, i.e. that most people are conformist. The apparent spontaneous nature of conforming may lead us to think that this is an isolated phenomenon, unrelated to the mechanisms of social power; nothing is further from the truth. We must not forget that the established system functions based on a continuous exercise of power that is characterised by rules, routines and habits, and when, somehow, that system is brought into question, power

⁸ From the article “The Lakoff Theory” by Manuel Castells published in *La Vanguardia* on October 1st, 2005: <http://hemeroteca.lavanguardia.es/preview/2005/10/01/pagina-27/41818007/pdf.html?search=observatorio%20global%20la%20teor%C3%ADa%20de%20lakoff%20manuel%20castells>

emerges as a coercive and even physical force. For Martín-Baró “speaking of conformity indicates the pursuit of power, social power, which subjects some people to the will of another” (Martín-Baró 2004: 156).

On the other hand, conformist behaviours can be witting or unwitting, people may not be aware that they are subjecting themselves or, on the other hand, that submission may be made consciously and when they are aware, that submission may be voluntary or involuntary. In fact, people can submit to the demands of others on a voluntary basis, but may also do so because they have or believe they have no alternative.

And this is where the “learned helplessness” theory can shed some light in order to understand what leads us to this situation of irreversibility in which we accept what are, in fact, purely ideological positions used to safeguard the interests of certain social groups, and not necessarily the interests of the majority. “Thus, the old psycho-social thesis reappears that postulates a psychological correlation between objective and subjective structures, between the requirements of social systems and the character traits of individuals. We do not need to assume a mechanical cause and effect relationship, or apply a ‘basic personality’; the idea is to check the obvious fact that the order and functioning of every social system fosters certain attitudes while hindering others, rewards certain behaviour while prohibiting and punishing others” (Martín-Baró, 1998: 93).

The learned helplessness theory has been intensively studied and applied in various fields such as drug addiction, domestic violence, health disparities, relationships in the classroom... Its creator, Seligman (2000), in his first theoretical formulation on helplessness stated that when people are faced with uncontrollable events, they realise that their responses are ineffective in controlling the consequences and that this experience generates a series of deficits at cognitive, emotional and motivational levels. In a later reformulation of the theory, Seligman and his colleagues added that when people perceive that their responses do not control the consequences, this causes them to generate an attribution to the cause of their impotence, and that the nature of this causal attribution determines the formation or not of an expectation of control, and of the intensity and generality of any deficits.

In most applied research on learned helplessness people exposed to a situation in which they lack objective control over the consequences of certain events present a significant overall deficit in relation to the said task. In particular there are deficits in three fields of behaviour:

1. Cognitive deficit: people learn that their responses do not have any relation to the consequences of certain events, i.e. events that are independent of voluntary responses and, therefore, this learning will interfere with the development of a subsequent belief that responses can be effective.
2. Motivational deficit: based on a cognitive deficit, people reduce decision-making in the face of these events by accepting the consequences in a passive way, even when presented with occasions to overcome the said consequences.
3. Emotional deficit: the perceived lack of control over the consequences of certain events produces an emotional behaviour that is similar to depression. For Seligman (1975), fear is the background for this behaviour, but as soon as the person learns that he cannot control the consequences at all, that fear decreases.

Why are the people who internalize helplessness unable to accept the effectiveness of some answers? Because they have acquired the expectation that the consequences of an event and their conduct are independent, reducing the incentive to adopt the said solutions. If there was no way of solving it before,

then why try? Once having learned that to respond or not to respond is unrelated to the outcome leads people to be less prone to associate their responses with a result in the future.

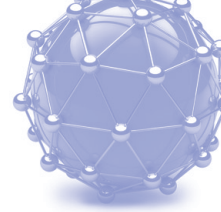
Having gone through the same experience repeatedly and trying to overcome it again and again without success, we learn that any effort on our part is in vain and, sooner or later, we will cease to seek a solution, i.e., we learn that overcoming the situation does not depend on us.

It can be said that the popular classes are more exposed to this type of situation because they are more vulnerable.

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Implementation and realisation of social rights in times of crisis*

Summary: 1 .- Conceptual Dimensions: Laying the foundations for the enforcement of social rights. 2 .- The structure of the obligation and the approach to social rights violations. 3 .- Towards a system of targets and indicators to detect violations and assess progress in the realization of social rights. 4 .- The economic crisis and the realisation of social rights.

Formalist approaches on the effectiveness of rights tend to reduce issues to a recognition in legal texts of domestic or international nature and to the analysis – formal, too – of the institutions and procedures required to guarantee or supervise them. On several occasions, I have reviewed this issue from a socio-legal perspective. Such a starting point leads, in itself, to a critical perspective and to the need to overcome traditional views, rooted in legal formalism and, therefore, to defend the unitary reconstruction of rights to ensure, based on praxis, the indivisibility and interdependence of rights; to go into greater theoretical depths on the structure of obligation and to focus on the violations of social rights based on the developments of the Committee on Economic, Social and Cultural Rights and, of course, to defend the inclusion of socio-legal gateways, both from the point of view of knowledge and of social rights enforcement strategies, as we progress in developing a system of targets and indicators (Calvo 2009). But given the present situation, with a deep economic and financial crisis and its extremely negative impact in terms of guaranteeing social rights, this perspective does not seem to be enough. To start with, it would be meaningless from a socio-legal point of view to ignore the crisis we are facing and its impact on rights in general and on social rights in particular.

In fact, beyond theoretical discussions, I still do not feel comfortable with a technical or legalistic discourse of a formal nature, but neither do I feel comfortable, in general, with an abstract discourse, oblivious to the severity of the impact of the crisis and of the marked decline in social rights which we are witnessing. However, I think the alternative we are facing does not require simply stating the figures of the crisis and the decline in social rights. I still think the theoretical and technical development of obligations

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and the effective implementation of economic, social and cultural rights are as necessary today as yesterday. In addition to the significant progress in relation to the enforceability and realisation of the said rights. What I advocate is that we must not stop here, as is still seen in some discourses (vid. *supra* 4); but, at the same time, although the crisis has lowered my optimism, it has also reinforced my conviction in the need to fight for progress and the effectiveness of economic, social and cultural rights.

As a result, this paper is half way between a socio-legal review of the enforcement of social rights and some positive thoughts to cope with the impact of the crisis in relation to the realisation of economic, social and cultural rights. Based on the above, in the first section, we shall address some conceptual issues and define the criteria we shall use to establish the enforceability of social rights. In this regard, the starting point will be a perspective focused on the unitary reconstruction of rights to ensure, based on praxis, the indivisibility and interdependence of civil and political rights and social rights. In the second section, based on the above, we will study the re-conceptualization of obligations to bring social rights in line with the full recognition and the specificities of such rights and their guarantees. To this end, we shall seek to integrate, analytically, and, above all, from the point of view of guarantees and control of their effectiveness, the different elements that affect the implementation and assumptions to identify violations of rights rather than their quality or mandatory nature. In the third section, apart from laying the groundwork for the full enforcement of social rights, including, of course, judicial and quasi-judicial rights, we shall also insist on the relevance of efforts made to identify and develop a system of goals or benchmarks and indicators to detect violations of social rights in the relevant assumptions. Finally, in paragraph four, the thoughts set out in the previous paragraphs will be confronted with the deep economic and financial crisis we are facing and the impact of which on rights in general, and on social rights, in particular, is evident. We shall address a few issues that I consider particularly important: the need to give voice to those who do not cause financial and economic crises, but suffer disproportionately from their effects; and, at the same time, the need to reinvent the relevance of social movements and of civil society in effectively implementing Rights.

1. Conceptual Dimensions: Laying the foundations for the enforcement of social rights

In recent decades, the question of the indivisibility and interdependence of human rights seems to have been settled by the evolution of international human rights, which would be reflected categorically in paragraph I.5 of the *Vienna Declaration and Programme of Action*.

“All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equitable manner, giving them an equal standing and weight. We must stress the importance of national and regional particularities as well as various historical, cultural and religious aspects; but States have the duty, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.¹”

However, that division has not been completely overcome either in typical rhetoric nor some serious analytical efforts. Certainly, important steps have been taken to rebuild a unified concept of obligation and

¹ *Vienna Declaration and Programme of Action* (A/CONF.157/23). Adopted at the *World Conference on Human Rights* (Vienna, 14 to June 25, 1993), paragraph 5.

the underlying guarantees to any type of rights, but perhaps it is too early to say that, beyond the wording of certain texts and specific doctrinal contributions, this equation has been implemented in practice. Consequently, it may not be amiss to review the *mud* brought by the *sludge* of the disregard for social rights from the perspective of their full recognition and guarantees.

Originally, and according to the ideas of liberal legal ideology (Calvo 1994: 260 ff.) human rights were conceived as *negative rights*, i.e. as rights that generated mere negative obligations or “things that should not be done”, susceptible to enforcement through general legislation or by legal or pseudo-legal measures. Faced with these approaches, the development of human rights has led to the acknowledgement of an increasingly large section of *positive rights*, i.e., rights that require positive action by public authorities for their effective realization. Put another way, as indicated in his day by Verdross (1969: 506, 431) in response to the content of *the Universal Declaration of Human Rights*, “together with [the] rights to freedom, pointing to a *non facere* of the states, there are other rights that involve *facere* from the states, and that branch into procedural and political rights on the one hand, and social rights on the other”².

Today, the development of rights has further accentuated the importance of positive rights, at least in terms of their acknowledgement in both quantitative and qualitative terms. States and international society are not limited to ensuring the natural liberty of citizens through acknowledgement and negative protection, by the obligation not to do, by their political and civil rights, as could be understood from declarations on rights from the late eighteenth and early nineteenth centuries. In general, in the acknowledgement of a “promotional” function in the realization of rights, including civil and political rights, states are obliged to actively intervene to enforce both of the former³.

This development makes the differences – of all types – between so-called civil and political rights and social rights to be considered artificial and unfounded. In this regard, there is abundant literature stating that there are no qualitative differences, neither from the point of view of axiological justification, nor from the configuration of the structure of liabilities that result or from the perspective of guarantees to ensure their effectiveness. It is accepted that this distinction may have heuristic value, even that there may be differences of degree in the *continuum* of obligations of “not to do” and “to do” between the two categories of rights, but although this does not enable us to speak of structural or qualitative differences pertaining to the nature of the obligations arising from civil and political rights and social rights⁴. Moreover, this distinction might make sense from the perspective of liberal ideology, the basis of traditional theory of law, or serve

² Note that the “positive rights” concept, according to this author, also includes civil and political rights. I have opted for this terminology against that which identifies social rights as “rights to benefits” which is perhaps more widespread today, because it is suitable for the purpose of this study and solves some of the theoretical problems and constraints posed by the use of the term “benefits”.

³ This evolution may be seen in the very language of the declarations of rights and constitutions of the past and present. For example, the *Declaration on the Rights of Man and Citizen* of 1793 spoke of “guaranteeing”, “protecting” or “not prohibiting”; the constitutions and the texts on international human rights today use terms like “adopt”, “promote”, “encourage”, “support”... The use of language is no stranger to the transformation of rights. *Positive intervention* of the state in the social and economic life of nations is no longer seen as a mere *power* and is now conceived as an enforceable *obligation* for the government, especially, in as much as it affects the care and protection of certain values and social purposes. On the promotional functions of law see Bobbio, 1980: 367 ff.

⁴ Abramovich and Courtis, 2004: 27. This issue, which has been repeatedly dealt with in the literature and supervisory bodies on rights, is discussed in detail in Sepulveda, 2002: 115 ff.

as a foundation for geostrategic alibis, but it would not be valid today and would only serve to justify the unenforceability of social rights.

Based on the above, it is necessary to overcome the differences between types of rights and clarify the correlations between the structure of the obligations that result and the guarantees that ensure their effectiveness with a view to ensuring the full enforcement of social rights and/or the acknowledgement as fundamental rights. As a result of this unitary reconstruction, both civil and political rights and social rights can be considered as fundamental rights. Obviously, this implies going beyond the liberal conception of “rights” in general and assuming their “multifaceted” nature, as “rights which are both positive and negative, in part a benefit system and in part a non-benefit system, expensive and inexpensive, definite and indefinite, with *ex constitutione* contents and legal configuration contents, with an objective dimension and a subjective dimension, with a structure based on requirements and guiding principles and a structure of justifiable rights”. A unitary reconstruction would facilitate, at the same time, the complex reconstruction of the guarantees of all rights and, in particular, their justiciability (Pisarello, 2007: 111-112).

The unitary reconstruction of the structure of obligations for rights seeks, as before, to foster the full acknowledgement as such of social rights and guarantees. However, even agreeing with these ends, perhaps it is worth noticing their distinctive features including those aimed at ensuring their implementation. Consequently, it is said that “blurring the differences between some rights and others does not always serve the cause of social rights”, particularly if substantial differences from the point of view of strategies for implementation are blurred. We must also stress, in this aspect, that social rights “may require different political and legal action techniques” (García Manrique, 2007: 496). Certainly, those who insist on the justiciability of social rights do not usually aim at circumventing the political, and emancipatory, dimension of social rights and/or their democratization, but perhaps the goal of accentuating the fundamental nature of social rights and their legal enforceability may distort some of their structural elements, the understanding of which is essential to ensure their control and also to make their full effectiveness as emancipatory rights possible (D’Elia, 2008).

Irrespective of other theoretical issues related to the features of such rights, it may be important to stress – in order to illustrate the contents of the previous section – a relevant data related to their implementation. Being rights that, in many cases, require, for their effective implementation, the positive action of public authorities will require the mobilisation of significant human and material resources and the need to organize them by means of an extremely complex process which includes legislative measures, public and social policies, action plans and programmes, organization of basic services and infrastructure as a precondition in order to achieve the protection and well-being targets for individuals and groups that need protection. These are changes that lead to regulatory scenarios for their implementations, involving substantial changes in the structure and dynamics leading to the realisation of rights. These changes make it necessary to alter not only the terminology but also the perspective of traditional analyses on the implementation and assessment of the development of rights.

“To begin with, the promotional logic of so-called social rights involves major changes both from the perspective of legal obligations and from the viewpoint of the systems and policies leading to the effective realization of the targets, objectives and values that protect such rights. Compared to traditional methods of implementation and negative control, there are new means and forms of promotion and positive control that lead to a substantial change in both legal instruments of international law on human rights and the level of public policies and the laws of the states. The active involvement of public authorities to ensure the effective realization of social rights and welfare

led to a clear shift in the legal dynamics, from the organisation of legal and pseudo-legal guarantees to the use of law to implement public policies and programmes that promote social values and interests. Regulation and “red tape” have become the paradigmatic expression of a model that requires the concurrence of political will and adequate material resources to achieve the goals and objectives established; the instruments for the protection of social rights.” (Calvo, 2005).

The effective implementation of positive rights requires, to start with, the creation and operation of a legal-bureaucratic framework that assumes the development of programmes and policies aimed at promoting the values, goals and social interests being protected. This means, in short, the mobilization of large financial, institutional, technical and human resources: budgetary allocations; the design and promotion of public policies and intervention programmes; the development or adaptation of intervention means and infrastructure – public and semi-public –; the incorporation of experts; the establishment of monitoring and assessment systems... This process would widely exceed the traditional logic based on a logical or quasi logical model under judicial or pseudo-judicial control. We are facing something far more intricate, which justifies the terminology change that is arising. Thus, compared to the age-old concept of “applying”, we are beginning to see the use, almost as a general rule, of the term “*implementation*” to refer to this complex process that cannot be resolved once and for all with a single decision, but based on a model of intervention that may be extremely complicated and the assessment of which will necessarily be vested in the said complexity.

Ultimately, the realization of rights that have an essential component of positive action, whether they are civil and political rights or whether they are economic, cultural, social or environmental rights, leads us to a complex picture that overcomes the pretensions of legal formalism on all sides. We are not only dealing with the realisation of rights, increased discretion... (Calvo, 2005); rather than dealing with isolated controllable decisions, we shall come across decision chains⁵. On the other hand, the existence of difficulties such as the economic limitations of social rights, the determination of the parties and setting the scope for the protection required, the verification of the existence of regression, ... to assess whether there has been any determining violations of rights that may complicate the formal control of their realization. Obviously, the weaknesses of formal controls are not remedied by waiving legal and quasi-legal guarantees, but with theoretical and practical measures that enable us to complete and complement them with other monitoring mechanisms. In this regard, in recent years, apart from having made considerable progress in the unitary reconstruction of the obligation structure of rights and in determining the scope of interpretation of social rights, we have also developed proposals to facilitate the enforcement of rights. In this regard it can be said that there have been significant achievements in both directions. However, praxis indicates that there are still many loose ends that need tying for the realization of social rights. So, perhaps, it would be a good idea to review and refine, in the light of the criteria advanced in this section, the possibilities and limitations of the main analytical developments that have taken place.

⁵ Keith Hawkins (2002: 39) has proposed a distinction between decisions on individual cases and decisions on types of cases. In his opinion, it is important to consider certain types of decisions as *policy decisions*, that would group types of cases or classes of acts or events that must be addressed in a coherent and comprehensive manner. Given that they are based on certain objectives and are part of a particular regulatory policy, such mass decisions would require rebuilding the theory of decision based on much higher complexity levels than those usually used in proposals centred around these decisions (p. 47 ff). Administrative agencies – police, social services, health and education services, equality bodies... – make decisions that are designed to deliver the policies that they assume within an organizational context, which determine lines of action managing material and human resources, modulating interventional rigour, adopting general guidelines and, sometimes, deciding when and how to act in relation to promotional and monitoring functions.

2. The structure of the obligation and the approach to social rights violations

As noted above, the implementation of social rights requires, in many cases, a positive intervention by the public authorities consisting in the development of social policies and welfare provisions that may require the mobilization of substantial financial resources and, therefore, their effective realisation is conceived based on a progressive development model and conditional on the availability of the relevant states. This condition, which has also been mentioned as a “financial reserve of what is possible” (Contreras Peláez, 1994: 109 ff) would not affect negative rights initially; but would essentially hamper positive rights and, in particular, economic, social and cultural rights if the state did not have the necessary financial resources:

“Each of the States that are part of the present Covenant undertakes to adopt measures, both individually and through international assistance and cooperation methods, especially in the case of economic and technical resources, *to the maximum of their available resources* to achieve, progressively, through all the appropriate means, including particularly the adoption of legislative measures, the full realization of the rights recognized.” (Art. 2.1 PIDESyC).

According to this, the problem of implementing economic, social and cultural rights would not be purely technical; but rather socio-economic and, ultimately, political. The commitment of states to ensure economic, social and cultural rights effectively conditional to the availability of resources is obviously troublesome from any perspective of social justice and may even lead to questioning the existence of rights when the conditions and resources for their implementation do not exist. In addition, through the loopholes posed by the economic conditions and the subsequent reduction of the mechanisms that guarantee them, the degradation of the so-called social rights and their conditions of enforceability increased.

Certainly, this degradation is based on a misunderstanding of Article 2, or rather, in interpreting that it emphasizes only economic conditions to limit the obligations of States parties to the covenant “to the maximum of their available resources”, forgetting the other elements that modulate those obligations, according to which States parties to the covenant:

- “are committed to taking steps ... by all appropriate means, including particularly the adoption of legislative measures”;
- “to achieve, progressively, the full realization of rights”;
- “without discrimination” (2.2);
- “through international assistance and cooperation methods”.

Faced with this type of interpretation designed to hang the possibilities for carrying out the obligations under the Covenant on the political will of States parties to the covenant and little else, the meeting of experts held in Maastricht in 1986 to clarify the “nature and scope of the obligations of States that had signed the *International Covenant on Economic, Social and Cultural Rights*”, put things in place, by establishing principles of interpretation which clearly rejected the loopholes⁶.

⁶ See the conclusions document known as “*The Limburg Principles*”, paragraphs 16 et seq.

Subsequently, the Committee on Economic, Social and Cultural Rights, in its *General Comment No. 3* (1999) on “The nature of the obligations of States Parties (paragraph 1 of Article 2 of the Covenant)”⁷ established, in a categorical manner, the criteria developed in *the Limburg Principles* as the authentic interpretation of the Covenant:

“The term ‘progressive realization’ is often used to describe the intention of this sentence. The progressive realization concept constitutes a recognition of the fact that full realization of all economic, social and cultural rights in general cannot be achieved in a short period of time. In this sense, the idea of obligation differs significantly from that contained in Article 2 of the International Covenant on Civil and Political Rights and embodies an immediate obligation to respect and ensure all relevant rights. However, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. ... It imposes an obligation to proceed as expeditiously and effectively as possible towards that goal.”

In addition, this same General Comment No. 3 stated, in paragraph 5, that “among the measures that might be considered appropriate, in addition to legislation, is the provision of legal resources concerning rights that, in accordance with the national legal system, can be considered justiciable”. This text pointed out a large number of rights, in addition to the requirement for non-discrimination, which “could be considered for immediate implementation by legal and other bodies in many national legal systems”⁸.

However, there was perhaps one more step missing in order to stress the obligatory nature of the rights recognized in the covenant and overcome the *vis attractiva* of progressiveness and economic conditioning. In that sense, in the mid-1990s, we began to hear of “violations”, which implied another step in the unitary and indivisible consideration of rights. Not only can civil and political rights be violated; we should also speak in terms of violations in relation to economic, social and cultural rights. Although the use of this concept had been mentioned earlier, a paper published in 1996 by Audrey Chapman, opting for the “violations approach” in the supervision and control of the realisation of economic, social and cultural rights can be considered a key aspect in this sense (Chapman 1996: 23-66). The proposal to focus on identifying violations of rights is conceived as essentially practical, with the purpose of intervention and providing content to social rights⁹. An alternative view, which would lead to a perspective that went beyond rhetoric – both positive and

⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 3* (1999) on “The nature of the obligations of States Parties (paragraph 1 of Article 2 of the Covenant)” *paragraphs 3 ff.* *Vid.* Compilation of General Comments and General Recommendations adopted by bodies established under human rights treaties, HRI/GEN/1/Rev.7 (May 12, 2004), pg. 16 ff.

⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 3* (1999) on “The nature of the obligations of States Parties (paragraph 1 of Article 2 of the Covenant)”, paragraph 5.

⁹ Chapman 1996: 36 ff. Later, she would return to this idea, along with Russell Sage, summarizing the proposals advanced here. *Vid.* Chapman and Russell, 1998: 10. Instead of trying to assess the degree of implementation according to some notion of progressive realization, it is considered better to focus on identifying violations. What is advocated here is the frank and explicit adoption of a review process to assess compliance, which would be comparable in monitoring enforcement to that of other international instruments. The definition of violations, with a view to ending and rectifying wrongdoing is more of a priority than the promotion of progressive realization of the right to education. Monitoring the effective realisation of human rights is not an academic exercise; its purpose is to limit human suffering resulting from violations of international human rights rules. Another benefit of focusing on the definition of violations is that it can be a more effective means of conceptualizing the positive content of those rights than more abstract and philosophical analyses attempted to date.

negative – related to the notion of progressive realization in order to improve the implementation of rights and equate them with so-called civil and political rights.

The theses indicated herein were contained in *the Maastricht Guidelines on violations of economic, social and cultural rights* resulting from the meeting of an important group of experts held in this city to mark the tenth anniversary of *the Limburg Principles* on the implementation of the *International Covenant on Economic, Social and Cultural Rights*. They strongly state that

“Like civil and political rights; economic, social and cultural rights generate three types of obligations for States: the obligations to respect, to guarantee and to provide. Failure of any of these three obligations constitutes a violation of these rights.” (D.6).

And, gradually, this approach would find an echo in the Committee’s interpretations of the economic, social and cultural rights set out in the Covenant¹⁰. In short, we are facing a singularly important analytical effort to clarify and “interpret” the scope of these rights, placing social rights on an equal standing with civil and political rights, and with clear practical purposes in order to improve the implementation and monitoring of the realisation of social rights.

The focus on violations is not inconsistent with the analytical development of the structure of obligations underlying economic, social and cultural rights that had taken place in advance. Thus, the violations approach is complemented by the so-called tripartite typology of obligations, which was originally developed by Henry Shue, Asbjørn Eide and G.H.J. van Hoof and was then taken up by the Committee in its interpretations of the nature of the obligations in the *International Covenant on Economic, Social and Cultural Rights* (Sepúlveda, 2002: 157 ff). In this sense, today we speak of violations relating to the obligations to respect, protect and fulfil; and the obligation to promote; violations relating to elements of the minimum core content of the rights; it is made clear that violations can be by commission or omission; it stresses discrimination (Article 2.2) as a frequent cause of violations and that regressive measures lead to the violation of rights... In line with this discourse, the content and scope of obligations are analytically regulated. A fundamental aspect are the developments pertaining to clarifying the obligations of States parties as obligations to respect, protect and fulfil, and to promote¹¹. And, of course, there is still an insistence on the distinction between obligations that require immediate action and obligations for progressive

¹⁰ This already appears in General Comment No. 12 on *The right to adequate food (Article 11)*, 1999, paragraphs 14 et seq., cfr. and also General Comment No. 13 on *The right to education (Article 13)*, 1999, paragraphs 43 ff; vid., in particular paragraphs 58 s., General Comment No 14 on *the right to the highest attainable standard of health (article 12)*, 2000, paragraphs 46 et seq., vid., in particular paragraphs 58 s, etc.

¹¹ *Maastricht Guidelines on violations of economic, social and cultural rights*. Vid nº 6: “... The *obligation to respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The *obligation to protect* requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The *obligation to fulfil* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation”. *General Comment No. 14 on The right to the highest attainable standard of health (art. 12)* and other added the idea that “the obligation to fulfil also incorporates an *obligation to promote*” (pfo. 37).

realization, and, from another perspective, between obligations of conduct and obligations of results. There is also a broadening of the scope of relevant actors, as subjects of obligations, including, besides the State party, the other States Parties, the United Nations bodies, specialized agencies, private actors and civil society organizations.

Beyond these interpretive efforts, the recent adoption of an *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*¹² opens the door to the submission of communications by individuals in relation to economic, social and cultural rights and strengthens the violation-related focus by establishing, in Article 2, that communications may be submitted “by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a *violation* of any of the economic, social and cultural rights set forth in the Covenant by that State Party” (bold type added).

3. Towards a system of targets and indicators to detect violations and assess progress in the realization of social rights

Advances in the development of a conceptual framework (in terms of “obligations” and “violations” of economic, social and cultural rights) have been supplemented with increasingly broad and effective defence strategies in relation to the enforceability of social rights and, in particular, the *judicialising* of the control on the realisation of such rights. Considerable progress has been made on this issue, both from a practical and theoretical point of view. It is true that very early documents such as General Comment No. 3 or *the Limburg Principles* established the bases for the interpretation of direct judicial control over certain rights; however, significant advances have taken some time. Perhaps an important milestone in this regard is the categorical statement made by the Committee in General Comment No. 9 when he stated that while it was true that effective remedies for the proper implementation of the rights recognized in the Covenant were not necessarily always judicial remedies, it was also true that “whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary” (paragraph 9). Further stating:

“10. In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions. The Committee has already made clear that it considers many of the provisions in the Covenant to be capable of immediate implementation. Thus, in General Comment No. 3 (1990) it cited, by way of example: Articles 3; 7, paragraph (a) (i); 8; 10, paragraph 3; 13, paragraph 2 (a); 13, paragraph 3; 13, paragraph 4; and 15, paragraph 3. It is important in this regard to distinguish between justiciability (which refers to those matters which are appropriately resolved by the courts) and norms which are self-executing (capable of being applied by courts without further elaboration).”

¹² A resolution of the United Nations General Assembly finally approved, on December 10, 2008, the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (A/RES/63/117), which gives powers to the Committee to receive and consider communications from individuals and groups of individuals.

To leave no doubt, the Committee closed some of the loopholes usually used to evade judicial controls:

“While the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.” (paragraph 10).

Today there is a broad and solid doctrinal trend in this direction, and also the praxis of the courts in some countries like South Africa or India provide glimpses of broad practical possibilities in this respect¹³. What is needed is “imagination” and the development of new procedural mechanisms and new ways of using traditional procedural mechanisms, a field in which significant advances have been made in recent years¹⁴.

Having mentioned the above, and without taking away any importance to progress in the “justiciability” of monitoring the implementation of social rights, perhaps it may be appropriate to address the specificities of these rights in order to gauge the problem of the said monitoring process and the possibility of completing and/or supplementing it with other methods. In this sense, it seems clear that determining violations of the obligation to respect or protect social rights can be more or less complex, but in any case addressed from a judicial or quasi-judicial perspective. The same is true of the obligation to respect and protect against discrimination in the exercise of rights. However, determining when a violation has occurred within the context of the implementation of certain social policies aimed at the obligation to fulfil social rights, may be a task that goes beyond technical-judicial knowledge and praxis. In these cases, when the obligation to fulfil in order to ensure the provision of a right requires adopting positive actions by public entities, detecting violations of rights may be a complicated task, especially when it is conditional on the existence of resources or progressive realization. In this regard, we must determine when an obligation to fulfil does not exceed minimal obligations and incurs in a violation as a result of regressive policies or in any other of the violations established in the interpretations.

The distinguishing characteristics of social rights that have been mentioned, by way of example, may complicate, in many cases, the formal judicial control of obligations, in particular of obligations to fulfil, and lead us to develop tools to gauge to what point we can demand and how we can monitor compliance with positive action obligations that are highly complex and contingent upon the availability of often scarce resources. In these cases, it is essential to foster the development of socio-judicial assessment tools to detect

¹³ Cf, as an example, Abramovich and Courtis, 2004; Ghai and Cottrell, 2004; Ramcharan, 2005; Coomans, 2006. The latter provides a comprehensive overview of the praxis of judicial protection of rights in various countries.

¹⁴ A very interesting work in this regard has been prepared by Abramovich and Courtis (2004: 46-47; chap. 2 and chap. 3). Sometimes, justiciability will force changes to strategies and pre-comprehensions to improve effectiveness (Tushnet, 2008).

violations of economic, social and cultural rights. One of these instruments will be the development and operationalization of a system of indicators and targets aimed at identifying loopholes, dysfunctions or violations in the development of economic, social and cultural rights¹⁵.

A set of goals or benchmarks¹⁶ and indicators should be used, in the first place, to detect violations by default. In this sense, the system must be oriented to measure and assess whether the minimum Contents related to obligations are fulfilled and whether violations, established as such in the interpretive efforts developed by the competent bodies that supervise and guarantee social rights, occur¹⁷. But it would also have important functions in order to bring out other violations such as those generated by situations of discrimination or marginalization in the enjoyment of social rights. Similarly, a system of indicators and targets developed in that line should be capable of identifying situations of risk and identify vulnerable groups from the perspective of social rights violations.

That said, maybe it should be stressed that a system of goals or benchmarks and indicators for these characteristics need not be oriented solely to monitoring states' obligations by the relevant body supervising compliance with the Treaties. Undoubtedly, this must be one of the purposes and, in fact, the goal that determines the origin of the ideas and proposals on a system of indicators and targets linked to the realization of economic, social and cultural rights. But, needless to say, individuals and groups that are the victims of

¹⁵ The debate on indicators in the field of social rights commenced with the works of Danilo Türk linked to the problems of monitoring the realisation of such rights at international level. Vid. Danilo Türk, *Realization of economic, social and cultural rights, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, E/CN.4/Sub.2/1990/19 (1990); ID, *Realization of economic, social and cultural rights, UN ESCOR, Commission on Human Rights. Second progress Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, E/CN.4/Sub.2/1991/17 (1991). This process would culminate in a Seminar of experts whose jobs are linked to and are reflected in the Vienna Declaration of 1993. Vid. *Report on the Expert Seminar on Appropriate Indicators to measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights*, A/CONF.157/PC/73 (Geneva, 25 to 29 January 1993). A breakthrough in this field occurred in 1998, during a discussion on the right to education in which Paul Hunt (1998) presented his paper on "State Obligations, Indicators, benchmarks and the right to education", Committee on Economic, Social and Cultural Rights (E/C.12/1998/11). Since then the issue of indicators has been on the agenda of academics and human rights organizations, in particular through the success of human development indicator developed by the UNDP. However, the works mentioned have only highlighted the difficulties in developing "an" indicator of human rights. The same could be said if we talk in terms of a system of indicators. Recently, this issue has again been present as evidenced by some of the work performed in the *Expert Meeting on Human Rights Indicators* held in Turku (Finland) from 10 to 13 March 2005, documentation on which is available at <http://web.abo.fi/institut/imr/research/seminars/indicators/index.htm>. In this context of renewal of the discourse on indicators, we must also highlight the work done by the Office of the High Commissioner for Human Rights. Vid. *Report on indicators for monitoring compliance with international human rights instruments*, HRI/MC/2006/7, submitted to the committee of Chairmen of the bodies created in virtue of human rights treaties, Report of the United Nations High Commissioner for Human Rights on *Social and human rights issues*, E/2007/82, which emphasizes the perspective of the indicators linked to the problem of progressive realization.

¹⁶ The importance of goals or benchmarks was highlighted by Hunt (1998). In this regard, on the versatility of combining goals and indicators, there are interesting experiments in other areas. Thus, the adoption of the *Millennium Declaration* at the World Summit 2005, following the guidelines of the *World Summit for Children* in adopting the *World Declaration and Plan of Action for implementing the World Declaration on the survival, protection and development of children in the decade of 1990*, established *Millennium Development Goals* to monitor progress and facilitate follow-up. Vid. *United Nations Millennium Development Goals Report 2008*, [http://www.un.org/spanish/millenniumgoals/pdf/MDG_Report_2008_SPANISH.pdf]. On these issues, cf. Calvo (2003).

¹⁷ The Committee's General Comments identify some of the most serious violations of rights protected under the *Covenant*. Vid, *supra* nota 20.

social rights violations will benefit from the data provided by a system of indicators of this nature in order to support their claims and allegations – and that, today, both from an internal judicial and international point of view, in virtue of the complaints mechanism introduced by the *Optional Protocol to the International Covenant on economic, social and cultural rights*. At the same time, from a more positive dimension, this system of benchmarks and indicators can be useful to design and assess policies and programmes which are used to implement certain obligations to fulfil and promote social rights¹⁸.

The need to emphasize the potential of indicators has to do, perhaps, with the fact that the demand for a system of indicators and benchmarks must still overcome some obstacles. From some views, it is seen as heavily dependent on international monitoring and also subject to the rhetoric on the economic conditioning of social rights¹⁹. On the other hand, the issue of indicators is seen as the story that always starts and never finishes. Indeed, as seen above, it is possible to outline a new impetus on this issue, but the development of a system of indicators and targets related to rights in general and to social and environmental issues, in particular, is still an unmet challenge. However, today, we can that significant steps in this direction, particularly at the international level, have been taken²⁰.

There are also objections in the sense that monitoring based on indicators cannot be considered a form of coercive control in legal terms. Certainly, the need for enforcing social rights obligations and correcting violations should be linked to the work of the State's public administrations, including the legislature and,

¹⁸ He insists on the plural dimension of the advantages of a system of indicators, but highly focused on the international level of supervision, Welling (2008: 940 ff).

¹⁹ This would be evident if we look at the latest documents generated by the Office of the High Commissioner for Human Rights. Vid. *Report on indicators for monitoring compliance with international human rights instruments*, HRI/MC/2006/7, *Report on social issues and human rights*, E/2007/82, which emphasizes the perspective of the indicators linked to problem of progressive realization.

²⁰ Vid., In this regard, Rajeev Malhotra and Nicolas Fasel, "Quantitative Human Rights Indicators – A survey of major Initiatives", a paper presented at *the Expert Meeting on Indicators of Human Rights* held in Turku (Finland) from 10 to 13 March 2005, <http://web.abo.fi/institut/imr/research/seminars/indicators/index.htm>. The latest general comments adopted by the *Committee on Economic, Social and Cultural Rights* (since General Comment No. 12) stress the need to develop a system of indicators and targets and benchmarks aimed at facilitating the implementation of rights and "the strict monitoring of progress" – at international level. In this matter, the contents of General Comment No. 19 on *The right to social security (Article 9)* (E/C.12/GC/19) as an example: "74. States parties are obliged to monitor effectively the realization of the right to social security and should establish the necessary mechanisms or institutions for such a purpose. In monitoring progress towards the realization of the right to social security, States parties should identify the factors and difficulties affecting implementation of their obligations .- 75. To assist the monitoring process, right to social security indicators should be identified in national strategies or plans of action in order that the State party's obligations under article 9 can be monitored at the national and international levels. Indicators should address the different elements of social security (such as adequacy, coverage of social risks and contingencies, affordability and accessibility), be disaggregated on the prohibited grounds of discrimination, and cover all persons residing in the territorial jurisdiction of the State party or under its control. ... 76. Having identified appropriate indicators for the right to social security, States parties are invited to set appropriate national benchmarks. During the periodic reporting procedure, the Committee will engage in a process of "scoping" with States parties. Scoping involves the joint consideration by States parties and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the States parties will use these national benchmarks to help monitor their implementation of the right to social security. Thereafter, in the subsequent reporting process, States parties and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered. When setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of the United Nations specialized agencies and programmes."

of course, the judiciary; the National Human Rights Organizations, international monitoring and control agencies and national and international civil society organisations. However, the above is not an obstacle for a system of indicators to be able to play a highly positive role in complementing other control mechanisms, identifying violations of economic, social and cultural rights – including a failure to formulate the guarantees provided to ensure their enforceability.

4. The economic crisis and the realisation of social rights

Both the analytical developments on the unitary nature of the structure of the obligations derived from human rights and the reinforcement of the indivisibility and interdependence of these have favoured their harmonization in practice, advancing the enforcement of social rights. Similarly, developments aimed at identifying and developing a system of benchmarks and indicators suitable for detecting social rights violations contribute to strengthening the foundations for the full enforcement of social rights that, without affecting their quality and binding, affect their implementation. This, of course, without prejudice to relevant judicial and quasi-judicial guarantees. As a conclusion to the above, we can say we have been tying ends and that, in recent decades, we have made considerable progress in the advancement in relation to budgets aimed at achieving the maximum realisation of social rights.

Claiming these developments is important, but at present we cannot stop there. As noted in the introduction, the optimism emanating from the above considerations has to confront a situation of deep economic and financial crisis whose impact on rights in general, and social rights, in particular, is evident. Its negative impact on the *Millennium Development Goals* is obvious and clearly displays a decrease in social rights²¹. A crisis that will affect countries and people in different ways, creating a negative impact on developing countries and on the most vulnerable groups, as stated in Resolution 63/303 of the UN General Assembly, which included the *final Document of the Conference on Financial Crisis*:

“3. Developing countries, which did not cause the global economic and financial crisis, are nonetheless severely affected by it. The economic and social progress achieved during recent years, in particular on internationally agreed development goals, including the Millennium Development Goals, is now being threatened in developing countries, particularly least developed countries. This progress, partially underpinned by a period of high economic growth in many countries, needs to be secured and enhanced in the face of threats posed by the crisis. Our endeavours must be guided by the need to address the human costs of the crisis: an increase in the already unacceptable number of poor and vulnerable, particularly women and children, who suffer and die of hunger, malnutrition and preventable or curable disease; a rise in unemployment; the reduction in access to education and health services; and the current inadequacy of social protection in many countries. Women also face greater income insecurity and increased burdens of family care. These particular human costs have serious development consequences on the human security of those affected.”²²

²¹ United Nations, *Millennium Development Goals. Informe 2010*, New Cork, 2010 [documento electrónico: http://un.org/es/comun/docs/?path=/spanish/millenniumgoals/pdf/MDG_Report_2010_SP.pdf]

²² *Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development*. Resolution approved by the General Assembly (9th July 2009), A/RES/63/303: [documento electrónico: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/399/86/PDF/N0939986.pdf?OpenElement>]

This negative situation is magnified by the deterioration of social protection caused by the regression of social spending and cuts in social rights and social welfare due to the neoliberal policies applied to overcome the crisis and boost economic recovery. Faced with this situation, it does not seem acceptable that we should maintain an abstract discourse, oblivious to the severity of the impact of the crisis and to the marked decline of social rights we are seeing. Neither do I think the alternative requires simply stating the figures of the crisis and the decline in social rights. In this sense, I understand that the reflections in the previous sections still apply and I reaffirm the idea that the theoretical and technical development on the obligation and effective implementation of social rights have brought significant progress in relation to the enforceability and their realisation, and that, in a situation of economic crisis, they are even more necessary. What I advocate is that we cannot remain at this level of abstraction and disengagement with respect to social reality, as can be seen in some approaches²³. Approaches that attract attention due to the fact that they do not even draw attention to the practical implications on theoretical statements about the decline of social rights as a violation of rights²⁴.

On the other hand, although the crisis has lowered my optimism, it has also reinforced my belief in the need to fight for the progress and realisation of ESC rights. Hence, during these final comments, I shall take a positive outlook. However, given space limitations, I shall only address a few issues that I consider particularly important at this moment: the need to give voice to those who do not cause financial and economic crises, but suffer disproportionately from their effects; and, at the same time, the need to reinvent the relevance of social movements and of civil society in effectively implementing rights.

The former issue not only leads us to rethink the role of rights in general and of ESC rights in particular in making economic policy decisions at state level, but it raises, once again, the global governance issue. This is an issue that appears in the academic literature in the last decade of last century and was even reflected in a UNDP *Report* (1999). Both in pioneering scientific literature (Held 1997, Held & McGrew 2003; Falk 1995, Santos 1998) and in the above-mentioned *report*, global governance is linked to the realisation of human rights and in many cases as a globalised effort from below. This perspective is still defended today (Falk, 2000; Brysk 2002, Santos and Rodriguez-Garavito 2005, Benhabib 2008, Held 2010).

The issue of governance, or rather, global regulation, started to have another meaning in the wake of the so-called Asian crisis (a speculative economic crisis, too) and the rapid spread to various global economies. Following this experience, institutions like the World Bank, began to talk about global governance and

²³ Cfr. as can be seen in the prevailing “técnico” approach, the *Report of the High Commissioner for Human Rights on the implementation of legislation on economic, social and cultural rights (E/2009/90)*. This approach incorporates the latest theoretical and technical developments on the obligations and the effective implementation of social rights, but, paradoxically, it does not mention the term “crisis” despite the fact that the effects of the financial and economic crisis was more than evident as early as 2009.

²⁴ Vid. Committee on Economic, Social and Cultural Rights, *General Comment. 3*, para. 2 and para. 9, *General Comment. 12*, para. 19, *General Comment. 14*, para. 32, 48 and 50. In this regard, the *report* mentioned in previous note stresses: “The obligation to progressively realize economic, social and cultural rights also entails a related *prohibition of deliberate retrogression*. This means that it is prohibited to adopt measures aimed at reducing the level of protection that some rights have already gained. The restriction or limitation of rights that have already been provided for (such as access to free primary health-care services for children) or the abrogation of legislation necessary to exercise a right, are examples of deliberate retrogressive measures, which are considered by the Committee on Economic, Social and Cultural Rights a *prima facie* violation of the Covenant unless the State can show that it is fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”.

global economic regulation. An approach that has been taken up by the G-20 as a result of the current economic and financial crisis²⁵.

It is clear that without progress on global governance mechanisms, it is not possible to control the power of the new transnational actors and the states leading the current process of “predatory” globalization (Falk 2002), but the question is: “global governance, how and what for?”. Without going into details, it is obvious that in the G-20 approach stresses the lack of some of the central themes of democratic governance proposals: the language of rights, the bottom-up perspective and, ultimately, the democratic nature of global governance. The argument, from my point of view, is not “global economic governance or chaos”, but global democratic governance to give voice to those who do not cause financial and economic crises, but suffer their negative consequences. And this clearly implies claiming an approach from the bottom up, but also the role of rights and, in particular, in the current crisis, of social rights.

The question of the need to reinvent the relevance of social movements and of civil society in the effective implementation of Rights runs parallel to that mentioned above, but goes further by claiming a leading role in social movements and civil society in the effective implementation of ESC rights. In this regard, it is true that the crisis and the regression of social rights can operate as a stimulus to restore the prominence of social movements and civil society in the fight for rights, but the question is obvious: Why do the links between human rights and social movements generally remain unexplored in academic literature?

Social movements do not fit into a technical-legal approach, nor in a functional socio-legal approach. In an evocative work, Charles Tilly (2004) asked “Where do rights come from?” This is obviously a provocative title, consistent with the thesis that maintains: “Where do rights come from? We could ask that question from an analytic philosophical approach..., from metaphysics..., or from rational action ... Instead, I would like to raise it from the point of view of European political history”. In the same line as Moore, Tarrow and other authors linked to socio-historical research, rights are primarily seen as “historical products” and secondly as “the result of struggle” (Tilly (2004: 273)).

However, this is not the dominant perspective in research on the origin and the realization of human rights (Stammers, 2009). The role of social movements in the realisation of social rights becomes important both from a theoretical perspective, and from the point of view of praxis. From the outset, I must say that, with an interdisciplinary approach and attentive to their conflictive dimension, it is possible to discover another history of human rights and other elements in the praxis of human rights, leading to identify the relevance of social movements and civil society in the origin and implementation of human rights. But, beyond theoretical reasons, the current economic and financial crisis enables us to see the relevance of social movements and civil society in addressing the regression of social rights. In this sense, to conclude these reflections, I would stress the need to re-link social rights and their realisation to social movements, re-inventing their role in the effective implementation of ESC rights. In this regard, the crisis and the regression of social rights may operate as a stimulus to restore the prominence of social movements and civil society in the fight for rights.

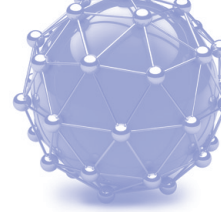
²⁵ Cf Malkin 2009, where human rights are conspicuous by their absence. The same applies, except for some anecdotal reference, if you view the outcomes of the summits: G20 *Summits* [<http://www.g20.utoronto.ca/summits/index.html> – last entry January 2011]

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Delivering Co-Production in Welfare Systems: the Case for a Heuristic Revolution?

Abstract: Putting co-production at the heart of welfare policy means that valued social outcomes are determined by the quality of interaction between state and citizens or more narrowly service producers and users. In this context we require a sea-change in the way that governments think about working with citizens and communities. The starting point is to move beyond perspectives that assume that citizens are always effective instrumental calculators. We require a heuristic approach that recognises how our cognitive maps, social networks and cultural norms also shape our responses to welfare policy. We further need to identify broad categories of soft tools of intervention that can turn these insights into policies. The strategies of Nudge provide a starting point for this heuristic sea-change but this article offers additional options for policy-makers.

Societies into the future will become more reliant on citizens to support the production of welfare outcomes (2020 Public Services Commission, 2010). The reasons for this prospect are only partly to do with problems over public finances. Short-term financial pressure caused by public deficits run up during the recession, stimulated in turn by the banking crisis of 2007 onwards, are a challenge. The long-term fiscal strain caused by ageing, advances in health care, increased global economic competition, the decisions of past governments and amplified citizen demands have played their part in stimulating thinking about encouraging citizens to shoulder more of the welfare burden. However in addition the nature of problems facing contemporary society – from securing environmental protection to meeting the needs of an ageing population, dealing with the fragmentation of traditional household and kinship – mean that positive outcomes cannot be achieved by the State alone. We have moved from hard-wiring challenges to a concern with soft-wiring society. It was enough of a challenge to build schools, roads and hospitals and ensure the supply of clean water, gas, electricity and all the requirements of modern life. But so much of what we are trying to do now is about soft wiring: getting healthier communities or ensuring that children from their early years get the right stimulation and the right environment in which to grow and develop.

The future is one where networks of co-production (we need to define networks of coproduction) will work to achieve welfare outcomes to a greater degree than???. Networks of co-production require a

contribution from both government and client or community. The key process is not about enforcing action but inspiring it. Coproduction is about government stimulating some response from clients or communities that requires voluntary effort on their part (Alford, 2009). There is growing interest in how more ambitious forms of citizen co-production can be garnered and many claims about the likely transfer of significant public service activities away from the state and towards society (Bovaird 2007; Horne and Shirley 2009; Alford, 2009). To achieve more through co-production there will have to be many changes in the way that public services are financed, organised and delivered and more attention to building on and supporting the contributions that families, volunteers, carers and communities make to welfare (Bovaird and Loeffler, 2011). There is already a core understanding that co-production is driven for citizens by a mixed range of motivations: stretching from self-interest to more moral concerns (Alford, 2009). The full agenda of change to deliver more effective co-production stretches beyond the scope of this paper. Instead we focus on one key issue: the need for a heuristic sea change in the way that governments think about working with and approaching citizens.

Our aim is to build on the debate stimulated by the publication of Thaler and Sunstein's *Nudge* (2008), a book that has had a major impact on public management thinking in the Anglo-Saxon world. There are a number of books and pamphlets that offer policy lessons drawing on insights from behavioural economics and cognitive psychology and a number of corresponding programmes of policy activity are underway at the local and national level both in the UK and elsewhere (Halpern *et al.* 2004; Cialdini 2007; Knott *et al.* 2007; Dolan *et al.*, 2010). Thaler and Sunstein's *Nudge* (2008) deserves particular credit because it has done much to bring out the possibilities of tackling issues of behaviour change in new ways. *Nudge* offers a helpful framework for changing the "choice architecture" of citizens in order to achieve alterations in their behaviour which constitute improvements for them and for society as a whole. Nudges are about framing our choices as individuals. We live in a complex world with complex signals about what is the best thing to do from both a practical and moral perspective. We use social cues to help us decide what to do: will it be much effort to change my behaviour, what are other citizens doing, can I work out the impact of a shift in behaviour quickly and easily? Governments in co-operation with citizens can help us shape the multiple daily choices we make in a way that could be better for us and our fellow citizens if they get these social cues right.

We think there is much of value in the arguments of the "nudgers". You cannot command people to be more neighbourly or save for their retirement, volunteer to help out in their community or make a contribution to tackling global warming by recycling more of what they use. You can provide incentives to perhaps support all of these activities but the money that government spends only comes from tax payers in the end and to tackle the full range of social and economic issues we are concerned with would require public spending at levels that would be unsustainable. That does not mean that governments are left unable to do anything. Rather as Thaler and Sunstein (1998, pp. 5-6) suggest they can try "to influence choices in a way that will make the chooser better off *as judged by themselves*" and go on to define these *Nudge* strategies as focused on "any aspect of the choice architecture that alters people's behaviour in a predictable way without forbidding any options or significantly changing their economic incentives". Nudgers challenge the dominance of hard tools of intervention that rely of command or tax and benefit incentives and argue that there is a range of softer tool options.

Softer tools are required now because as citizens in western industrial democracies we have drunk deeply at the well of individual freedom, lifestyle choice and our right to have a say. We are less deferential, less automatically inclined to accept the claimed wisdom of experts and more willing to challenge those

in authority. We are active, moral choosers, or at least we like to be as much as we can, and as a result commands or crass straightforward incentives to change our behaviour are less likely to take a grip.

In this light policy makers have to develop new ways of thinking or perhaps re-emphasise ways of understanding that have been neglected. In an era where the state led, and citizens followed, command and incentive based interventions were for much of the time good enough but when seeking to develop a capacity for co-production between state and citizen not only are different tools required but also a different way of thinking: a heuristic sea change in understanding the microfoundations of human behaviour.

In social science the search for microfoundations rests on identifying individual-level mechanisms which bring about aggregate social outcomes. For policy makers microfoundations play a role in shaping governance choices because they provide the rules of thumb which guide their work. For them they are the starting point for thinking about what to do, what might be effective and what could be feasible. Microfoundations play a significant role in steering policy choices. The default image of the citizen in the minds of most policy makers is a rational calculating decision-maker. The aim of this article is to challenge that assumption and encourage a greater plurality of heuristic starting points and beyond that to indicate broad categories of soft intervention tools that could be used building on that heuristic sea change.

The structure of the argument is as follows. First we establish the embedded nature of rationality assumptions in the thinking of policy makers. Next we review the evidence from social science that suggests that human behaviour often operates beyond the microfoundational world of rational choice and is structured by a range of other cognitive, social and moral influences. We argue that for policy makers microfoundational pluralism is far more appropriate for shaping their thinking. A major challenge surrounds the development of intervention tools that can embrace and apply a wider set of microfoundational assumptions. Here we start with Nudge strategies but then suggest a need to go beyond them when addressing behaviour change. We offer a heuristic that frames the options that are available to policy makers and weighs their potential strengths and limitations.

Policy makers and their rationality assumptions

Policy makers often design their interventions to reflect a sense that human beings are driven by an instrumental rationality in which actors use information efficiently and make predictable calculations to advance their objectives. The reasons why the instrumental rationality paradigm is dominant are complex. As Jackson comments in his review of understandings held by policy makers about how to change citizen behaviours: “the rational choice model is so widespread and so deeply entrenched in the institutions and structures of modern (Western) society, that it tends to have an immediate familiarity to us” (Jackson 2005, p. 27). It is also frequently assumed that, if given a chance, individuals will pursue their own self interest. So, in designing public policy individual and collective interests need to be aligned. The response this familiar perspective requires from the policy designer is good institutions to establish the right incentives. Policy is constructed on the basis that individuals are self-interested but subject to manipulation through a combination of incentives and constraints.

The grip of these microfoundational assumptions is reflected in the founding history of public administration. Social engineering principles first offered by David Hume in the eighteenth century were captured in

the dictum “to design institutions for knaves” by offering material sanctions and incentives for good behaviour (Goodin 1982). The approach is also supported by a long history of utilitarian thinking on the design of institutions, constitutions and laws in which the influence of the Benthamite tradition – to protect public institutions from exploitation by sinister interests – has been great (Schofield 2006).

The modern delivery of public policy, we suggest, is imbued with assumptions about the instrumentality of service users and providers. It has been given an additional push in the last few decades by the rise of the New Right critique of the state and its lionization of market-like incentives as a means of designing public policy, something which is well-illustrated by the use of quasi-markets in welfare provision (Le Grand 1997). Market style incentives – rewards for good performance – provide a way of channeling that self-serving motivation of bureaucrats for the public good. Better information and more choice – again in an aping of market principles – give consumers of public services who know their own interests the opportunity to pursue them. In the UK, the New Labour Government’s public service reform programme (1997-2005) continued with such themes, premised on the idea that actors are rational, self-interested and likely to respond in a predictable way to incentives and constraints (Hood 2006; Stoker 2010). Core aspects of their performance management approach – targets, and naming and shaming – smacked of the microfoundational ingredients of instrumental rationality. Choice and personalisation in public services celebrated consumers’ ability to know their best interests and provided a means of keeping self-interested providers in check. The Conservative-Liberal coalition since 2010 have further strengthened the use of market mechanisms which...

These microfoundational underpinnings are not unique to the UK. New Public Management (NPM) style reforms implemented across many OECD countries over the past two decades have been underpinned by similar rational actor assumptions. Although NPM does not represent a unified body of ideas and practices internationally (Newman 2002), certain themes based upon the rational actor philosophy do find global resonance. These include a focus on tempering self-interest, inefficiency and ineffectiveness within bureaucracy, an emphasis on individual need rather than a universal basic level of service, and a celebration of consumer choice.

The influence of New Institutional Economics on public services, incorporating public choice theory, transaction costs economics and the economic theory of agency, has been noted in both the New Zealand and the UK context (Barzelay 2002; Borins 2002), an influence which owes much to the rational actor model. In the United States and Canada, public service reforms have been dominated by concerns to inject business style practices such as a greater customer service orientation, more managerial autonomy, and a focus on results oriented performance (Borins 2002). In both the Germany and the Netherlands measures to enhance control and transparency over bureaucracy have been prominent as well as mechanisms to strengthen the client orientation (Schedler and Proeller 2002).

In the founding and the reforming of welfare systems rationality assumptions are plainly embedded in the orientations and outlooks of policy makers. If people assume that you view them as selfish calculators in your design of policy instruments they may respond in a self-fulfilling prophecy, creating what Bryan Jones refers to as a “rationality trap” (Jones 2001, pp. 120). Co-production appears to have only limited prospects if the offer to citizens to engage rests on the assumption that they will only do so if they can identify they are getting more out than they put in. A survey of public attitudes to co-production in several European countries reveals that “citizens are most willing to make a contribution towards improving public services when it involves them in relatively little effort and when they do not have to work closely with other citizens or staff or professionals in the government” (Bovaird and Loeffler, 2011). As a result individualised forms

of co-production dominate over more collective forms, although it is arguably the latter that policy makers most want to encourage as they bring benefits not just directly to participants but to the wider community. With a heuristic framing of rational economic actors it looks like an impossible ask. But what if people are not rational, selfish calculating machines?

The limits to rationality assumptions

The idea that we are not self-interested, calculating machines is hardly a novel one to those who study public policy brought up on a diet of Simon's focus on bounded rationality (Jones, 2001) and it will hardly be a great revelation to policy makers with any capacity for self-reflection. Only now though are these insights beginning to emerge in a way that can be applied to policy thinking and with a force that can challenge the dominant rational decision-maker heuristic. The key insights establish the cognitive, social and moral influences on behaviour.

Our cognitive pathways

The idea that we search comprehensively and act in a fully rational manner when making choices is confounded by a wide range of social-psychological and behavioural economics research (Jones, 2001). In psychology a cognitive revolution has occurred over the last few decades and insights have been taken up by political science, sociology and most particularly economics (see Simon *et al.* 1992). This new social science thinking has started to feed through to policy makers and been given a high profile in the work of Thaler and Sunstein (2008) with the publication of their book *Nudge*. The essential argument is that we are decision-makers constrained by bounded rationality because we have a fundamental human problem in processing information, understanding a situation and determining consequences, given the limits of our cognitive capacities and the complexities of the world in which we operate. Our cognitive inner world helps us to focus on some things and ignore others and it is driven by habits of thought, rules of thumb, and emotions. Rationality is bounded by this framing role of the human mind. Policy makers need to consider how interventions can shape how attention is paid and to what issues and how the "problem space" is represented, defined and understood by actors. Policy makers need to consider in addition the role of choosing and learning strategies in controlling the search for alternatives and options for action and the impact of emotional attachment and loyalty on the framing of the decision-making environment. Here we summarise a few of the most important contributions, many of which are referenced in *Nudge* itself, and identify some implications for policy design. These examples highlight the mental shortcuts taken by "homo psychologicus" to aid decision-making (see also Simon 19xx; John *et al.* 2009).

Prospect theory (Kahneman and Tversky 1979; Thaler 1980) alerts us to the "endowment effect" which suggests that when we are already in possession of something, we are very reluctant to lose it. Cognitively it is more important for us to hold onto what we have (i.e. prevent loss) than to gain something extra. Experimental research backs up this theory and demonstrates that "ownership matters" in people's valuation of a good, with owners placing higher value on the traded good than sellers (Kahneman *et al.* 1990). In public policy this translates into designing behavioural change strategies to emphasize losses rather than gains. Where people feel that they have something to lose, they may be more inclined to do something to

prevent the loss occurring. For instance, smoking cessation policies which highlight life years lost through smoking are more effective than those highlighting life years gained by quitting (Wilson *et al.* 1987; 1998; see Halpern *et al.* 2004). In a similar way, fines are likely to be a more powerful motivator for changing behaviour than financial rewards (Dawnay and Shah 2005).

Another facet of our cognitive architecture which displays our less than fully rational behaviour is our use of psychological discounting (Frederick *et al.* 2002). This theory suggests that immediacy is a major factor in our responsiveness to offers. We place more weight on the short term than on the long term effects of our decisions. If we are to gain something, we would rather do so now than later. If we have to feel pain, we would rather experience it some time in the distant future. Behavioural economists use this principle to explain why people often make imperfect economic decisions. “Hyperbolic discounting” occurs when we place a “high discount rate over short horizons and a relatively low discount rate over long horizons” (Laibson 1997, p. 445). In other words, we overweight short term consumption while discounting the greater long term gains that could be made by delaying consumption, creating outcomes which are suboptimal both from an individual and collective perspective. It is this that makes many of us reluctant to save for our retirement, or inclined to ignore the long term effects of a poor diet or exercise regime. Commitment mechanisms can be built into public policies to redress our propensity for short-term gratification and procrastination and so extend the capacity for co-production (O’Donoghue and Rabin 1999). One example of this which is displaying promising results is a pension savings programme built on a “buy now pay later” principle in which employees have to commit to incremental savings with a two year payment holiday to begin with (Thaler and Bernartzi 2004). Discounting is a feature of analysis by conventional economists as well but the psychological (including behavioural economics) literature tells us that we tend to discount in a less consistent and rational way than the conventional economists recognize.

A closely related phenomenon is our propensity for maintaining the status quo (Samuelson and Zeckhauser 1988). Limited by time, intellectual energy and resources, the majority of us, most of the time, prefer not to change our habits unless we really have to. Research verifies that when confronted with a complex or difficult decision, and in the absence of full information about all the alternatives, we will often stick with our current position (Choi *et al.* 2003). A powerful mechanism which can be used by policy makers is to alter “choice architecture” by shifting the default position to maximize social welfare (Thaler and Sunstein 2008). Automatically enrolling citizens for pension savings programmes (Cronqvist and Thaler 2004) or onto organ donor registers (Johnson and Goldstein 2003; Abadie and Gay 2006) are instances where changing defaults appears to work well.

A fourth aspect of our behaviour recognized by social psychologists and relevant to the development of co-production is the issue of cognitive consistency. Following Festinger (1957) psychologists suggest that people seek consistency between their beliefs and their behaviour. However, when beliefs and behaviour clash (the phenomenon of cognitive dissonance), we frequently alter our beliefs instead of adjusting our behaviour. One way out of this difficulty given a desire to promote co-production is to extract commitments from people (Dawnay and Shah 2005). Research indicates that when people make such a commitment they feel more motivated to adjust their behaviour to back up their expressed beliefs, particularly where commitments are made in public. Making a commitment to do something can change our self-image and encourage us in future decisions to seek consistency with our previous commitment. Evidence in the field of environmental behaviour suggests that extracting public promises can help to improve water efficiency as compared to simple information provision (McKenzie-Mohr 2000). Similar findings are reported in the

area of voting behaviour, with those asked beforehand to predict their likelihood of voting more likely to vote than those not asked (Greenwald *et al.* 1987), and in blood donation decisions where exposing people to an “active decision choice” (i.e. actively putting the choice before them) increases blood donation rates in people who display uncertainty on the subject (Stutzer *et al.* 2006).

Our Social Influences

Despite the importance of addressing individual psychological factors in attempts to foster co-production, homo psychologicus does not live in isolation. Recognition of the interpersonal, community and social influences shaping behaviour will also strengthen public policy designs for co-production. Social psychologists and sociologists suggest a number of important influences (see Halpern *et al.* 2004 for a review). For instance, our perception of how others see us, particularly our peers, matters to us. In the context of promoting energy efficiency within offices, there is evidence that the technique of “information disclosure” between firms creates a “race to the top” amongst firms keen to display their green credentials (Thaler and Sunstein 2008). Similarly, the concept of social proof suggests that when confronted with an ambiguous situation, we look to other people for cues on how to behave (Cialdini 2007). Additionally, we will be most influenced by people with whom we identify, those we trust and those who are seen as credible (Druckman 2001). Peer support and community mentoring schemes are examples of co-production which exploit these inter-personal influences, for instance programmes to increase breast feeding which are delivered by mothers (Bovaird 2007), or bullying prevention schemes in schools where mentoring is provided by children who have suffered bullying (Cross *et al.* 2009).

Theories of inter-group bias stress the importance of group loyalties and identifications, and experimental work indicates that strangers divided into groups can quickly form such loyalties (Tajfel *et al.* 1971). Group identities often develop and generally speaking we are predisposed to emulate the behaviour of those with whom we identify (Tajfel *et al.* 1986). Techniques which exploit these inter-group biases and loyalties have been used to encourage co-production, for instance by attempting to encourage whole streets to form group identifications vis-à-vis other streets in a neighbourhood, in a bid to increase food waste composting (Nomura *et al.* 2010).

A further strand of sociological work suggests that people are influenced by their immediate social networks which are themselves based on social norms including reciprocity and mutuality (House 1981). Public policy instruments like community contracts, covenants and other forms of voluntary agreements as well as campaigns to encourage organ donation or volunteering which emphasize reciprocity or a sense of community make use of such principles.

Our Moral Convictions

Goodin identifies three forms of moral behaviour and motivation (Goodin 1980). The first is referred to as prudential morality and is premised on an appeal to long-term or enlightened self interest usually by way of careful reflection on the part of the individual. The second is where moral principles are held and internalized by the individual but are given the same status as more self-interested, instrumental motivations and are tradable in the prominence they are given in decision-making. The third area is where moral

principles are held to be sacred and require to be protected from more profane motivations and not to be traded under any circumstances.

To illustrate, a donor to a blood bank could see the issue as a matter of long-term rational interest (I might need some blood in the future). Information, incentives and even modest coercion (in times of emergency) might be acceptable external stimulants in these circumstances. Alternatively blood donors could see it as a moral commitment and as long as it is made a convenient and easy task will carry on doing it. Finally they could see it an absolute moral duty and regard the act of giving blood as an outward expression of their commitment to their fellow human beings. Coercion or reward for giving blood in these circumstances would undermine the commitment, or “crowd out” the altruistic motivation. This idea was originally put forward by academic Richard Titmuss in *The gift relationship*, in which he argued that monetary compensation for donating blood might reduce the supply of blood donors. He argued that paying for blood donations would undermine cherished social values and therefore reduce or totally destroy people’s willingness to donate blood (Titmuss 1970).

The significance of this in relation to interventions aimed at encouraging co-production is that conventional public policy levers such as financial incentives may inadvertently transform altruistic orientations into self-interested loss and gain calculations: “the introduction of a monetary reward for performing a task which subjects originally regarded as intrinsically enjoyable consistently reduced the intrinsic pleasure subjects reported deriving from the task and, furthermore, reduced their rate of volunteering to repeat the experiment” (Goodin 1980, p. 139).

Goodin’s observations are echoed in Bruno Frey’s “Crowding Out” Theory (Frey and Jegen 2001; Frey 2007) and supported by research. For instance, studies of volunteering indicate that volunteering rates can in some cases decline when payments are offered (Frey and Goette 1999). Similarly, in the field of childcare, the introduction of fines for parents who arrive late to pick up their children increases lateness because payment erodes their sense of guilt for being late and changes the nature of the relationship to a contractual one (Dawnay and Shah 2005).

External and, in particular, monetary incentives do not mechanically induce human beings to act in the desired way, because they crowd-out intrinsic motivation under identifiable conditions (Frey 2007, pp. 4-5). Three psychological processes account for the hidden costs of stimulating behaviour through external incentives and constraints. When people feel that they are being controlled, especially through intensive oversight and regulation, they may feel impelled to forego intrinsic motivation because the external framework is so overwhelming that it makes maintaining an intrinsic motivation pointless. When people find their perceived intrinsic motivation over-looked or ignored this situation can lead to loss of self-esteem and sense of purpose. Finally when they are not encouraged to display their cherished intrinsic motivations they can experience a sense of anger at this deprivation (see Cotterill *et al.* 2009 for a fuller discussion of this issue).

The microfoundational assumption that we are rational calculating machines cannot stand on its own as a rule of thumb for policy makers. That is not to say that people never act in a self-interested and calculating manner but it is to argue that we may not do it as often as some of the founding thinkers of social science assumed or as some of their modern day followers in public choice economics or management schools claim. And the story does not start with the emergence of behavioural economics over the last two decades, it can be traced back, at least in its direct allocation to public organizations, to the pioneering work of the Nobel-prize winning Herbert Simon over sixty years ago (Simon 1997). His core argument was that our limited

capacity for information-processing constantly gets in the way of us being heroic rational decision-makers. The bounded rationality maxim is that “we have small brains and face big problems”. Add to that the idea that citizens are social and moral beings and you have the base for a more pluralistic microfoundational heuristic.

Developing the heuristics of intervention

A commitment to microfoundational plurality leads in turn to a new heuristics of intervention. What are the strategies available to turn insights about the cognitive, social and moral dimensions to citizens’ decision-making into effective interventions to support co-production of welfare? A valuable report written for the Cabinet Office on how Nudge ideas have been taken up in practice and how they could be taken further is provided by the Institute of Government (Dolan *et al.* 2010) and seeks to encourage policy makers to think beyond the tools of regulation, law and financial incentives. The report argues that a revolution in thinking is already well on the way. “For policy-makers facing policy challenges such as crime, obesity, or environmental sustainability, behavioural approaches offer a potentially powerful new set of tools. Applying these tools can lead to low cost, low pain ways of ‘nudging’ citizens – or ourselves – into new ways of acting by going with the grain of how we think and act. This is an important idea at any time, but is especially relevant in a period of fiscal constraint” (Dolan *et al.* 2010, p. 7).

We do not wish to challenge such an optimistic assessment directly but note that there is currently a gap between our understanding of general social and psychological processes and capacity to ensure that these insights become effective tools for social engineering. Moreover we think that more than Nudge type interventions should be on the table. To explore these concerns we think that it is useful to consider four intervention points available to governments when they seek to translate ideas about general microfoundational mechanisms affecting behaviour into deliverable policy measures (See Table 1). These are presented under the headings of framing, persuasion, socialization and bricolage. The first two are top-down in orientation with government in the lead but the final two are more bottom-up with government ceding more control to citizens. We want to challenge the idea that behavioural change can be driven solely by top-down interventions. We suspect the governmental officials will be more comfortable with top-down interventions but argue they should not neglect more bottom-up approaches.

Framing

Framing activities are at the heart of the *Nudge* book by Thaler and Sunstein (1998) with its focus on shifting the choice architecture of citizens. They are a widely recognized feature of marketing, campaign and policy interventions. Framing in the context of policy making refers to the process by which a policy maker may present an issue in order to encourage policy targets to respond in certain ways. The way problems are stated, and in particular the importance attached to certain dimensions of a problem, affect people’s reactions and their subsequent behaviour. It is an approach that is top-down, in which the decisions of citizens are framed or influenced by a policy format that takes citizens as they are but supports them towards better decisions. Framing recognizes that as boundedly rational beings we do, at times, take cues from government, cues which act as rules of thumb to support individual decision-making.

Table 1

Soft tools of intervention to facilitate behavioral change: a heuristic

Intervention tool	Defining Characteristics	Process of Creation	Strengths	Weaknesses
Framing	Shaping the choice framework of actors based on their original values.	Top-down.	Multiple framing opportunities and a well-established practice.	Lack of Trust in government may limit message reception.
Persuasion	Shifting the beliefs of citizens.	Top-down.	Tackling challenging or difficult issues.	Too many conflicting perspectives or challenges can limit capacity to shift beliefs.
Socialisation	Working with the processes that create positive norms in social groups.	Bottom-up.	Embedded norms become deeply ingrained and powerful drivers of behaviour.	Governments fail to provide space and time to work that supports citizen-led activities.
Bricolage	Given the complex and contradictory perspectives of citizens the aim is to influence the way that people think through situations and apply established norms.	Bottom-up.	Powerful way of affecting everyday decision-making. The challenge is match the right norms to the right situations.	Governments face major obstacles in seeing the world like a citizen.

Framing typically involves highlighting a subset of potentially relevant considerations which form part of the larger issue at stake, in order to influence the way in which people react to it (Druckman 2001). Applying our previous example from prospect theory (Kahneman and Tversky 1979), it might involve presenting a choice as involving losses rather than gains. Another example of framing is the issue of sequencing. Behavioural science indicates that people give disproportionate weight to the last part of an encounter or a message since this is the part that they retain in their recollections (Chase and Dasu 2001). Applying this to a government-sponsored television appeal for donations to natural disaster or for blood and organs the argument would be for a strong positive image to end the message.

Classic framing nudges include, for example, changing the default arrangement so that individuals do not actively have to choose the better option for them and society (so you are in a pension scheme unless you actively opt out). But recent research suggests that nudges may shift the behaviour of only relatively low percentages of citizens (John et al., 2011) and may also be less good at tackling ingrained behaviour. Moreover, there are clear constraints on the framing ability of elites. Experimental work (Druckman 2001) indicates that frames are only influential insofar as the people generating the frames are perceived as being

trustworthy and credible by those they are attempting to influence. Government agencies undoubtedly have the capacity to frame or nudge but they may not be trusted by citizens as credible sources of information or advice, and this constrains the capacity of interventions at this point to reach more challenging elements of citizen behaviour. Trust in public institutions and agencies does vary and is a complex phenomenon (MORI 2003) but it cannot be assumed that the trust needed to engage in effective framing will always be present.

Persuasion

Persuasion shares some ground with the idea of framing, although the two are conceptually distinct. The main difference, according to Nelson and Oxley (1999, see Druckman 2001), is that persuasion involves altering *belief content* while framing involves only altering the relative *importance* that is attached to certain beliefs, that is, it brings something that you want to do anyway to the fore. In this light Nudge is a framing not a persuasive activity as defined by Thaler and Sunstein (2008). They (who? T&S?) argue that not only must citizens, rather than governments, be the ultimate choosers but that nudges work best when citizens know that something is right and just need to have that choice brought to the forefront of their mind. The key to a successful Nudge is applying it to situations where people have already made up their minds and are willing to perform the action in question. This may limit the range of actions that Nudges are capable of fostering, leaving out, for instance, issues which are more controversial or require more sustained consideration (John *et al.*, 2011).

So what are the prospects of going beyond nudge to persuasion? Lau *et al.* (1991) demonstrate that where only one interpretation of a policy problem and solution is presented, providing the idea itself is consistent with voters' cognitive schemata and that the interpretation is itself a "chronically accessible construct" (i.e. that the interpretation is largely uncontroversial and that voters are used to thinking about the policy problem in this way), they will generally accept the policy argument. In such situations voters engage in only "shallow information processing". Their evaluation of the issue will be strongly influenced by the interpretation presented in the official account, even if this interpretation is at odds with their deeper political beliefs. However, where competing interpretations are presented and where interpretations might be in conflict with our cognitive schemata because the ideas themselves are new or unfamiliar, deeper information processing is required. In these situations voters tend to draw on their general political beliefs as a heuristic to aid to decision-making, rather than on rules of thumb or nudges provided by policy makers.

In short, persuasion as an intervention point has its greatest impact when there is limited competition for ideas and little to challenge the message. It only takes a moment's reflection on the issue of global warming or the MMR jab to see that the persuasion capacity of policy makers can be limited in those circumstances when competing ideas are aired effectively.

Socialisation

If we are going to bring into play the role of social norms or the building of moral dimensions into policy measures to create co-production then socialisation processes become a bottom-up intervention point for governments. Fostering social norms which support coproduction might be one means of encouraging citizens to play a part in achieving public policy outcomes. But the development of norms is something

which it is difficult for policy makers to influence because, as Parsons (2010) discusses, norms develop in an incremental and evolutionary way through a process of repeated interaction between groups. Moreover, it is only over a sustained period that social norms begin to translate into action. Recognising the role of socialisation as an intervention point in shifting behaviour may make sense in terms of research but is very challenging in terms of policy (as Putnam has found in turning social capital insights into effective policy interventions, see Putnam and Feldstein 2003).

It would seem that the key is for government to cede power to citizens if the forces of socialisation are going to come to fruition. Groups themselves can find ways of overcoming “tragedy of the commons” type scenarios (Hardin 1968) in order to attain collective goals. As the Nobel prize winning Elinor Ostrom (1998, p. X) notes, “contrary to purely rational models, individuals systematically engage in collective action to provide local public goods or to manage common pool resources without external authority”. With repeated interactions, particularly face-to-face interactions, group members learn conditional cooperation and reciprocity, and develop norms of cooperation through the use of group sanctions and rewards, either material or reputational. Group norms such as a willingness to sanction other group members for non-cooperation are arguably the equivalent of moral codes.

In areas of public policy reliant on citizen cooperation for achieving policy aims, particularly collective action or “social dilemma” situations (Ostrom 1998) such as improving air quality or reducing the use of landfill sites, governments can employ creative methods for harnessing cooperative behaviour. Rather than using the traditional tools of government to punish or incentivize, the State may be better off working on the development of the institutional apparatus which will permit citizens to cooperate. In practice, this means building opportunities for face-to-face interaction, the development of trust and the performance of reciprocal acts.

Consequently nudges, as we have argued elsewhere (John *et al.* 2009; John *et al.* 2011), need to be joined by strategies that give citizens more sustained space and opportunity to “think”: to find common ground, to deliberate their way to solutions and to agree ways of changing behaviour. If we are going to access the full range of the intervention points for positively influencing behaviour, particularly in attempts to foster co-production, we may need governments who are prepared to devolve more power to citizens than is achieved by adopting calculating nudges. The future of public services may be tied as much to a capacity of government agencies to engage citizens individually and collectively in rethinking their lives and choices as much as it is by their capacity to develop smarter nudges.

Bricolage

Top-down framing and bottom-up building of deliberation may need to be joined by a further development in governmental capacity, which requires seeing like a citizen rather than seeing like a state. This argument is inspired by Scott’s study (Scott 1998) of the failings of grand social engineering projects, failings which, he argues, are in part a reflection of the high-handed, uniform, centralising and codifying form of thinking that can dominate government thinking and a lack of respect for the local knowledge, craft understanding and diversity of the practices and perspectives of citizens. The same point is made in a different way by the literature in social science on bricolage. The essence of the argument is that people “tend to develop ideas and norms and practices to suit rather discrete problems and goals, and ... end up with a

complex landscape of overlapping realms of action” (Parsons 2010, p. 96). Lévi- Strauss’ metaphor of bricolage (Lévi- Strauss 1966) attempts to capture the way that actors can learn in an ad hoc way, making sense of things as they go along and finding out what is useful, as the need to bring something into use comes into focus. Many practitioners describe the way they learn using the idea of bricolage (Freeman 2007).

Given the significance of such processes to exploring how citizens are deciding and why they are behaving in certain ways it suggests that the state faces a major intelligence challenge in developing more subtle and effective intervention. A capacity to see like a citizen rather than seeing like a state is a considerable challenge for the effective development of new tools of intervention. So a key intervention point could be to use focus groups and the collective equivalent of “mystery shopper” to discover what it like to experience the state from the citizen’s view point.

Conclusion

This article argues that the case for taking on board a wider understanding of the diverse microfoundational bases to social behaviour in the design of public policy is overwhelming. A greater comprehension of cognitive pathways, social norms and moral motivations should join with a continuing understanding of instrumental factors in shaping government policy-making. The evidence and theoretical understanding provided by social science would endorse a move to a greater use of a more subtle range of tools for changing social behaviour if co-production is to become a more important part of public policy delivery.

We have so far ducked the more normative questions about co-production and forms of intervention that seek to trade on individuals’ cognitive foibles, social practices and moral convictions. Judging the morality of seeking to steer people’s choices in certain directions is of course not a new dilemma for policy makers and issues of whether it is right to intervene apply equally well to the use of standard tools such as law-making, regulation or taxation. What makes the issue more challenging in the case of some nudging is that standard forms of intervention are more open and explicit about their intentions (although how much many of us really understand about the details of regulations and taxation applied to us would be in doubt, and we know also that policy tools of all types can be made less visible to reduce public resistance). The tenor of nudging can be “we the government know better what is good for you than you do and we have found a sneaky way of getting you to make the right choice”. One line of defence promoted by Thaler and Sunstein (2008) under the label of “libertarian paternalism” is that at least the choice does remain with the citizen, it is just the *architecture* of choice that is designed by democratically elected governments, to support what are judged by political representatives to be beneficial outcomes. The Institute of Government report (Dolan *et al.* 2010) argues that judgements about the controversy of interventions need to be made before they are launched and democratic or public approval sought before they are introduced.

Even if these moral challenges could be addressed there is a further issue according to some commentators. Can we trust governments to pick the right choices for us? Rajiv Prabhakar (2010, p. 2) argues:

“Behavioural economics assumes that government knows best. But often this may not be the case. For good reason, government might find it difficult to unpick the different parts of a policy problem...government might lack proper evidence to guide its decisions. Government might only know the right nudges in a limited number of areas where there is plenty of evidence.”

This argument is, perhaps, a useful qualification to over-enthusiasm about nudging, but hardly a major challenge to nudge-like strategies since it applies equally well to other forms of government intervention. When it taxes and regulates us how does government know it is doing the best thing? The answer in all cases is surely that the key issue is a judgement for which in a democratic society we can hold government to account at some point. In short the morality and legitimacy issues surrounding the idea of using interventions driven by a wider set of microfoundations that reflect the complexity of human decision-making can be addressed.

Our caution rests not so much over the ethical or political issues thrown up by intervening to promote co-production using a mix of microfoundational insights. Our concern debated in this article is driven by recognition that we are only in the foothills as social scientists in understanding how to translate a general understanding of social process into viable social engineering interventions and that we need more research and work to clarify what works and to what extent and in what circumstances. Second we think that there is a danger that top-down forms of intervention to shift social behaviour will overwhelm more bottom-up approaches. Top-down approaches may sit more comfortably with government practice and may indeed be effective but only within limits. Bottom-up approaches demand a greater culture change from government but may enable the tackling of issues that top-down nudging strategies will not be able to grasp.

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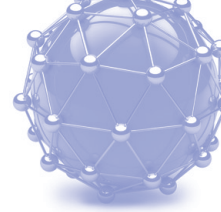
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Participation and social networks for social cohesion

The social cohesion deficits of our societies are often referred to as if we had lost the welfare of the *old* days. It would be absurd, however, to idealise the past and fail to recognise the progress we have made in areas such as education, health or caring for the vulnerable (Fink, Lewis and Clarke, 2001; Gallego, Gomà y Subirats, 2003; Navarro, 2003). It is not true; therefore, the past has always been better, although present improvements cannot be used to deny the tensions and challenges we are facing today. Regardless of the past, the truth is that the present causes enough concern for us to focus on its realities and its own dynamics of poverty and social exclusion. Our future looks uncertain and full of risks that must be addressed.

The following pages include some thoughts on the present and on the future of social cohesion in our society. With this in mind, we shall firstly identify those challenges that define the peculiarities of the present moment. Secondly, we shall discuss the types of responses – public policies – we should articulate to approach the goal of a cohesive society. Thirdly, referring to what these policies should be like, we shall stress the importance of providing collective and participatory responses. And finally, we shall dedicate a section to illustrate our ideas based on social action networks in Barcelona.

1. New society, new challenges

In Western countries, although with notable differences, as can be seen in the Spanish case, we have gone through a long period of social welfare and economic growth. The still mythical welfare state proved a success story which combined Keynesian economic policies, extensive universal welfare services, powerful techno-bureaucratic management and, as a basis for all this, a broad social consensus (Martínez, 1998; Ginsburg, 1992; Ochando, 1999).

The result was an exceptional period of growth and social peace, while maintaining a level of inequality between *the top and bottom*, between the bourgeoisie and the working classes. A clear but peaceful level of inequality: useful for identifying each party, but incapable of generating serious confrontations. During this stage, in short, inequality persisted, although the widespread expectations for growth and well-being defused potential conflicts.

None of these assumptions are held today: our society has changed, while traditional policies no longer work to unite society or to pacify tensions. We have a different reality and we should be proposing different responses to cope with it (Offe, 1990; Adelantado, 2000). Here, we shall take a look at these changes and, with this in mind, we shall focus on two aspects which, while not exhaustive, sufficiently summarise the challenges we must address:

- in descriptive terms, the emergence of the *new middle classes* and the emergence of the *social exclusion* phenomenon; and
- in analytical terms, the collapse of the links and joint projects that characterized the welfare state.

1.1. “Up-down” is diluted, “in-out” appears

The traditional focus of social inequality, as mentioned above, is in the *up-down* dimension and it is suitable to distinguish social classes based on their material resources and on aspects that identify them. Being rather schematic, the lower classes would have fewer resources, they would vote for parties of a socialist nature and present high rates of trade union membership; while the upper classes would enjoy higher income and identify with conservative parties and business organizations. These differences are important, although, in the welfare state they were cushioned by offering a wide range of goods and services that allowed the generalisation of certain expectations. In other words, those below would still be less than those above, but they would have more than before and, in any case, enough to ensure their material well-being (Moreno, 2000).

This general situation of stability and material well-being disappears with the widespread social transformations that accompany the current development of the welfare state. Many are the changes affecting social structures, although, here, we shall focus on two: the new middle classes and new forms of social exclusion.

Firstly, the consolidation of redistributive policies that defined the welfare state led to the gradual dissolution of traditional class distinctions. Most people no longer identify with high or low classes and define their own identity in terms of a new and diffuse middle class. The traditional signs of class identity (vote for a particular party or trade union membership) have tended to weaken, while there are new signs of identity that are more closely tied to individual consumer preferences or styles and forms of group behaviour than collective projects. As set out by Inglehart (1991), a *new middle class* has appeared that, once its basic material needs have been satisfied, concentrates its attention on *post-materialist* demands and expectations.

From the point of view of social cohesion and welfare policies, the emergence of this *new post-materialist middle class* has at least two notable effects:

- On the one hand, these new middle classes see the traditional universal services of the welfare state as rights, while also calling for new services linked to their post-materialist expectations. They no longer accept classical policies based on “*the same for all*”, they have fragmented and changing demands; they demand personalised treatment and require both quantity and quality from public services. The new middle classes, better educated and more sophisticated, are no longer satisfied with the *menu* of services offered by the classic welfare state; they expect an *a la carte* relationship with a state that not

only guarantees a minimum for all but that must also be able to respond to the maximum expectations of each person. It is no surprise how these new demands are putting pressure on the structures of the *old* welfare states, forcing them to perform personalised and fragmented tasks for which they are unprepared and forcing them to deploy an increasing volume of activities with increasingly scarce resources.

- On the other hand, the new middle classes are not only more sophisticated but also more vulnerable. Ulrich Beck (1998) speaks of the democratization of the risk of exclusion in order to remind us that the former stable system has disappeared, and that today, although we all belong to the new middle class, anyone can be victim to social exclusion. All that we have collectively and individually achieved (work, family, vacation, comfort) can disappear from one day to the next in this new *risk society*. A society where sophistication and fragility, affluence and vulnerability go hand in hand.

Secondly, we must recognize that the social peace provided by the welfare state represented an unprecedented achievement in terms of extending decent life expectations for the population as a whole. This is why the so-called *rediscovery of poverty* towards the end of the 1970s was so surprising. The rich Western societies seemed to have reached heaven and found hell in the streets and squares of major cities, where a growing number of people wandered without home, family or resources whatsoever. Material deficits affected society once again; a society that thought it was entitled to post-materialist demands.

The asymmetry between the dominant discourse (post-materialism and consumerism) and personal situations (marginality and poverty) is probably the main factor of exclusion, the primary reason for the inability of our society to address or even accept the situation of these people. The new poor have no place in society, nor up nor down nor even lower, and therefore, are left out, excluded. A new and cruel type of inequality has emerged: that between insiders and outsiders, those who are part and those that have been excluded, those that are *in* and those that are *out* (Percy-Smith, 2000; Bauman, 2005).

The phenomenon of social exclusion is complex and has been widely discussed for at least two decades. However, even at risk of simplifying, we would now like to emphasize that there are three complementary ways of approaching this term: situation, risk and process.

- Exclusion as a situation*. Exclusion, indeed, can serve to define the situation in which a person or a group find themselves. From this perspective, exclusion is often defined as a state of intense need caused by multiple factors (material, education, urban planning, health...). The multifactorial nature of exclusion situations impedes policy-related responses, as those excluded have two features that are especially outside the traditional logic for social intervention: invisibility and transversality. The accumulation of factors puts people who are in a situation of exclusion into extreme marginal situations without the possibility of being seen by *normal* agencies: they are out of sight. At the same time, their situation does not respond to sectoralised social policies designed to address *a given* problem but that are powerless when presented with a *cocktail* of simultaneous and overlapping problems typical of a situation of exclusion.
- Exclusion as a risk*. Exclusion is not only an intensification and an accumulation of personal deficits, it also expresses the weakening of the individual and collective resources to address them. Exclusion is not only a situation, it also refers to the context of *loneliness* that the very risk of exclusion increases. People who have been excluded are not only poorer, but live their poverty alone; without relations

and connections to lean on. Without social networks, with a very weak social capital, with family structures becoming increasingly weaker and without strong community values, exclusion not only defines a situation of poverty but one of extreme isolation. People in a situation of exclusion are obviously very low down but they are especially out. In our society, there are many people in situations of exclusion, but there is also an individualising process that – freeing us from relational networks, severing our social ties – makes us increasingly vulnerable and introduces a risk of exclusion. There is a group of outsiders, certainly, but we are all at risk of exclusion.

—*Exclusion as a process.* Finally, it is essential to mention exclusion, but not as the result of a personal failure but as the effect of general social and economic processes. Opposed to the traditional blame placed on the poor as incapable people who have to be helped, people suffering from exclusion are the inevitable result of *progress* (Bauman, 1999; Wacquant, 2006). Our growth model creates them and, therefore, taking the problem of social exclusion seriously does not only imply redesigning social policies but, above all, reassessing our model of development. No one says it too clearly, but it seems very clear that very few of those who benefit from this model seem willing to reconsider it. They seem rather willing to accept the price – that others pay, the invisible people who are “out” – of growing and appalling social exclusion.

1.2. A society with no ties or joint projects

The emergence of new middle classes and new forms of social exclusion illustrates the emergence of a new society. However, beyond its visibility and notoriety, both processes are the manifestation of changes that affect the moral conception of society. A society that has broken with interdependencies and, as a result, has seen how the nerve that provides a system of shared responsibilities has diluted. Some of us no longer feel responsible for others and, thus, as Levinas suggests, we are dismantling the moral foundations of our community life.

The welfare state has often been defined as a triumph of ethical wills, because the link between capital and labour kept the ideal of a shared responsibility project alive. It was, as mentioned above, a segmented society, but also a society where people depended on each other and where, therefore, there was a basis for recognition and the development of trust. A society of this kind can be strongly segmented, but still maintain high levels of cohesion. It accepts inequality, but incorporates it to a system of shared relationships and interdependencies.

The very image of an industrial factory illustrates this interdependence, displaying a place where employers and workers coexisted, where the compromise between capital and labour was strengthened by their complementarity. In the words of Bauman (1999):

“... The walls of the huge factory locked the two partners in a common prison. Capital and labour were united, we could say, in wealth and poverty, in health and disease, and till death do them part. The factory was their common ground and, at the same time, the battleground for a trench war and the natural source of hopes and dreams.”

In addition, these ties offered long-term prospects, a future to strive for, which also became a common destiny. These ties did not appear occasionally; relations between them – between the various segments of society – were given time to mature and consolidate. Apart from the ethical dimension of this shared

future, the long term perspective enabled them to plan, build and develop individual and collective projects. Stability provides a framework in which citizens find the confidence to live their lives, while enabling the development of relationships that will shape the social framework.

In a dynamic and changing world, stability is a falling value. However, opposed to those who see it as stagnation, there are also those who warn us of the risk of not having enough time, of not achieving enough stability to build a community. Excessive stability may end up spoiling the water in the pond, but an incorrect type of mobility may be misleading and dizzying. Richard Sennett (2000) expresses this with his usual skill:

“Routine may degrade, but it also protects; routine can break down work, but it may also compose life.”

Today, however, no reference to the long term or to letting time do its work seems to have too much sense. The ties are broken, we no longer need to allow relationships to mature and, ultimately, the short term is taking over. Everything is speed, flexibility and change. We live in an individualized society where we have neither time nor the desire to relate to others. We claim to have overcome traditional social segmentations, but by doing so we have broken the bonds between us and, thus, we have put into question the mechanisms of social cohesion.

With the crumbling factory walls and protected by the discourse of individual responsibility, we have been evicted from our old social reference points – class, if you prefer – and left alone; to enable some to succeed while most fail heroically alone. This is society without morals that Levinas mentions, one in which we do not want to get involved with others, where we do not even ask ourselves about their welfare. *That's their problem, the should wake up!*, could be the new motto of this individualised society.

In this context there are more and more uncertainties, which reach a peculiarly intense dimension precisely because it is impossible to live and address them collectively. Currently, unlike what happened in the past, we experience uncertainties alone. Getting together with other people no longer serves as a way to mitigate or face challenges. Uncertainty appears as a powerful individualizing force. Difficulties do not unite us, they divide us. Solidarity is not rational, it no longer has any meaning and, therefore, we deal with our troubles alone. As Ulrich Beck (1998) would say, we try to give biographical answers to systemic problems. *And it shows!* Most of us are too weak to face problems that affect everyone alone.

Consequently, the description of the new middle classes and the identification of new forms of social exclusion are two sides of the same coin. Faced with the novelty of this most epidermal manifestation, we find the definition of a new model of society. Actually, a model of *non-society*, a fragmented social structure without ties that finds it impossible to represent a collective project or opportunity. The socially excluded are alone, just like the new middle classes that seem to hide their fear in compulsive and self-destructive consumption.

The former British Prime Minister, Margaret Thatcher, summed up the new situation by proclaiming “Society? There is no such thing”. It was an expression of joy and confidence in a new and redemptive type of individualism. Two decades later we consider it the expression of our inability to live in a minimally cohesive community. We need society to live together in it and this is precisely one of the major challenges we face; and not only in relation to individual efforts but above all concerning public policies. We must work to create citizens and a community: once again, the two sides of the same coin (Rodger, 2000).

2. Policies for social cohesion

The scenario outlined in the preceding paragraph is disheartening, although it should not be crippling. It should be, however, the starting point for promoting public policies aimed at building citizenship and a community, the two essential ingredients for social cohesion.

In recent years, many studies have been dedicated to analysing and assessing public policies in Spain, including social cohesion policies (Grau and Mateos, 2002; Gomà and Subirats, 2001; Gallego, Gomà and Subirats, 2003). In this short paper, we cannot explain the wealth of this debate and, therefore, we will focus our contributions on some key ideas. To do this, we will borrow the metaphor of the train by Mora and Cabezón (1999). In an interesting study, the authors compared their community of reference (they are social service professionals at municipal level) with a train in which they identified the engine and the first, second and third class carriages:

- The engine – which pulls the train in a certain direction – represents the development model, the force driving our society and that set the pace at which we move forward.
- The first class carriage, with opaque windows, accommodates a privileged elite, who comfortably enjoy all the advantages of an unstoppable train.
- The new middle classes are in the second-class carriage, where they strive, albeit uncomfortably, to keep up the pace and to continue the journey. This carriage, on the other hand, is filling on a daily basis, to bursting point and, therefore, many of the people who occupy it do so in extremely fragile conditions. We are, making use of extremely graphical language, falling out of the windows at the slightest bump. We are, in short, experiencing a constant risk of exclusion, of falling from the crowded and vulnerable second-class carriage.
- And when we fall out, we will end up in the third class carriage, a carriage that is no longer defined by its lack of comfort or space, but by having come loose from a train that still advancing. The third class carriage has stopped, it has been abandoned on a service track and no longer forms part of the train.

This is, from our point of view, a good metaphor, because it allows us to visualise exclusion as a situation (the third class carriage that has stopped), as a risk (the crowded second-class carriage) and as a process (the engine that does not wait anyone.) It also helps us to think of specific responses for each case. We shall now look at the contents of a public social cohesion policy, and we shall do so thinking about the image of our social train:

- Reactive policies that address the needs of individuals or groups in situations of social exclusion.
- Forward-looking policies to help those who are at risk of social exclusion.
- Strategic policies to address the processes that generate social exclusion.

2.1. Reactive policies that address exclusion as a situation

Social policies that react to situations of need, with a view to *mitigating* them are often branded obsolete. These policies, often labelled pejoratively as *assistance* policies, are part of the classic professional group but

would be incapable of meeting the current challenges affecting social cohesion. They would enable those in great need to obtain the support and services that would ensure their survival, but hardly help to reverse the situation and, therefore, to (re)integrate those living in marginal situations.

We can agree that this type of intervention is part of the arsenal of traditional welfare policies, although this does not mean that they are no longer useful or needed. There is a tendency to dismiss these *old-fashioned* policies, but this might be a hasty assessment if, as we believe, they respond to a real need.

If exclusion is a real situation for specific people, as it is, then this calls for actions to mitigate any deficits or needs. There are homeless people, people without income, disabled people or people with no training; and they all demand policies that provide them with access to certain minimum decent conditions of life. These assistance policies are indispensable in any society that claims to take responsibility for those most in need.

When we come to more practical aspects, the question focuses on the intensity and extent of the policies: who is entitled to access them and what resources shall we dedicate to each person. In order to answer these questions, classic assistance systems tended to blame the poor for their situation and, therefore, although they sympathized with them, they were required to prove their poverty and offered minimal services. It was important to prevent people who did not want to work and who wanted to take advantage of the system from *slipping through*.

“These considerations, and other similar ones, must have been important in the 1820s and 1830s, for the ‘Poor Law’ reformers, who, after a long and bitter debate, reached a nearly unanimous decision: assistance to the poor sectors of society had to be limited to those admitted to hospices. (...) First, this separated the real beggars from those who were ‘suspected’ of only masquerading as such to avoid the inconvenience of a stable job. Only a real beggar would choose to live confined in a hospice if the conditions were horrific enough (...).” (Bauman, 1999: 27-28).

These approaches still pervade many assistance policies and, indeed, should be reconsidered. Individuals or groups in situations of exclusion are not to blame for their situation, they are suffering that situation. On the other hand, this approach lack meaning in a society, like today’s, where work is scarce. Consequently, reactive policies aimed at mitigating situations of exclusion should not disappear, although they should be redefined. Conceptually, they should be considered as one of rights of citizenship, while, operationally, they should ensure decent living standards.

It is true, however, that we must seek a balance between the resources allocated to these policies and their real goals. We should not think that it will always be possible to reverse situations of exclusion by increasing the resources allocated to them and, therefore, we should decide how to distribute those scarce resources between reactive policies and forward-looking policies, referred below.

2.2. Forward-looking policies that address exclusion as a risk

We have already stressed the importance of the risk of exclusion, a risk that has been *democratized* and that today affects most citizens. Until a few decades ago, a person’s socio-economic conditions had very marked pattern of stability. It was highly unlikely that someone with a particular *status* should lose their

position. Belonging to a family or having an estate implied having a strong guarantee for the future. The risk, therefore, was minimal; continuity was maximum.

Today, however, continuity is minimal and the level of risk is maximum. Anyone, from whatever origins, can find themselves removed from their position and suffer a process of exclusion. The past neither helps us to live the present nor does it protect us from the future. No-one can feel safe and we all experience the uncertainty. In that overflowing second-class carriage, we all experienced the danger of falling, the risk of exclusion.

Given this situation, the reactive and assistance policies we mentioned above are ineffective. Inaction, waiting for the fall in order to apply the palliative treatment is not an option either. The risk of exclusion is so widespread and its impact is so devastating that it is essential to make an effort to reduce it. We need public policies that, anticipating exclusion processes, provide citizens with resources to protect themselves against future risks.

All citizens, or at least the vast majority, need these policies to protect ourselves against uncertainties. We are not talking about goods and services to meet their material needs, but of policies that promote their own resources and attitudes to face the future. From this point of view, forward-looking policies should, at least have two objectives: promote human capital (strengthen citizenship) and promote social capital (strengthen a sense of community). It is the citizens, as a community, who have the strength to assume the risks that we are facing today.

- *Promote human capital.* The first goal of a proactive policy like the one we are suggesting is very clear: to empower citizens so that, better educated and trained, they have personal assets that will enable them to assume risks successfully. These policies – which are embodied in different types of education programmes, in courses for entrepreneurs, in skill banks or in offering computing resources – are fundamental today, although they can also examine the processes of individualization that define our society. We must create citizens with sufficient resources, but we should ensure that we do not transform these initiatives into the idea of *all must cope as best they can alone*. Human capital is a crucial factor for our future, but we should not link it to collective irresponsibility. It is necessary, therefore, to complement the development of human capital with the promotion of social capital. We need citizens, but we also need a community.
- *Promote social capital.* We run the risk of exclusion because we often do not have enough personal resources, but also because we are alone. We must recognise that the uncertainties and risks of the future are so powerful that they can hardly be handled individually, no matter how well prepared we are or how many languages we speak. It is therefore necessary to build social skills that enable us to realise that ancient aphorism of *united we stand*. Public policies have no experience in this field, although in recent years they have begun to show some concern about strengthening civil society institutions, promoting participatory processes, creating spaces where relationships can develop or promoting programmes to rebuild neighbourhood or generational links. Relations with our neighbours or belonging to certain groups, to name just two examples, make us stronger. It is not only a question of getting smart, but of co-operating with others. Only then will we become citizens, and only then will we create a community and, ultimately, only then will we be able to build a cohesive society.

The forward-looking policies are a challenge for public authorities, and require them to enter uncharted territory. These policies, however, are crucial if we want to address exclusion as a risk and, therefore, *control*

the processes that affect the cohesion of our societies. Some papers and some experiences allow us to advance in this field (Gorz, 1998; Gough, 2000), but we still have much to learn and a lot of work to do.

2.3. Strategic policies that address exclusion as a process

So far we have referred to policies aimed at assisting those with present needs and that provide individual and collective resources to those who are deemed to be at risk in the future. However, we should remember that both present needs and future risks do not appear spontaneously but are induced by certain patterns of development. The situations and the risks leading to exclusion are socially generated and can be interpreted as the impact of a number of growth and development factors. People are falling off the train and are trapped on a branch line, but the engine of the train continues to advance, leading the way regardless of whether some can keep up or not.

Social policies have not been able to influence this debate and have been limited to coping with the negative impacts of certain development models, without being able to influence them. Those that fall are picked-up and, more recently, the intention is to protect those who are about to fall; but you can never talk to the driver to ask him to slow down a little, to wait a minute because some people are unable to follow. The very structural element of social policies is marginal, as is usually the political profiles of the perpetrators. Social policies, in other words, cannot get involved in the dynamics of exclusion and are limited to addressing their impact.

While the impact can be managed, not much will change probably. However, as social cohesion problems grow in intensity and extent, the situation will become less sustainable. Social services will gradually collapse, while the pressure and social demands will not cease to grow. A train that is going faster and faster may provide a good image of progress. But a type of progress that sows the tracks with the *human remains* of those who were unable to keep up is also a metaphor for a failure that could be seen coming (Barman, 2005).

Some of us believe, therefore, that cohesion policies should not be peripheral but central. They should not reflect the adverse effects of development, but (re)define the pace and dynamics of that development. Social policies should not be restricted to working in the last carriages, but should be able to access the engine at the head of the train. Social policies should not be used to mitigate *ex post* the effects of other policies deemed central (such as economic or town development policies), but to define the contents *ex ante*.

This new central nature would shape the strategic dimension of cohesion policies. A dimension that is still unfortunately lacking in the approaches proclaimed by our government officials and, perhaps most importantly, by most citizens mainly interested in enjoying the privileges of a train moving at full speed than in taking a look through the back window to observe their impact. Politicians are responsible for promoting the strategic shift we are seeking, but they can hardly be successful while the whole population is unwilling to rethink the development model (Margalit, 1997).

Earlier, referring to forward-looking policies, we concluded by mentioning that we had much to learn and much to do. Now, speaking of the strategic dimension of cohesion policies, we still have a lot to learn and much to do, but also the daunting task of building a collective consciousness. We can demand of our public officials to serve those in need better, but we cannot ask them to prevent social exclusion problems if we do not let into the engine room, if we are not willing to give up some of the benefits

that are providing a development system that is powerful but also excludes people. The solutions given to exclusion issues through the public administrations may be better or worse; but we can only build a cohesive society if we choose to do so as a society.

3. Participating to build a cohesive society

In the previous section we referred to the contents of social cohesion policies. These are new contents that, consequently, require novel forms of implementation.

During recent years, administrative modernization initiatives have proliferated. These initiatives consist in decentralisation, proximity, transversality, the use of various forms of partnership and network management. All these innovations have found an excellent field of experimentation in social policies. While other areas showed greater resistance, social policies have generally displayed interest and openness when it comes to innovations in the management of their activities.

This behaviour should probably be linked to the nature of the need. In other words, the incorporation of new ways of working can be seen as more urgent in areas where contents are under greater pressure to change. And this is the case of cohesion policies; policies that are becoming increasingly complicated in relation to their contents and that, therefore, also prove more complicated when they have to be implemented.

In recent years, as mentioned above, administrative modernization efforts have taken over our practical experiments and our academic discussions with a wide range of innovative labels (Osborne and Gaebler, 1994; Kettl, 2002; Lane, 2006). We would, however, like to focus on an idea that we find crucial: the need to overcome purely technocratic ways of doing things and a desire to incorporate relational styles. In other words, traditional management systems have always operated under the principles of hierarchy and segmentation, assuming that public policies can be totally broken-down and assigned to specialised professionals in each field. This outlook assumes a certain simplicity of outlook: the ability to define what needs to be done in a clear manner and the certainty of having an expert to execute it.

Faced with this traditional clarity and rationality, the problems we see today are increasingly complex, more comprehensive and more difficult to break-down. Consequently, it is not easy to distribute organically or to assign them to standard professionals who monopolize the solution. Therefore, compared to hierarchical and segmented methods, innovations are being proposed that are designed to encourage dialogue, relationship, the ability to tackle problems together. Hence the importance of finding ways of working that bring us together, promote collaboration, that incorporate citizens and their organizations (participation), that facilitate inter-organizational relationships (transversality) and that ensure an overview of the issues under discussion (comprehensiveness) (Brugué, 1996; Agranoff and McGuire, 2003; Hajer and Wagenaar, 2003; Kooiman, 2003).

Cohesion policies require this complex method because they must also deal with a complex reality. Our society is increasingly diverse, plural, changing, volatile and, therefore, we cannot propose actions without acknowledging this fact. Traditional welfare services perceive society as a snapshot, while today we need methods that are more flexible, more adaptable and more attentive to the reality for which they are intended. Only through proximity, openness and dialogue will we be able to realise this complexity and act accordingly.

The participation of citizens and their organisations has often become a banner for this new sensibility, for this system that is more aware of the complex and diverse nature of our societies. We cannot dwell on details, although we would like to stress the objectives and specify the potential of this new way of working. With this in mind, we shall very briefly suggest three reasons:

- Dialogue and participation improve the contents of policies.
- Dialogue and participation improve the efficiency of policies.
- Dialogue and participation build citizenship and communities.

3.1. Dialogue and participation improve the contents of policies.

Involving the public and listening to their diverse voices is a way of improving the content and creativity of the cohesion policies. Given the aforementioned complexity of the decisions we take today, this is a crucial contribution.

Using other terms, in order to face today's many-sided challenges – for example, immigration has to do with welfare policies, but also with education, employment, openness, cultural or linguistic policies – we need many-sided solutions; solutions that are not found in just one place (in the desks of certain professionals) but that have the ability to establish a constructive dialogue between the different fields, to find a balance between the various facets of an issue that cannot be reduced to a single dimension.

This argument is particularly relevant in the case of forward-looking policies. In this case, it is easy to realize the limitations of expert and/or professional knowledge, as well as the importance of receiving the contributions of those who are actually suffering the risk of exclusion. The public administrations can help, but we are talking of *their* personal and relational resources.

3.2. Dialogue and participation improve the efficiency of policies

From an operational point of view, despite certain perceptions, we are convinced that participation is helpful in improving the efficiency of governmental and administrative activities. Incorporating the different social actors may generate additional costs in the beginning of the process, but these will be recovered thanks to the work performed to reduce resistance and achieve collaboration.

Just think how difficult it is to build prisons, landfills or centre for drug addicts from the loneliness of an office. We are not suggesting that responsibilities should be delegated to build a centre of this nature, we are saying that its implementation will be more efficient if, through dialogue and participation, there has been a certain level of involvement. Participation generates collaboration, and cooperation is now recognised as one of the key factors in promoting administrative efficiency.

Participation and dialogue are also essential in promoting efficiency in the case of strategic cohesion policies. Without the complicity and trusts that inter-administrative relations have the potential of generating and the bridges that can be built between government and civil society, it would be difficult to take significant steps in proposing and implementing a potential and new centrality for cohesion policies.

3.3. Dialogue and participation build citizenship and communities

We have already mentioned the individualisation process that is putting pressure on us and creating difficulties in relation to building a cohesive society. With individuals only, without citizens or community, we will not achieve the goal of social inclusion. And in order to generate citizens and community relations, participation may be a suitable instrument.

The world, we insist once again, has made us more complicated and demanding, but, paradoxically, instead of joining efforts to face this challenge, we take on individual responsibilities that we are unable to assume. We can only count on our own powers, but these are usually scarce and display the inability of entire groups, such as the elderly, women caring for others, young people earning only *one thousand euros* or immigrants. The problem of having access to housing, for instance, is clearly linked to the development model and should therefore be a matter of state, everyone's problem. However, we have individualised it, it has disappeared from the public agenda and has become a private matter (loans and mortgages).

Participation can help reverse this situation as citizenship and community relations are created. Participation makes us members of a community because we are involved in public affairs and it allows us to speak to those who have other resources, other perspectives or other interests. This is how you create community, creating spaces for interaction and acknowledging others. Community does not mean harmony in equality, but diversity and constructive conflicts. Participation creates community because it brings people together, not because it makes them equal. And this is the only way in which we can build inclusive societies.

In addition, once we are together, participation allows us to build collective responses to collective problems. Building community and creating opportunities for collective action reinforces our individual and community resources, increasing our ability to respond to the problems of social exclusion successfully. If we continue to respond to the challenge of accessing housing as if it were *my* problem, many will continue to live with grandparents or mortgaging the future of their children. We will not solve the problem. Only if we look at the root of the problem, recognize that it is everyone's business and join forces, will we stand a chance. Participating we realize and, thus, we become stronger collectively. This is the first step, the most important step, if you really want to create a more cohesive society.

4. Social action networks: Barcelona

The social and economic structure of Barcelona, following the trend mentioned in the first section, has undergone a profound transformation. Despite significant progress, there are still social risk and exclusion situations that require public policies. Schematically, Godàs and Gomà (2008), to whom we will refer in this section, highlighted some of these situations as follows:

- In Barcelona there are men and women who are going through major economic problems: a relative poverty rate of 12% (50% of the average income, about € 375 a month), 18.2% of the population is in an economically vulnerable situation or, to mention a third figure, 3,153 homeless people were attended by the municipal services throughout 2006.
- There are about 332,800 people over 65 in Barcelona (21.1% of the population), of which 123,626 (mainly women) earn less than the minimum wage. Furthermore, 83,104 of these elderly people live

alone (63,533 are women). Regarding those that require assistance, about 164,000 are over 75 and about 90,000 are over 80 years of age.

- There are around 93,000 people with disabilities in Barcelona, of which 19,600 have registered a major disability.
- During the last decade, immigration has substantially changed the aspect of the city. There were 40,903 immigrants living in Barcelona in 1999 (2.7%), a figure that rose to 113,809 in 2002 (7.6%) and 260,058 (15.9%) in 2006. They play a crucial role from a social, economic and cultural standpoint.

Due to these new circumstances, a Municipal Plan for Social Inclusion (PMIS) was prepared which is also based on participation. The following pages offer, in the first place, a brief overview of the PMIS and, then, we shall focus on its participatory aspects, namely the establishment of social networks for cohesion.

4.1. The Municipal Plan for Social Inclusion (2005-2010)

The PMIS was approved, under the leadership of the Deputy Mayor, Ricard Gomà on March 4, 2005. The Plan, in the words of Godàs and Gomà, “undertakes to achieve a city where people may live their lives in conditions of full freedom and equality; this implies contributing to establish social relationship frameworks that will generate the conditions and values of independence, solidarity, fraternity, and the acknowledgement of differences” (2008: 289).

Based on a detailed analysis of social exclusion in Barcelona, the PMIS intends to generate an inclusive city based on 6 strategic lines:

- Promote social debate on social services and caring for people who need assistance.
- Prioritize primary social care and provide it with resources and infrastructure.
- Design specialized care as a mechanism of inclusion for vulnerable groups.
- Develop transversal inclusion programmes: housing, job placement, health or education.
- Encourage participation and community actions as a relational dimension of social inclusion policies.
- Promote knowledge, the exchange of experience and innovation.

We cannot go into each of these lines of action in depth at present. We shall, therefore, focus on the one that aims to promote social participation and community actions.

4.2. Social participation in the PMIS

Social participation together with the different city council institutions and departments, has been inherent in the design and implementation of the PMIS in Barcelona. The promotion of community dynamics, the strengthening of social networks and the involvement of new actors implies considering participation as more than a query. It implies considering it as a joint responsibility in the social network, in the decisions and actions that the city, not just the city council, adopt to promote inclusion:

“If an inclusion plan only focuses on what the city council can offer, it will obviously be inadequate, given the importance of the social resources that exist in the city. Therefore, for Barcelona, the implementation of inclusion policies originates from the perspective of the city as a whole, with its different agents involved in social welfare issues.” (Godàs y Gomà, 2008: 292).

There are several actions aimed at promoting this concept of citizen participation. At the moment we shall only mention three: the Social Welfare Council, Community Action and the Civic Agreement for an Inclusive Barcelona.

4.2.1. *The Social Welfare Council (CMBS)*

The CMBS is an advisory body on participation created in 1988. Its plenary board, chaired by the Councillor for social welfare, brings together 71 people representing several organisations and associations in the city. The Council, as a whole, includes 535 citizens, 140 organisations and 34 experts.

The CMBS is used to exchange information, experiences and knowledge. Its objectives are, therefore, to prepare reports, coordinate activities, improve institutional coordination, and to provide information and to discuss on issues relating to the quality of city life.

For years, the Council’s most formal component has been complemented by the existence of working groups that – under the shape of a social action network – meet two conditions: that all actors are directly involved in the case under study and that their meetings end with a concrete proposal for action. This has led to a group of highly integrated social networks with a great capacity for direct actions in relation to building an inclusive city. They have also managed to overcome the liturgical character of many of these Councils and provide their activities with a practical outlook.

4.2.2. *Community Action*

Given the importance of partnerships with the social fabric, the city of Barcelona has opted to strengthen and enhance community planning and management processes. With this in view, three types of activities have been developed:

- *Community projects within the framework of primary care social services* aimed at strengthening social cohesion among the most vulnerable people and groups. In 2007, there were 38 projects, involving 253 professionals and 460 organizations, catering for approximately 4,700 people.
- *City community programmes* that relate time banks and other solidarity driven exchange networks with the promotion of volunteer groups. In 2007, there were a total of 39 operations of this kind.
- *Community development plans*: comprehensive actions driven by the social fabric of a neighbourhood that work in co-operation with local public services. The aim of these plans is to obtain results through projects that incorporate multiple dimensions of urban life: social, educational, environmental, employment... In 2007, Barcelona had 16 community development plans.

4.2.3. *The Civic Agreement for an Inclusive Barcelona (ACBI)*

The background of the Agreement was the Barcelona Association for Social Action (ABAS), established in 1999, with the purpose of involving all social agencies and institutions in social action projects in the city. ABAS now comprises 69 organisations and institutions and seeks to establish new forms of governance involving cohesion policies through reflection, agreements, participation and partnership.

The ACBI went a step further in the joint management of inclusion policies in Barcelona. As stated by the protagonists:

“A special commission of the Barcelona Association for Social Action has been preparing this new participation and action scenario. The climax of this process was April 5, 2007, when 375 entities of different types signed an the Citizen Agreement for an Inclusive City and a list of related commitments.” (Godàs y Gomà, 2008: 297).

The ACBI is a social network, an opportunity for dialogue and a work sharing commitment between the city council and other city entities, agents and associations. The relations between the city council and the social networks have seen a shift from subsidies to agreements, stressing the desire to promote more egalitarian forms of relationship. They have also overcome a strictly bilateral approach, favouring relationship frameworks between the public administrations and large groups of entities. In 2007, the Agreement had a total of 2,611,000 euros and used the funds to support the activities of 190 social organizations in the city.

Finally, from the perspective of social networks, it seems appropriate to stress two features of the ACBI: its *modus operandi* and the development of *thematic action networks*:

—The ACBI is an opportunity for open dialogue and on-going commitments that is open to the incorporation of new social entities and organisations. In addition, each year, the commitment to working together is renewed, while past achievements and new challenges are presented. The ACBI, as an agreement signed by the parties, operates through their expressed will to work together according to the capabilities of each operator and in accordance with the principles established in the City's social inclusion plan.

In order to facilitate the operation of the network, the ACBI has a website that facilitates the transmission and coordination of information: a directory of traders, access to relevant information, a calendar of events...

—Once the ACBI had been signed and the opportunities for discussion and commitment had been set out, the so-called *Thematic Action Networks* for social inclusion were launched. Among these, we can mention aid for the homeless, open child centres, social-labour insertion, acceptance and multiculturalism, support for family carers or the co-operation network between companies and social organisations.

These networks, formalised under the aegis of ACBI, require a triple pact between the different participants: they must agree on goals, propose means of action and have the resources and professional support to implement their initiatives.

In conclusion, those responsible for implementing a new approach to inclusion policies in Barcelona stress two aspects that seem crucial to understanding the functioning of social networks dedicated to the

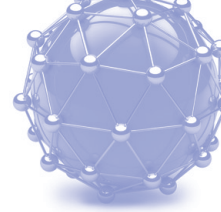
promotion of social welfare: “First: a relationship strategy sustained by means of associations and based on strategic thinking, decisions by consensus and shared actions takes time and involves overcoming certain difficulties. To start with, local governments should relax their procedures to accommodate an open and participatory relationship with social workers (...). Second: the participatory dimension of social inclusion policies in Barcelona intends all actions to provide tangible results. The main prerequisite for this is to assume that local governments should promote the general interest through strategic interaction, based on concerted actions with many organisations and with contributions from citizens that govern social dynamics” (Godàs and Gomà, 2008: 301-302).

Barcelona, in short, is a good example of the double challenge we are facing: the need to build inclusive policies together and the need to learn to work together. Acknowledging the contribution of others and creating specific opportunities for organising social networks appear to be some of the basic ingredients for effective inclusion policies.

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The future of social welfare networks

Abstract: Social action has historically enjoyed the support of a variety of agents in response to social needs. The extension of the Welfare State and the consolidation of social rights as rights of citizenship have overshadowed the activities of other social players. The crisis and subsequent restructuring of the Welfare State, has led to a new scenario, in which the activities of the so-called Third Sector acquire a new significance in the development and implementation of social policies, mainly in the management of programmes and services.

With a view to studying the future of social welfare networks, we shall first examine the nature of the various agents that shape social welfare networks, with particular attention to the advantages and limitations in social protection that have been observed in recent years. We shall then discuss the challenges that the social welfare system faces in terms of intervention methodology and multilevel coordination. And we shall finish by pointing out the role of the different agents involved in the construction of social citizenship within the new welfare model.

Summary: 1. Social welfare agents.—2. Advantages and Limitations of welfare agents.—3. Challenges for the social welfare system. 3.1. The issue of coordination. 3.2. The role of individuals and entities in the construction of social citizenship.—4. Conclusions.—5. Bibliography.

1. Social welfare agents

First, let us refer to the agents that shape social welfare networks, understanding as such, those that respond to social needs experienced by a person or group. Demetrio Casado (1991) refers to four ways of meeting social needs that point to the action of four basic elements:

Way of providing for needs	Motivation
Self-provision and Basic Assistance	Survival
Market	Benefit
Voluntary action	Solidarity
Public intervention	Social Rights

The most widespread is the *self-provision*, that is, an individuals' ability to meet their own needs. However, there are needs that can only be satisfied with the involvement of a third party to be satisfied; and there are also people and groups with special needs that require the intervention of others.

Where self-provision ends, "heteroprovision" begins, highlighting the involvement of the family and of informal groups under the heading of *basic assistance*, with different formats: family support, neighbourhood, friendship, personal gifts or support...). The main motivation for meeting social needs within this group of agents is what we may refer to as the survival of the person or of the primary group.

Secondly, we can highlight the *market*, which has an increasing role in the social welfare sector. Extremely consolidated in the fields of education and health, it also has a significant role in social services, especially in the care of elderly and other dependent people. For this group of agents, the primary motivation is to obtain economic profit in exchange for the provision of a service.

Third is the *Voluntary Action*, whose common denominator is the Voluntary nature of its actions, not based on any commercial spirit or official mandate but on Solidarity. Under this heading, we can include a diversity of institutions that make up the so-called Third Sector.

Finally, *public intervention*, that responds to social needs through a number of government agents using a number of instruments, including: a) *management, control and protection*. This mechanism regulates private conduct; b) *subventions*, this mechanism funds the activities of private entities to introduce the policies required, c) *direct intervention*. In addition to public services, we must consider the action of other related policies, particularly fiscal policy. The motivation for public intervention can be summarised in the guarantee of social rights from a certain approach to social justice.

The future of social welfare systems should be grounded on the active and proactive participation of different actors, creating synergistic relationships and reciprocity.

2. Advantages and Limitations of welfare agents

The agents involved in each of the modes of provision of social needs have been present throughout the history of social action. Although, depending on the composition of the forces in play, the pre-eminence of some systems over others has varied. In this section, we shall highlight some general aspects regarding the advantages and limitations of the different actors, taking into account permanent elements, i.e. those derived from the nature of the agent and not other external conditions of ideological, political or economic nature.

First, we must consider the person as an active subject (agent) responding to social needs. The ideal situation is the maximum autonomy of a person. In this case, the advantage of self-provision is that people's needs are met by people themselves, avoiding any dependence on third-parties. However, although many of the basic needs are satisfied in this way, in today's society complete self-provision is not possible. This is the main limitation of this agent. The social division of labour in complex societies makes us more dependent on others to meet our own needs, due to increasing specialisation. This is the case when meeting needs in the field of education, health, employment...

Regarding informal "heteroprovision", we must consider the social asset of having a strong support network as an advantage for a person. As a limitation, we can mention the fluctuation from one subject

to another. It is often the case that people most in need tend to have a more limited support network and, therefore, the existence of other agents capable of filling those gaps is required.

Concerning the market, the existence of profit-making organisations in the field of social services was difficult to imagine only a few years ago. In fact, their presence was residual. An ageing population and an increased demand for welfare services by the population are two factors that have driven the development of this type of agent.

An advantage worth noting is the market's ability for self-regulation, based on the law of supply and demand, which tends to fluctuate based on the free interplay of stakeholders' interests. Consequently, it is an agent capable of providing services quickly to emerging requirements and to diversify or disappear in the absence of any demand for the services created.

Although, *a priori*, one might think that access to this agent is free and universal, that is, directed to the entire population, there are at least two restrictions that reveal the limitations of this agent. On the one hand, territorial restrictions. Business organisations open where there is business, not where there are needs. This is the problem, for example with regard to the lack of personal care services in rural areas. Secondly, and no less important than the former, are economic constraints. Companies provide services to those who can afford them. Hence, in the case of certain social needs, and in particular those related to social rights, this agent cannot be the sole or main mode of provision.

Voluntary actions give rise to a plurality of agents, which are grouped under the heading of the Third Sector. Among them, we can make a rough distinction between non-profit organisations and self-help associations and groups. Among the former, solidarity may be based on civic, religious, political, trade-union considerations. The latter may be a form of collective and organised response to a situation involving a shared need in the absence of other agents.

In general, these organisations have a dual purpose, first to address needs that have not been covered and secondly to raise awareness in society and lobby the administration in such situations of need.

Among the advantages of this mode of response are: a) Agile response, b) Social participation and c) Matching needs-demand-resources.

Faced with the prevalence of the administrative apparatus, Third Sector entities display greater agility to respond quickly to new problems. Their structure allows them to implement mechanisms that respond to specific demands, streamlining service processes for recipients, staffing...

On the other hand, this social initiative represents the participation of civil society by means of an organised response to social problems. They are indicative of the wealth of society and its active involvement.

Finally, the scaled action of altruistic associations allows the adjustment of needs, demand and resources. The activity can be organised to meet the demands posed by specific individuals at any given time, depending on the needs of the social context in which they arise.

Among its limitations we should note, along with Giner and Sarasa (1995:16-18): a) Ideological altruism; b) Dependence on the state; c) Corporatism and d) Adverse circumstances.

The first of these limitations refers to the ideological affiliation of voluntary associations, far from being neutral in this dimension, it can lead – and there are enough examples – to its provision being conditional on the acceptance of the ideology of the organisation.

The second limitation points to the strong dependence of many voluntary associations on funds and government resources for their own operations, if not also for their existence. This relegates the capacity of response of these associations against government actions to a mere illusion.

Regarding the former aspect, corporatism reflects the complexity of managing the activities performed by altruistic associations. To the extent that they are part of the social welfare system, their mode of action must adapt to the requirements of the system itself. Today social organisations must be transparent in relation to management, auditing, quality standards... This implies a greater rigidity in the activity of organisations in contrast to the alleged bureaucratic nature of the system which they are largely intended to address.

Finally, the extensive overlap of the actors, particularly between altruistic and state associations, implies that in adverse circumstances, especially of a financial nature, the actions of Third Sector entities are eroded by a lack of resources, especially in contexts that are often accompanied by increased social problems. This limitation is particularly evident in the current economic crisis.

Regarding public intervention in its different manifestations, we can say that the advantages of these actions are gauged towards the general interest and common benefit, but with differences according to ideologies on what this means and how it can be achieved. As for the limitations, we can mention their high cost, which may lead to large budget deficits. The Welfare State has been the model on which Western social policies have been developed over the past fifty years, and the analysis of its advantages and limitations has been discussed at other tables during this Congress and, therefore, we shall not expand on this point.

However, we would like to emphasize that after the crisis and subsequent restructuring of the welfare state in the 1980s and 1990s, the need for networking, for collaboration between the public and private sector of a mainly altruistic nature became evident. Consequently, the leadership of the Social Initiative and civil society resurfaces with new momentum through the activity of the Third Sector. This change in the model can be seen in the laws governing Social Services. Taking the Basque Autonomous Region as an example, it defined Social Services, in 1982, as a Public Service, while in 1996 it speaks of Publicly Accountable Services, allowing for social initiatives. In the most recent definition, in 2008, Article 5.2 states that the “Basque Social Services System shall consist of publicly and privately owned provisions, services and facilities”.

The relationship between government and social initiatives may be of different types, including: a) control and overseeing, b) promotion, c) contract, d) pacts and f) agreements. However, the relationship is not easy. A number of mutual misconceptions have to be overcome, as indicated by García Roca (1992).

The Administration tends to misunderstand social initiatives by considering them as a residual activity of the State. From this point of view, altruistic actions are considered to arise in order to remedy compelling situations, but disappear when state resources are sufficient to meet such situations of need. A second misconception is to consider social initiatives as a means of treating certain social pathologies. From this perspective, certain pathologies must be contained so as not to expose the structural poverty generated by the system. There is a dereliction of duty by the state in favour of the social initiatives. Finally, there is the consideration of the reduction in costs through the provision of services through social initiatives, using it as cheap labour.

On the other hand, social initiative agents become suspicious, in what García Roca terms “them or us”. Social initiative agents understand that it is exclusively entitled to certain fields of social intervention, considering the state as an outsider and not as a guarantor of social rights. We may also refer to a second misconception: “Them when we are unable”. The approach is to let social initiatives to solve social problems

by themselves and, when they are unable to address them, require the assistance of the Public Administration, which would play a subsidiary role.

Finally, we must refer to the dual strategy of double discourse of the Social Initiative. Based on its ideology, it aspires to independence from the Administration, but in order to maintain its activities, it calls for greater financial support, generating a dependence on the former.

García Roca considers that, in this situation, we must first be made aware of the contradictions that the said misconceptions include so that, being aware of the need for new strategies of collaboration, we will aspire to a mixed culture, where the systemic nature of reality and social action is divided, and actions are based on principles such as:

- All elements are linked and mutually determined.
- A situation must be analysed in relation to others.
- No action are good or bad, but appropriate or not to a given situation or moment.

In addition, in this new scenario we must take into account the new role of the market. Hence, the suitability of the so-called “fourth sector” is beginning to be considered. This sector is seen as a new group of organisations that are “at the intersection of the public, private and social sectors” (Fundación de la Innovación Bankinter, 2009:30). The fourth sector is characterised by performing functions that go beyond the traditional boundaries between the different agents, making way for new formulas, with the aim of developing innovative activities that respond to needs that have not been met by other systems. One such formula is the social action developed by social initiative agents within the context of corporate social responsibility programmes, to mention one example. The results of this new model and the emergence of new actors in the construction of social citizenship will be largely determined by the knowledge of the history of social actions in order to face new challenges.

3. Challenges for the social welfare system

As noted above, the lessons of history show, on the one hand, the plurality of agents that coexist in meeting social needs, and secondly, the need to introduce two types of changes and innovations in social care processes in terms of methodology and in terms of multi-agent coordination. The aim of this is to create true social citizenship within the new welfare model.

A first lesson that can be taken from the recent history of social actions is changing the term that identifies the target subjects of social actions and social policies. Language is not neutral, and in this sense it should be noted that a name change also reflects a change in the orientation of these policies.

Initially the word *case* was used due to the influence of the clinical model; later it was replaced by the term *social situation*, which is more neutral. Later, the term *client* became more extended through the influence of Carl Rogers, as denoting a “symbolic meaning of freedom”. As social services became public services the use of the terms “user” and “beneficiary” – the latter linked to the perception of economic benefits – were used. Today – according to C. de Robertis (2003) – the terms “person” and “subject” are beginning to prevail.

Talking about a person as subject is connected with the legal, political and sociological concepts of citizenship. “A person as a subject implies action, experience, knowledge, as opposed to object (a number, a file, a problem). The notion of a subject asserts that person’s ability to decide and influence the course of events and their active participation in everything that concerns them.” (Robertis, 2003:68). Furthermore, if we add the concept of rights to the noun “subject”, i.e., the person has rights and obligations due to the fact that he/she lives in a society, we will necessarily come to the concept of citizenship. And this concept leads us to define a citizen as one “who actively participates in the life of the city, who beyond being part of the social life, models, modifies, creates, drives that social life, presents and conveys his ideas, organises them, together with others, to make them known, undertakes projects for himself, for others, with others. The revitalization of citizenship is not pure public affirmation of documented rights, it is also the daily organisation of democratic life, civic actions, the constant creation of new possibilities” (Robertis, 2003:69).

Within this duality of the concept of citizenship – access to rights and citizen actions – the methodological challenge becomes more important, where social workers – as qualified experts in social actions – will develop a commitment to and for people. For each of the two levels, the specific objectives of social worker have been outlined: *restoration goals* (find solutions, improve living conditions, affirm dignity and enhance self-esteem) *promotional goals* (create meaningful bonds with others, partake in community life, gain recognition and a sense of social use...) (Robertis, 2003:69).

People, who are both individuals and members of groups, are the key elements of this professional intervention and are tutored in a process to acquire power over their lives. This process involves:

- Changing one's image.
- Belonging to a peer group.
- The preparation of possible joint projects.
- The success achieved, step by step through each performance, increases confidence and momentum.
- Social recognition and a sense of social use, which transform an isolated and undervalued person into an active and participating citizen.

The Anglo-Saxons call this process *empowerment*, and the French *accès à la citoyenneté*. Although both terms cover culturally different definitions, they originate from the same professional goal: promoting individuals and their active and participatory integration in the society in which they live.

This new period requires paying attention to social problems not only from an interdisciplinary point of view but also from an inter-institutional viewpoint due to the tendency to privatize social services and thereby increase the prevalence of the third sector, not only in its self-assistance role or advocating the interests of members but increasingly as the managers of public services and provisions. This coordinated response represents a new challenge in the future of social actions.

3.1. The issue of coordination

The new scenario requires a number of assumptions or requirements to meet the challenges that have arisen. Compared to the tested privatisation formula, where the third sector has assumed a subcontracting role,

inter-institutional cooperation or coordination is required. According to the Dictionary of the Spanish Royal Academy, coordination means “arrange things methodically or agree on means and efforts for joint action”. This effort is required because functions are shared. The so-called welfare pluralism leads to a variety of agents that must not “imitate” one another, but cooperatively operate in the benefit of the people, of citizens, of society.

At an organisational level, coordination is understood as the process of assembling and synchronising a number of activities in such a way that they function jointly towards achieving the organisation’s goals. In our case, the objectives involve ensuring social rights. Coordination is more than cooperation. The latter refers to the will, the attitude, the desire to work with others. Coordination requires this spirit of cooperation, but it requires a conscious effort to combine a number of actions. And this involves planning the tasks that are to be performed, since they do not arise spontaneously. There are different forms of external coordination between different organisations: a) Merger, b) Limited co-participation, c) Agreed management, d) Movement of staff, e) Regulations, f) Political activity. In relation to the provision of services, it is necessary to assess the advantages and disadvantages of each form, in order to provide an appropriate response within a framework that ensures social rights.

Today, in the field of social services and social welfare, the need for coordination is no longer questioned, although there are difficulties in carrying it out. There are at least three types of arguments in favour: a) of a regulatory type, b) quality, c) theoretical.

Among the arguments of a regulatory type, it is worth noting the reference made previously to the Social Services Act and the so-called Basque Social Services System. Art. 7, h) establishes the principle of coordination and cooperation. And it states that “the Basque public administrations will act in accordance with their duty of coordination and cooperation among themselves and with non-profit social initiatives. Furthermore, they will cooperate, alternatively, with the rest of the private sector”. This same format is used in Article 6 of Law 39/2006 on the Promotion of Personal Autonomy and Care for Dependent Persons, when it defines the System for Autonomy and Care of Dependent People as a “public network that integrates, in a coordinated manner, centres and services, whether public or private” without involving any alteration in the legal system of ownership, administration, management and organisational dependence.

As can be seen in the said article from the popular Law on Dependency, co-ordination is mentioned as a characteristic of the system. This aspect is made clearly specified in several of its guiding principles, in particular in paragraphs c, d, l, m, n and ñ in Article 3:

“c) The comprehensive and integrated care of dependent people.

d) The transversal nature of care policies for dependent people.

l) The collaboration of health and social services in providing services to users of the System for Autonomy and Care for Dependent People, as defined in the current Law and in the relevant rules of the Autonomous Regions and in those applicable to Local Authorities.

m) The participation of private enterprises in the services and provisions to promote personal autonomy and care for dependent people.

n) The participation of the third sector in the services and provisions to promote personal autonomy and care for dependent people.

ñ) Inter-governmental cooperation.”

In addition to any legislative arguments, we must also consider the quality of the social services. According to this type of motivation, the quality of social services is based on providing a coordinated response in relation to the provision of services and the development of programmes. Some autonomous regions have enacted social service quality laws, as is the case of Rioja, which, in 2007, pioneered the creation of a law of this nature. The general operating principles include the principle of inter-departmental and inter-administrative coordination (art. 5.f.) understood as a form of stewardship of public policies or as the provision of a service aimed at connecting with other administrations to provide a more effective response. In addition, Article 6. 10, among users' rights, refers to the right of users to receive benefits in accordance with the intervention programme established, and to the correct coordination, if necessary, with other related systems.

Coordination is also a criterion measured in quality standards, such as UNE 158301 on the Domestic Assistance Services. Coordination is included in criterion 3.7. It refers to coordination at two levels. The first covers coordination during the provision of the assistance service and the second covers coordination with other agents involved in the service.

Legislative and quality type requirements must be accompanied by what we may call theoretical requirements. In this regard we must highlight the multidimensional nature of the social problems that require comprehensive interventions with a coordinated response to avoid doubling efforts and missing areas. The systematic theory and network theory apply this principle of coordination in response to the bio-psycho-social needs of persons, groups and communities.

For a co-ordination effort to be effective a series of conditions must be met, including:

- The existence of an adequate political and regulatory framework.
- The identification of agents that have to be co-ordinated.
- Sufficient and flowing information to achieve the objectives proposed.
- A relationship of trust between agents.
- The institutionalisation of processes through collaborative agreements.

3.2. The role of individuals and entities in the construction of social citizenship

However, as in story of the stone mason where a king was seeking the strongest man in the world and rejected a stone mason for a mountain, a mountain for the sun, the sun for a cloud, a cloud for the wind, the wind for a mountain again and the mountain for the stone mason again¹ we cannot forget that the important subject of any action is the person, the subject, as a subject and not as an object, patient and sufferer. Hence, the machinery must be geared to creating conditions that guarantee the development of the individual, their rights and obligations, as an active and proactive subject.

Regarding this aspect, it is appropriate to recall some lessons from history, in particular, from the experience of two classical authors on social work issues, who laid the foundations of this profession, Octavia

¹ A version of this story can be found at http://blogs.diariovasco.com/index.php/cuentameuncuento/2005/06/08/el_picapedrero

Hill and Mary Richmond. From a methodological point of view, as indicated by the former, working with individuals implies strengthening the relationship, getting to know them before judging behaviour. She also stressed recognising the value and dignity of all people, arguing that their particular views of the circumstances were respected. This implies placing the individual in the heart of the relationship.

Mary Richmond referred to the need to dedicate time to learn the history of customers to understand their situations. With this, both pointed towards a time-intensive methodology and to the relationship with individuals. Further, the latter indicated the need to work with the individual but also with the environment. Social actions must be directed inward, promoting changes in the subject, but also outward, promoting changes in society, through public policies, awareness and creating opportunities for people.

In order to achieve this, the social intervention agents must combine creativity, expertise and systematisation. This is not easy, since the social intervention process is complicated, it is not mechanical or mathematical, but varies from one person to another and from one situation to another. Hence the need for methodological tools, which, like a compass, guide the actions of professionals. One of the first methodological tools, when working on social action programmes and services is to consider the moment and processes of those in a situation of need.

The moment refers to taking into account the stage of a person's life cycle, the critical points, decisions on change and the social, economic and political situation they find themselves in. Regarding the stages of people's life cycles, the situation of an unemployed person, for example, is different if it is their first job; if we are talking of people at the beginning of their professional careers or activities or if they are in the development and senior phase of their jobs or just prior to retirement. Each of these moments involves demands, requirements, to understand the situation.

It will also be necessary to consider the existence of critical points that may influence their life process with respect to a situation of need. Following the previous example, circumstances such as bringing up children and/or caring for family members; the experience of a lay-off and lack of professional retraining, or a "negative" environment at work are factors that affect people in different ways in relation to proposals for action that may be made by a welfare institution.

Together with the previous paragraph, we must also consider the decisions for change that a person who undertakes a social intervention process has made and why that person has made those decision. What are the motivations for change, to what extent are they consistent and can they be a driving force for that person. In the example of the unemployed person, we have raised the option of re-entering the job market after a long period of unemployment; a decision to change the activity or sector; the possibility of expanding the search area, to change the geographical area. These are decisions the individual must make and not aspects to be imposed by the institutional apparatus. As mentioned above, decisions should be respected.

In addition to these preliminary considerations of a situation that requires a solution; one must also take a look at the environment, in which the person exists, the context in which the person lives. In this sense, the dominant social values involving the subject object of the relevant action are particularly relevant; such as unemployment. What does society think of the unemployed, are they blamed or understood? What are the characteristics of the labour market and what employment and promotion policies exist? We could consider to what extent an individual is capable of coping with the situation, taking into account the specific conditions of the context in which that person has to act.

In relation to the actions available, we must consider four aspects: a) life history, b) multidimensional nature of social problems, c) the objectives and expectations of the parties involved, d) the results.

The subject's life story told from a subjective point of view to understand their point of view on the situation. Knowing their personal history, their individual and collective perception, the way they believe other people see them (Cooley), the balance of achievements and areas for improvement, as well as obstacles and failures. All this becomes the compass that will provide the roadmap for a new process of intervention. Because people do not reach this point "untouched"; they have had a life that needs to be known by himself and by the people who will accompany him in this process.

The second aspect to be considered in relation to these processes is the multidimensional nature of social problems. This has been mentioned above, noting the need for multi-agent coordination. Individuals go to a social service or resource to find a solution to a particular problem; what we can call the tip of the iceberg. This is not an isolated problem in its causes or its consequences, in the intervention process should be analysed as a whole.

Thirdly, the intervention process involves all the objectives and expectations of the stakeholders involved, not only of the relevant subject, but also of their family and friends on the one hand, and of the professionals (and volunteers) offering the resources and services. It should also be borne in mind that these goals and expectations need not coincide. Therefore, in the early stages of the intervention, it will be necessary to identify, define and share the goals and the expectations among all stakeholders involved. Goals can be very ambitious, but the real possibilities of achieving them should be taken into account. We must assess the degree of realism of the proposed intervention. A plan cannot be built based on wishful thinking, that leads to frustration for on-going actions and for future actions. Consequently, time should be taken at the beginning of the process to assess all these issues together with another equally important aspect, which is the degree of involvement of the different actors, starting with the individual (subject-object of the action) with whom we are working on a change process involving one or several aspects of life. We must also consider the level of involvement of other agents. What they can contribute according to their nature, what is reasonable to expect from them and especially, in this specific case, what their contribution is going to lead to.

The prior programming work performed in this phase will serve to assess the degree of compliance of the results within the deadlines planned, to assess the adequacy of the plan set out to achieve the objectives, and, depending on the level of satisfaction with the results obtained, new goals may be established.

In any social intervention process, one must consider a number of elements that are present prior to the relationship that occurs between the subject and the service. Among these, C. de Robertis (1992) states: a) the mobilisation of the person, b) the choice of service; c) attitude toward the professional. All these aspects will shape the relationship and the work to be performed during the social intervention process in one way or another.

Before demanding any specific assistance, of expressing any distress or need, the person will have already gone part of the way. That is, there has been some type of mobilisation. He will have reached the point where he understands that his situation is a problem, and he will somehow have faced it. Either because the subject has tried to confront and overcome the situation (generating a background in relation to the problem) or has acknowledged its existence, which has led him to seek help. In short, he will have experienced a sense of hardship and suffering that will result in a need for change to resolve the situation. Consequently, the person is more or less explicitly establishing some goals and targets, and trying to find ways to realize a change.

The case may also arise where a person is faced with an unforeseen or unexpected situation or problem. In these cases, there may not have been any prior mobilisation. It is the professional who must come forward and offer assistance, anticipating the difficulties and needs the person requires. This is the case in emergency situations.

Secondly, the choice of the service for the person requesting assistance is not neutral. When the demand is made by people suffering a situation that requires an intervention, their knowledge and past experiences regarding the service come into play when requesting assistance. The image and perception they have of the service, of the staff and of its functions. When the demand for assistance is voluntary, people will request the service with hope and confident in its ability to meet their needs.

Finally, their attitude towards the professionals and what they represent, is also present prior to the relationship. At first, the attitude is usually anxiety, fear, threat. The subjects project their expectations for improvement on the professional and, therefore, hope those professionals will be able to help them solve their situation. But contacting a professional to solve personal problems can also be seen as a situation of dependency, of incapacity and failure to live their lives independently. Asking for help is a public manifestation of their own failure.

The success of the intervention will depend on the way people solve the conflicts represented by each of these aspects. The response to them may be so crippling that they prevent any action.

The process prior to making contact with welfare agents can be represented graphically as follows:



The people who may request assistance are engaged in a global context (economic, political, ideological, cultural...). The induction of the demand will be driven by the analysis people make, whether spontaneously or based on information, on the changes in the overall context, affecting aspects such as legislation, social problems and the way they see that context based on their situation and environment. They will study the options offered by a particular institution or professional and decide to request information, assistance...

This request, filtered in many cases, reaches the programme or service, through the professionals, often social workers, who have to decide how and why, the reason for that application; they have to understand the client's demand and expectations and provide a response.

The answer depends on the possibilities of the programme, service or professionals, based on the training of the said professionals and their ability to listen and analyse. It will also depend on the characteristics of the organisation, the environment and social policies in force at that time.

It will be during the first interview when the professional will outline a possible intervention scenario based on the behaviour of customers, on their behaviour, their demands and on latent or manifest problems. Based on this, the response is outlined or the person will gradually generate a dossier without any comprehensive response. This is where, once again, we can say that a future welfare network strategy should be organised. People oriented. Located at the centre of the intervention, working in coordination with the different stakeholders, based on new ethical guidelines (C. de Robertis, 2003:62): *ethics of conviction* in human beings as unique beings, with the right to develop personally and the duty to contribute to the welfare of society, *ethics of responsibility*, including the ability to empathise, to feel with others and *ethics of discussion*, which implies a certain equality among people, that is, between the social worker and the system-client in order to share, develop, decide and carry out a joint project, with all this implies of confrontation, negotiation, concessions, seeking agreements, i.e. social work.

In this new scenario, Social Work is given a task that is essentially ethical and that consists in enforcing the civic virtues of solidarity. "Social services – says S. Giner (1988) – that blindly obey the instructions of politicians and elected officials only, without proposing their own programmes of altruism and solidarity, will be subservient to power and ultimately ineffective." The question is who will carry out that proposed renovation and how. Expecting it to be performed by the administrative welfare structures (whether state, regional or local) or based on privatisation policies, would be naive, and where it does seem possible is when based on the creation of a new cooperation between Social Work practices and other traditional disciplines (applied sociology, social pedagogy, social psychology...) and with social movements and political action (Barber, 2002:160). This is an forum that is open to real participation, creativity and strategic thinking, and that – as Barbero says – "reformulates the role of social workers, their positions and their training: it seems that the practices based on corporate attitudes or thoughts will end up losing. (...) This new space will introduce social workers into a situation where they are not the only professionals (social researchers, educators, community psychologists, teachers...) and where the leadership is divided and shared with other actors (communities, associations, politicians): it is time for synergies" In this new scenario, multi-agent coordination together with an interdisciplinary approach to interventions is essential.

4. Conclusions

In this study we have examined the future of welfare networks within the context of the challenge to build and extend social citizenship rights.

Firstly, we identified and characterised the different systems by which social needs are covered, noting the advantages and limitations of each one based on how they respond. We have noted that, in complex societies, the participation of different actors is required: family, primary network, market, voluntary actions and

government intervention. We have also stated that the future of social welfare systems should be grounded on the active and proactive participation of different actors, creating synergistic relationships and reciprocity.

Overall, we have mentioned the existence of different actors throughout history, although the prominence of one over another has been influenced by economic and political factors, mainly. The crisis and subsequent restructuring of the welfare state in the late 1980s and 1990s brought to light the need for networking and collaboration between the public sector and social initiatives, a resurgence of momentum of the civil society, through the activities of the so-called Third Sector. While the lessons of recent history show that it is necessary to overcome the mutual misunderstandings between the Administration and Social Initiatives, embarking on a mixed culture based on the systemic nature of reality and social action.

In addition, in the new scenario of the late twentieth century and early twenty-first century, a new social actor has appeared, which is the lucrative market based on the management of social programmes and services, but also what is beginning to be called the “fourth sector” which includes a group of organisations that are partly public, private and social.

Turning to the characterisation of the actors, in the second part we have considered the double nature of the challenges the welfare system must face in terms of methodology and multi-agent coordination. One challenge is to consider the subjects of the intervention as citizens, recognising their rights and obligations, making them the core elements in the intervention and offering guidance in the process of acquiring power over their lives; this goes beyond the mere management of resources. Fulfilling this objective requires tackling social problems from an interdisciplinary and inter-institutional point of view, which takes us to the issue of coordination.

Within the field of social services and social welfare, the need for coordination is widely accepted and this need is also endorsed by three types of arguments: regulatory, quality and theoretical. For coordination to be possible and efficient, a number of conditions must exist, including: the existence of an appropriate policy and regulatory framework, the identification of the agents that must be co-ordinated, sufficient and flowing information to achieve the proposed objectives, a relationship of trust between the parties; the institutionalisation of the processes through collaborative agreements. Currently, we can say that it is necessary to advance in the development of the latter three conditions.

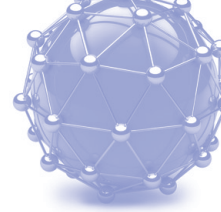
From a methodological point of view, coordination is a necessary but not sufficient condition for the extension of social citizenship; this requires working with the people, their processes, with their difficulties. The conditions that guarantee the development of the individuals as active and proactive subjects must be put into place. Hence the support for accompanying as a methodology, considering the timing and processes of the person subject to the intervention process. With regard to timing, we referred to the life cycle stage, critical points, decisions to change and the social, economic and political environment in which a person lives. As for the processes, we must consider the history of their lives, the multidimensional nature of social problems, the objectives and expectations of the different actors involved in the problem and the results obtained and expected. Another aspect that should also be taken into account is the motivation for the demand and the elements prior to the relationship. Individuals access a service with their personal history and with their background history of requests for assistance from the different parties, which will affect the subsequent relationship.

Finally, as a final synthesis, we could mention that the lessons of history have shown that to achieve the construction of active citizenship, a political and regulatory framework is required that guarantees the

existence of social rights. But the extension of that citizenship to all sectors of the population, particularly to the most vulnerable, requires the existence of new processes and systems regarding the way assistance is given to individuals. And in this new scenario, the collaboration of the different welfare agents must be achieved, united by the common goal of guaranteeing citizens' rights for all.

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Fundamental social rights and the balance between economic and social objectives in the European Treaties

Viewed in its historical dimension, the construction of social Europe presents two main characteristics. First, over a long period social Europe was less an objective in its own right and rather an accompaniment to economic integration between Member States of the European Community and later Union. Second, it has developed gradually through recourse to a variety of legal methods and has involved a wide range of actors. At present it is primarily the result of certain provisions in the Treaty of Rome, of legislative measures, and of the case-law of the European Court of Justice (ECJ). But it has also resulted from the adoption of political declarations with no legally binding effect – such as the Community Charter of Fundamental Social Rights of Workers (1989) and, until it was made formally binding by the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union (2000) – as well as from European social dialogue and “open” coordination between Member States over employment and combating social exclusion. The combination of these various methods makes it difficult to provide an overall diagnosis. However, it is possible to identify the successive historical stages in the construction of social Europe, and to relate these stages to a theoretical framework so as to reveal the logic that links them together.

It is the thesis of this contribution that fundamental social rights have a fundamental role to play in balancing the economic and social objectives in the European treaties, and that their role has been hitherto underestimated, particularly insofar as they would imply a more systematic reference of EU law to international and European human rights law. At the same time however, such a reference should not constitute an obstacle to the search for a new generation of fundamental social rights. This second generation of fundamental social rights should be aimed less at the defence of the social *acquis* protecting workers or at the purely redistributive dimension of the Welfare State, than at equipping all individuals with a core set of entitlements allowing them to fare better in the era of globalization, and at enabling them to take part actively in the reshaping of the economy.

This proposal is based on a diagnosis about the present situation of the progressive movement. Today, the left is largely divided in two camps. One camp sees itself as opposing the forces of markets and globalization, which it fears is increasing inequalities and threatens, in particular, the position of the

workforce in the industrial sector of the most developed economies. Because the industrial basis itself is shrinking, however, and because of the greater individualization of the employment contracts, this Left is increasingly marginalized: it is seen as defending a factional interest rather than the universal interests of mankind; its traditional constituency is in rapid decline, both as a part of the global population and as a political actor that counts. Another camp, often labelled “social-democrat”, instead embraces markets as a source of allocative efficiency, and it sees globalization as a set of opportunities, provided the Welfare State can redistribute equitably the gains from improved economic growth. This second left has been embracing European economic integration, which indeed is perhaps the clearest manifestation of what J. G. Ruggie retrospectively referred to as the “embedded liberalism” characteristic of the post-World War II international economic order (Ruggie (1982)). In this order, the reduction or elimination of trade barriers between modern Welfare States should serve to enhance the redistributive capabilities of each State vis-à-vis its own citizens, thus leading the regulatory State at domestic level to complement trade liberalization at international level: the gains from trade should benefit the Welfare State, just like the Welfare State should protect the losers from international trade, thus ensuring that international trade remains a politically desirable option.

This however presupposed that the Welfare State should not be obliged to renounce its regulatory functions under the pressure of trade liberalization. And it also assumed that in their domestic policies, States are not primarily motivated by the need to improve their international competitiveness – that they are not mutating from Welfare States to “national competitive States”, to use the concept of J. Hirsch (Hirsch (1995)). However, since the early stages of European integration, fears have been expressed that the lowering of barriers to trade and the free movement of capital within the EU, in addition to creating efficiency gains, also may create incentives for the EU Member States to adopt legislation or policies that are considered desirable in order to benefit the most from the opportunities created by market integration or in order, at least, not to be put at a disadvantage as a result of such integration. This, it has been argued, may operate at the detriment of workers, particularly the least qualified, since these are much less mobile than capital. Indeed, calls for more social Europe have been primarily motivated by this risk of “social dumping”, in the presence of the strong diversity of social protection legislations across the Member States and in the absence of a binding “floor of rights” (Rhodes 1992).

Today, this second Left too is failing. Not only did it underestimate the risks of regulatory competition undermining the possibility of “embedded liberalism” associated with the Bretton-Woods order which followed the Second World War: it is also premised on a view of economic growth as infinite and as infinitely strong, and on a naïve idealization of the capacity for progressives at domestic level to obtain for workers an equitable share of the gains achieved through economic progress.

What we now need is a third left, that can justify its pretense to represent the general interest, but that goes beyond simply hoping for redistributive policies that can cushion the impacts of globalization and the acceleration financialization of the economy. A new set of fundamental social rights could contribute to define the identity of this left.

This contribution begins with a summary of the main stages through which Social Europe was built. It recalls the reasons why, in the original treaties, social rights were considered irrelevant to the driving project of the European Economic Community. It then moves through the different stages of the emergence of social Europe. It then reflects on what has been achieved, concluding that the reference to fundamental social rights should be strengthened further in order to restore an appropriate balance between the economic and

the social objectives of the EU, but also that such a reference may not be enough – and that a new set of entitlements may need to be developed in the future.

1. The beginnings (1957-1974): the Common Market

We should begin, perhaps, by recalling the understanding of the relationship between social rights and the common market that was dominant when the European Communities were established. In 1955, acting at the request of the Governing Body of the International Labour Office, a group of experts chaired by the Swedish economist Bertil Ohlin examined the “Social Aspects of European Economic Co-Operation”. They concluded that the improvement of living standards and labour conditions in the common market should essentially result from the functioning of the market itself, both because of the equalisation of factor prices this would lead to (since wages would be led to rise in labour-abundant countries, as a result of those countries exporting more labour-intensive goods), and because of the productivity gains to be expected from a more efficient international division of labour (Ohlin et al., 1955).

That conclusion was based to a significant extent on what was already known at the time to trade specialists as the Heckscher-Ohlin theorem. The theorem, as expounded in the 1933 book by Ohlin, *Interregional and International Trade*, affirms that a country will specialize itself in the production of goods that intensively uses its relatively abundant factor of production, and will import the commodity that intensively uses its relatively scarce factor of production (Ohlin 1933¹). It follows that trade liberalization can be a partial substitute for factor mobility and that it will lead in time to factor price equalization, since the reward for the abundant factor increases and the reward for the scarce factor decreases. The theorem thus offers a fundamentally optimistic view of the benefits of international trade: in this approach, trade flows are caused by differences in endowment factors, and their overall net effect is positive, since in each trading country, the most abundant factor will reap greater rewards than in a situation of autarky.

This optimism was largely mirrored by the Ohlin group of experts. The experts expressed their faith in the ability of international trade to lead to an increase in the standards of living benefiting all categories of the population and conducive, in time, to better and more equal social conditions across the EU. Yet, the experts at the same time clearly acknowledged that these results hold “when account is taken of the strength of the trade union movement in European countries and of the sympathy of European governments for social aspirations, to ensure that labour conditions would improve and would not deteriorate” (Ohlin et al. 1955: para. 210). In addition, they emphasized that this “equalisation in an upward direction” of labour standards could be facilitated if all European countries joined the international conventions adopted by the International Labour Organisation or the Social Charter, then under negotiation within the Council of Europe: the experts considered that it would be useful “to consider what steps might be taken to promote the more widespread application of the provisions of these Conventions by European countries and thus add to their effectiveness as instruments for solving certain of the social problems connected with closer European economic co-operation” (Ohlin et al. 1955: para. 273, at vi). Finally, they noted that the establishment of freer international markets “may be expected to foster the development of international contacts among

¹ Ohlin attributed his views to the influence of an article published in 1919 by professor E. F. Heckscher, under whom Ohlin had studied. See Samuelson 1948; and Flam and Flanders 1991.

trade unions and employers” organisations representing the same industry in different countries’, something which might assist in “safeguarding the workers” right to a fair share in the benefits of increasing productivity’ while at the same time “reducing the risk of excessive increases in money wages, costs and prices which otherwise might lead to inflationary pressure in certain countries” (Ohlin et al. 1955: para. 215).

The main tone of the Ohlin report, however, was an optimistic one. The central idea was that international competition within a common market would not be an obstacle to a gradual rise in living standards, related to the productivity increases that should result from the more efficient allocation of resources through free movement of the factors of production. For the future European Economic Community to be attributed competence in social matters was thus neither necessary nor recommended. The view thus expressed is known to have considerably influenced the Spaak report presented following the Messina intergovernmental conference, and subsequently the Treaty of Rome of 25 March 1957 (Barnard, 1996; Davies, 1993; Deakin, 1996; Kenner, 2003: 2-6). The latter does not enumerate any social rights. It attributes the European Community no legislative competence in this area. Article 118 EEC provides merely that “the Commission shall have the task of promoting close co-operation between Member States in the social field”, particularly in matters relating to employment, labour law and working conditions, vocational training, social security, health and safety at work, the right of association and collective bargaining between employers and workers. The same provision provides that “To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organizations”. However, the Treaty of Rome contains a clause on the principle of equal pay for men and women for equal work – in Article 119 EEC (now Article 141 EC, after amendment) – and a provision relative to paid holiday schemes – in Article 120 EEC (now Article 142 EC). In addition, the European Social Fund was set up, with the task of improving employment opportunities within the common market by encouraging occupational and geographical mobility among workers and “thereby contributing to raising the standard of living” (Article 123 EEC). Lastly, Article 51 EEC (now Article 42 EC, after amendment) laid down that measures would be adopted to secure for migrant workers and their dependants aggregation, for the purpose of acquiring and retaining rights to social benefits and for calculating their amount, of all periods taken into account under the different national laws, and payment of benefits to persons resident in the territories of Member States. The latter provision formed the basis for the adoption of the first regulation in 1958², and the successive regulations issued thereafter were consolidated in Council Regulation (EEC) No. 1408/71 of 14 June 1971, on the application of social security schemes to employed persons and to members of their families moving within the Community³, which despite repeated modification is still today the applicable legislative framework. But Article 51 EEC and the regulations for its implementation, decisive for making the free movement of workers effective by avoiding them being penalized by the diversity of national laws on social security legislation, made no attempt to harmonize these laws. On the contrary, regulation n. 1408/71 organized their diversity⁴.

² Council Regulation No 3 on social security for migrant workers, OJ, No 3 of 16.12.1958, p. 561/58.

³ OJ L 149 of 5.7.1971, p. 2. This regulation has been amended many times, and most recently by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, OJ L117 of 4.5.2005, p. 1.

⁴ Hence what follows contains no discussion of social security for migrant workers.

The considerable debt that the Treaty of Rome's authors owed to the philosophy of the Ohlin report is apparent in the subordination of the social objectives of European unification to the creation of the common market. While the elimination of barriers to the common market constitutes the instrument, social progress appears as its by-product. Thus Article 2 of the EEC Treaty (now Article 2 EC, after amendment) provides that "the Community shall have as its task, by establishing a common market and progressively approximating the economic policies of the Member States (...), an accelerated raising of the standard of living". In the same vein, Article 117 of the EEC Treaty (now Article 136 EC, after amendment) states that "Member States agree upon the need to promote improved living and working conditions for workers so as to make possible their harmonisation while the improvement is being maintained". The second indent states that such a development "will ensue not only from the functioning of the common market (...) but also from the procedures provided for in the Treaty and from the approximation of provisions laid down by law, regulation or administrative action".⁵ The essentially programmatic character of these social provisions of the original Treaty of Rome – in the sense that these provisions imposed no legal requirement on Member States to cooperate for the purpose of achieving the social objectives fixed for them by the treaty – has been confirmed by the European Court of Justice in several decisions where it judged "with regard to the promotion of an accelerated raising of the standard of living, in particular, (...) that this was one of the aims which inspired the creation of the European Economic Community and which, owing to its general terms and its systematic dependence on the establishment of the Common Market and progressive approximation of economic policies, cannot impose legal obligations on Member States or confer rights on individuals"⁶. Thus in the *Sloman Neptun* judgment of 17 March 1993⁷, the Court of Justice had to rule on German legislation that was challenged for not banning the hiring of seamen of foreign nationality – five Filipino seamen in this instance – who were disadvantaged by their low rates of pay (around 20% the level for German seamen) and generally less favourable working conditions. A works council asked the Court of Justice to declare such legislation incompatible with community law, either because it was tantamount to unlawful state aid or because it violated Article 117 of the EEC Treaty. The Court rejected the argument, however, that the latter provision required Member States to "monitor the influx of workers from non-member countries in order to prevent 'wage dumping' and other disturbances on the labour market and take measures to enable those workers to share in social progress if they are employed in the Community". On the contrary, it affirmed the essentially programmatic nature of Article 117 of the EEC Treaty: "It relates only to social objectives the attainment of which must be the result of Community action, close cooperation between the Member States and the operation of the Common Market" (para. 25).

It is important to appreciate the full significance of this. If Member States are indeed required to respect the rules for establishment of an internal market – which in the hierarchy of objectives that the Treaty of

⁵ Article 136 EC includes an additional clause referring, among other things, to "the need to maintain the competitiveness of the Community economy". Some formulations of Article 117 of the EC Treaty have also been amended, but the principle according to which the Member States (now: the Community and the Member States) believe that improved living and working conditions making possible their balanced progress "will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action" stands.

⁶ Case 126/86, *F. R. Giménez Zaera* [1987] ECR 3697, para 11. See earlier Case 149/77, *Defrenne (No 2)*, [1978] ECR 1365, paras. 19 and 31; Case 170/84, *Bilka-Kaufhaus GmbH*, [1986] ECR 1607; and, this time in the context of the ECSC Treaty that contains the definition of similar objectives, Joined Cases 3-18, 25 and 26/58, *Barbara Erzbergbau and others* [1960] ECR 173.

⁷ Case C-72/91, *Sloman Neptun* [1993] ECR I-887.

Rome sets for the European Community constitutes the *instrument for realizing* more far-reaching objectives such as, notably, that of “an accelerated raising of the standard of living” (Article 2 of the EC Treaty today refers to the “raising of the standard and quality of life”) – they are nonetheless not required to take measures that contribute directly to this objective, and they are not even prohibited from taking measures that seem to run counter to their realization. For the Court, therefore, that the establishment of an internal market is not an end in its own right in the Treaty of Rome, but is rather a means for attaining certain social ends, does not imply that Member States must contribute to these ends when exercising the competences that remain their responsibility (Ball 1996; Majone 1993).

2. Stage two (1974-1985): emergence of a social Europe

Sixteen years were to pass before the start of a new stage, with the adoption in January 1974 of a Social Action Programme, contained in a Council resolution⁸. At the same time as the European Community was enlarged by three new Member States, governments displayed a resolve to foster harmonization of social policy using the instruments – to be sure still modest in scope – available to them under the Treaty of Rome. The effects of the crisis associated with the sharp rise in the price of oil were starting to be felt; a sense of urgency predominated. Article 100 EEC (now Article 94 EC, after amendment) provided the possibility for the Council, acting unanimously, to issue directives for the approximation of national laws with a direct influence on the establishment or functioning of the common market. In addition, Article 235 (now Article 308 EC) also laid down that if action by the Community “should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers”, the Council, acting unanimously on a proposal from the Commission, was authorized to exercise the implicit powers. The Council encouraged the Commission to use these provisions in order to move towards realizing the social objectives of the Rome Treaty. The need to act at the Community level appeared all the greater because, in a parallel development, the Court of Justice had begun to consider all trading rules that might hinder directly or indirectly, actually or potentially, intra-Community trade, as measures having equivalent effect to quantitative restrictions on imports, prohibited under Article 30 EEC⁹. This jurisprudence heralded the acceleration of “negative” integration within the Community, through the gradual abolition of all direct or indirect barriers to trade. It also led the Court to evaluate the compatibility with the free movement of goods of a set of national laws that were intended, directly or indirectly, for the protection of certain social rights (Poiars Maduro 1999: 453-455; Poiars Maduro 1998). A greater effort towards “positive” integration at the community level was essential. Thus was launched the harmonization of social policy.

The directives adopted in the period 1975-1986, that is, between the adoption of the Social Action Programme and the Single European Act, appear mainly as measures aimed at limiting the social impacts of the economic crisis and of the industrial transformations whose pace it sharply increased (Kenner 2003: 27). Characteristic examples are Council Directive 75/129/EEC of 17 February 1975 concerning the

⁸ Resolution of 21 January 1974 concerning a social action programme, OJ 1974, C013, p. 1.

⁹ Case 8/75, *Dassonville*, 8/74 [1974] ECR, p. 837, para. 5 (judgment of 11 July 1974).

approximation of the laws of the Member States relating to collective redundancies¹⁰, Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses¹¹, and Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer¹². These directives were intended to achieve merely a partial harmonization of employee protection in the Member States of the Community. As stated in the preamble to Council Directive 80/987/EEC, the idea was not to eliminate differences between the Member States but "to tend to reduce those differences that may have a direct impact on the functioning of the common market". In addition, these directives imposed minimum standards, and explicitly left unchanged the capacity of Member States to apply or introduce provisions more favourable to employees. These characteristics were probably determined by the use of Article 100 EEC as a legal basis. At the outset, given the European Community's limited competences in social policy, European welfare law was necessarily a law to accompany the internal market, intended to attenuate its negative social impacts. But what is expressed here more fundamentally is the idea that European social law – since this was emerging – had to be conceived on a negative rather than positive mode: it limited the effects of the restructuring brought about by creation of the common market, but as yet had no ambition to steer the Community towards a particular European social model.

Even the spectacular advances made in this period over equal pay for men and women continued to be governed chiefly by a logic in which social rights appear as an instrument at the service of the internal market, although the Treaty itself presented the common market project as intended to promote an accelerated raising of the standard of living and to improve living and working conditions for employees. It was in this domain, however, that a new balance was gradually established between the economic objectives and social objectives of the Community. When the Court of Justice confirmed, in its second *Defrenne* ruling of 1976, the direct effect of Article 119 EEC – in part to make up for the slow transposition into law of the directive on the same question adopted the previous year¹³ – it did so, first, on the grounds of the need to avoid distortions of competition, faithful in this respect to the reason for originally including this provision in the treaty: "in the light of the different stages of the development of social legislation in the various Member States, the aim of Article 119 is to avoid a situation in which undertakings established in states which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-Community competition as compared with undertakings established in states which have not yet

¹⁰ OJ L 48 of 22.2.1975, p. 29. Directive amended by Directive 92/56/EEC (OJ L 245 of 26.8.1992, p. 3), and consolidated by Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225 of 12.8.1998, p. 16).

¹¹ OJ L 61 of 5.3.1977, p. 26. This directive was subsequently amended (Council Directive 77/187/EEC (OJ L 61 of 5.3.1977, p. 26); Council Directive 98/50/EC (OJ L 201 of 17.7.1998, p. 88)), and more recently was consolidated: Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses (OJ L 82 of 22.3.2001, p. 16).

¹² OJ L 283 of 28.10.1980. This text has since been amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 (OJ L 270/10 of 8.10.2002, p. 10).

¹³ Council Directive 75/117/EEC of 10 February 1975, on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ L 45, p. 19).

eliminated discrimination against women workers as regards pay”¹⁴. At the same time, the Court observed that, “secondly, this provision forms part of the social objectives of the Community, which is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek the constant improvement of the living and working conditions of their peoples” (para. 10), such that “this double aim, which is at once economic and social, shows that the principle of equal pay forms part of the foundations of the Community” (para. 12). Council Directive 76/207/EEC of 9 February 1976 on implementing the principle of equal treatment for men and women as regards access to employment, to vocational training, and as regards working conditions¹⁵, had already opened the breach a few weeks earlier¹⁶. This Directive founded the recourse to the implicit powers clause (Article 235 EEC, now Article 308), which provided its legal basis, on the idea that “equal treatment for male and female workers constitutes one of the objectives of the Community, in so far as the harmonization of living and working conditions while maintaining their improvement are inter alia to be furthered”.

By a succession of small steps, therefore, the social objectives of the Treaty came to be given equal status as the objectives relating to economic integration. In the *Schröder* judgment of 10 February 2000, drawing the consequences of recognition of the right not to be discriminated against on sex grounds as one of the fundamental human rights, which the Court was required to uphold¹⁷, the Court reached the view that “the economic aim pursued by Article 119 of the Treaty, namely the elimination of distortions of competition between undertakings established in different Member States, is secondary to the social aim pursued by the same provision, which constitutes the expression of a fundamental human right”¹⁸. This judgment is a good illustration of how the gradual renegotiation of the balance between the economic and the social objectives of the treaty in the late 1970s, was encouraged and made possible by the introduction into the Court’s case-law of fundamental rights, recognized as general principles of Community law to counter the fears expressed by some national constitutional courts that affirmation of the primacy of community law, established by 1964, was in danger of infringing the human rights embodied in the national constitutions of Member States.

In parallel with this renegotiation, the Community was also extending its action in the field of health and safety at work. In 1975, again based on the implicit powers clause of the Treaty of Rome, the Council set up the European Foundation for the Improvement of Living and Working Conditions¹⁹. The Foundation – that was helped in its work by a committee of experts – had as task to “contribute to the planning and establishment of better living and working conditions through action designed to increase and disseminate

¹⁴ Case 43/75, *Defrenne v. Sabena* (“n° 2”), [1976] ECR, p. 455 (para. 9) (judgment of 8 April 1976).

¹⁵ OJ L 39, p. 40. This directive was amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ L 269 of 5.10.2002, p. 15).

¹⁶ Directive 76/207/EEC was extended by the adoption of Directive 79/7/EEC of the Council, of 19 December 1978, on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6 of 10.1.1979, p. 24), also using Article 235 EEC as its legal basis.

¹⁷ Case 149/77, *Defrenne* (“n° 3”), [1978] ECR, p. 1365, paras. 26 and 27 (judgment of 15 June 1978); Joined Cases 75/82 and 117/82, *Razzouk and Beydoun v. Commission of the EC*, [1984] ECR, p. 1509, para. 16 (judgment of 20 March 1984), and Case C-13/94, *P. v. S.* [1996] ECR, p. I-2143, para 19 (judgment of 30 April 1996).

¹⁸ Case C-50/96, *Schröder*, [2000] ECR, p. I-743, para. 57 (judgment of 10 February 2000).

¹⁹ Council Regulation (EEC) No 1365/75 of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions (OJ L139 of 30.5.1975, p. 1).

knowledge likely to assist this development”²⁰. Specifically, it was intended as an instrument to give the Community access to analyses, studies and research permitting a systematic scientific approach to the problems presented by the improvement of living and working conditions. The first action programmes on health and safety were adopted in 1978 and 1984. The first framework directive on health and safety at work was adopted in 1980; it related to the protection of workers exposed to chemical, physical and biological agents at work²¹. It was completed by a number of “individual” directives, known as “sister directives”²².

Two concerns appear to account for these advances. First, that of setting minimum protection thresholds for working conditions at the Community level, so as to avoid Member States being deterred from guaranteeing this protection at a high level, for fear of damaging the competitiveness of undertakings situated on their territory. The second was that of identifying the most appropriate solutions for scientific problems that required both a high degree of expertise and a comparison of the solutions defined for each state. This provided the justification for resolving questions of health and safety at work at the level of the Community rather than of individual states. The more specialized the expertise required, the more the studies conducted – for example on the danger posed by certain chemical substances in the work environment – use up large amounts of resources, and the more the entrusting of such studies to a European agency like the Dublin Foundation represents economies of scale for all the states.

3. Stage three (1985-1997): from the Single European Act to the Treaty of Amsterdam

A new stage in the evolution of social Europe opened in 1985-1986. The accession of Spain and Portugal to the Community in 1986, coming after that of Greece in 1981, raised the question of the coexistence within a single economic area of countries with, at that time, sharply contrasting standards of living. Fears of “social dumping” now began to appear²³. There was clearly a need to facilitate approximation of national

²⁰ Art. 2 § 1 of Council Regulation (EEC) No 1365/75, aforementioned.

²¹ Council Directive 80/1107/EEC of 27 November 1980, on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (OJ L 327 of 3.12.1980, p. 8).

²² For example, concerning exposure to asbestos: Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC (OJ L 263 of 24.9.1983, p. 25), later amended by Council Directive 91/1382/EEC of 25 June 1991 (OJ L 206 of 29.7.1991, p. 16).

²³ This notion is in reality more complex to define than its spontaneous usage would suggest. The 1993 Green Paper *European Social Policy – Options for the Union* defined “social dumping” as the “unfair competitive advantage within the Community derived from unacceptable social norms” (Commission of the European Communities 1993: p. 7). See also the White Paper *European Social Policy – A way forward for the Union*, COM (94)333 final, 27 July 1994, para. 19 (which called for a framework of minimum common standards in social matters as a rampart against the temptation of competitive deregulation in social matters) and the Council Resolution of 6 December 1994 on some aspects of social policy in the European Union: a contribution to economic and social convergence in the Union, OJ No C 368, 1994, p. 4, para 10. Clear from this definition is that such and such a regulatory policy adopted by a state cannot be considered as a form of “social dumping” in its own right but only by reference to some assumed common norm, the violation of which confers the unfair character on the competition by the state in question. A more strictly economic definition, directly based on the commercial practice of dumping whereby a product is sold on a given market at below its cost of production so as to eliminate competitors, may also be used. Social dumping is then understood as a wage practice whereby workers are paid less than their real productivity, or when the level of wages does not follow productivity gains, so as to maintain a competitive advantage over competitors.

legislation in certain fields, notably social welfare, the more so since jurisprudence favoured “negative” economic integration, through progressively challenging national regulations that constitute barriers to trade, putting the regulatory regimes of the various Member States in direct competition with each other. In the “*Cassis de Dijon*” judgment of 12 February 1979²⁴, the Court of Justice affirmed the principle of mutual recognition for the free movement of goods. The judgment stated that Germany could not ban imports to its territory of alcoholic beverages, “provided that they have been lawfully produced and marketed in one of the Member States” (para. 14), by reference to the requirements of a national regulation on the sale of spirit drinks that set a minimum alcohol content for different categories of alcohol-based products. For the Court, the obstacles to intra-Community trade resulting from national laws on the sale of the products in question were not to be considered compatible with the prohibition of measures having equivalent effect to quantitative restrictions on imports, except “in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating, in particular, to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer” (para. 8). The German government argued that under the mutual recognition requirement the regulation that protected consumers least would gradually predominate throughout the Community, precipitating a negative spiral – a form of competitive deregulation, with no state wanting to set standards higher than those prevailing in neighbouring states²⁵. By rejecting this argument, but while not excluding that the imposition of certain national regulations, though creating barriers to the free movement of goods, might be necessary to meet overriding public interest objectives, the Court did not deny this difficulty but seemed of the view that this was the inevitable, albeit in some ways regrettable, consequence of the free movement sought by the treaty.

In the *Webb* case²⁶, the Court of Justice had to address the question of whether the freedom to provide services guaranteed by the treaty was compatible with a national regulation that required a permit for the service activity of supplying agency work. By deciding in its judgment of 17 December 1981 that such regulation, when it occurs in a domain that is “particularly sensitive from professional and social viewpoints” (para. 18), must in principle be admitted²⁷, though noting that this “measure would be excessive in relation

²⁴ Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* [1979] ECR, p. 649 (judgment of 20 February 1979).

²⁵ See para. 12 of the judgment, which reflects these arguments: according to the German government, “the lowering of the alcohol content secures a competitive advantage in relation to beverages with a higher alcohol content, since alcohol constitutes by far the most expensive constituent of beverages by reason of the high rate of tax to which it is subject”; furthermore, “to allow alcoholic products into free circulation wherever, as regards their alcohol content, they comply with the rules laid down in the country of production would have the effect of imposing as a common standard within the Community the lowest alcohol content permitted in any of the Member States, and even of rendering any requirements in this field inoperative since a lower limit of this nature is foreign to the rules of several Member States”.

²⁶ Case 279/80, *Webb* [1981] ECR, p. 3305 (judgment of 17 December 1981).

²⁷ “It is permissible for Member States, and amounts for them to a legitimate choice of policy pursued in the public interest, to subject the provision of manpower within their borders to a system of licensing in order to be able to refuse licences where there is reason to fear that such activities may harm good relations on the labour market or that the interests of the workforce affected are not adequately safeguarded. In view of the differences there may be in conditions on the labour market between one Member State and another, on the one hand, and the diversity of the criteria which may be applied with regard to the pursuit of activities of that nature on the other hand, the Member State in which the services are to be supplied has unquestionably the right to acquire possession of a licence issued on the same conditions as in the case of its own nationals” (para. 19).

to the aim pursued, however, if the requirements to which the issue of a licence is subject coincided with the proofs and guarantees required in the state of establishment” (para. 20), the Court in fact extended to services the lessons of its “Cassis de Dijon” judgment. Barriers to the free provision of services resulting from application of the law of the host country are acceptable only in so far as the regulation of the country of origin does not ensure an equivalent protection. Likewise, a few months later the Court ruled that a national regulation extending to employers established in another Member State a requirement to pay the employer’s share of social security contributions for workers in that state when those employers were already liable for similar contributions in respect of the same workers and for the same periods of employment, constituted an unjustifiable barrier to the free provision of services, because it discriminated against providers of services established in another Member State when performing work in the first state²⁸. By its ruling that such a requirement would be no more justified even if it were intended to “offset the economic advantages which the employer might have gained by not complying with the legislation on minimum wages in the state where the work is performed”, the Court implicitly admitted the risk of social dumping that could result from the mutual recognition requirement. But this was probably the best way of encouraging states to move forward along the path of social harmonization, as was well illustrated by the adoption a few years later of Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²⁹, which was in direct response to the *Rush Portuguesa Limitada* judgment of 27 March 1990³⁰ and to the fears this judgment had revived about unfair competition from Member States with lower protection for workers’ rights in the framework of the provision of services.

When Jacques Delors became president of the European Commission in 1985, the conditions were thus in place for a new qualitative leap forward in European unification. The adoption of the Single European Act, negotiated in 1985-1986 and put into effect on 1 July 1987, was the combined result of the United Kingdom’s wish to move faster to completion of the internal market, for which the symbolic date of 31 December 1992 was set, and the concern of other states, notably France, that this project should be accompanied by further progress in social policy. The Commission’s Work Programme for 1985 had been quite explicit about the need for this linkage: “the positive effects gained from the large market would disappear if some states attempted to obtain a competitive advantage over the others at the expense of a social regression. The existence of a European Social Area should therefore prevent recourse to these social dumping practices, harmful to total employment”.³¹ In Article 8a introduced into the EEC Treaty, the Single European Act – whose Preamble took the novel step of referring to the European Convention of Human Rights and to the European Social Charter – defined the internal market as “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty”; the Commission shall decide “measures to progressively establish the internal market over a period expiring on 31 December 1992”. New Article 100a of the EEC Treaty (now Article 95 EC) facilitated realization of this objective by providing the possibility for the Council to adopt such measures by qualified majority, except those applying to fiscal provisions, those relating to the free

²⁸ Joined Cases 62 and 63/81, *Seco and Desquenne & Giral v. Etablissement d’assurance contre la vieillesse et l’invalidité*, [1982] ECR, p. 223 (para. 9) (judgment of 3 February 1982).

²⁹ OJ L 18 of 21.01.1997, p.1.

³⁰ Case C-113/89, *Rush Portuguesa Limitada v. Office national d’immigration*, [1990] ECR, p. I-1417 (judgment of 27 March 1990).

³¹ Work Programme of the Commission, 1985, Bull. CE, Suppl. 4/85, para. 56.

movement of persons and those relating to the rights and interests of employed persons³². Most importantly, the Single Act was the first time provisions were introduced into the Treaty of Rome that explicitly accorded the Community a role in the social field. New Article 118a provided that the Council shall adopt, by qualified majority, directives imposing minimum requirements on the Member States in order to encourage “improvement, especially in the working environment, to guarantee a better level of protection of the health and safety of workers”; Article 118b contained the first reference to the development of a social dialogue at the Community level³³. Lastly, the Single European Act sought to strengthen social and economic cohesion within the Community, which was the subject of a new Title in the Treaty of Rome: the action of the structural Funds (European Social Fund, European Agricultural Guidance and Guarantee Fund, European Regional Development Fund) was given the objective of reducing the disparities between the regions and the backwardness of the least-favoured regions³⁴.

Article 100a EEC allowed the Council to adopt, by qualified majority, several directives that appeared sufficiently closely linked to the establishment of the internal market to justify use of this legal basis³⁵. As the Court of Justice subsequently had occasion to confirm, the simple fact that a directive has for objective not only the establishment of the internal market but also an objective of a social nature does not preclude taking this provision as a legal basis³⁶. Thus Council Directive 89/686/EEC of 21 December 1989, on the approximation of the laws of the Member States relating to personal protective equipment³⁷, justified its contribution to the creation of the internal market by the observation that national provisions as regards personal protective equipment, often highly detailed, differ significantly from one Member State to another, and “may thus constitute a barrier to trade with direct consequences for the creation and operation of the common market”.

Possibly the clearest manifestation of this resolve to bring a social dimension to the creation of the internal market was the Community Charter of Fundamental Social Rights of Workers, adopted by the European Council at Strasbourg on 8-9 December 1989 (Vogel-Polsky and Vogel, 1992: 173-180; Bercusson, 1991: 195-295; Bercusson, 1996: 575-598; Betten, 1989; Hepple, 1990). However, the Charter takes the form of a solemn political declaration, adopted by eleven of the twelve Member States, the UK having decided not to sign up to it; and has no legally binding effect. It attributes no additional competence in social matters to the Community; indeed, Article 27 declares instead that responsibility for implementing

³² Article 100 A § 2 EEC, inserted by Article 18 of the Single European Act.

³³ This provision states that “The Commission shall endeavour to develop the dialogue between management and labour at the European level which could, if the two sides consider it desirable, lead to relations based on agreement”.

³⁴ Article 23 of the Single European Act, adding Title V to Part Three of the EEC Treaty (Article 130 A to 130 E).

³⁵ Article 100 EEC (amended Article 94 EC) was less easy to use as a legal basis, since it required unanimity. Nonetheless it permitted the adoption during this period of, for example, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225 of 12.8.1998, p. 16).

³⁶ Case C-491/01, *Regina v. Secretary of State for Health, ex parte British American Tobacco Company*, judgment of 10 December 2002 (request for a preliminary ruling on the validity of Directive 2001/37/EC of the European Parliament and the Council of 5 June 2001, on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ L 194, p. 26)). Cf. on the limits to the use of Article 95 EC (corresponding to Article 100 A EEC, after amendment), Case C-376/98, *Germany v. European Parliament and Council of the European Union*, [2000] ECR, p. I-8419 (judgment of 5 October 2000).

³⁷ OJ L 399 of 30.12.1989, p. 18.

the Charter lies primarily with the Member States. Lastly, its ambitions are modest, since it concerns only the fundamental social rights of workers – and not, as the European Commission initially proposed in its projects of May and September 1989³⁸, all fundamental social rights. In any case, it has no other objective than that of encouraging the Member States and the European Community, within the limits of their respective competences, to work for the recognition of certain fundamental social rights. Its chief merit lies in having encouraged the Commission to make proposals to the Council over social policy, in the areas of Community competence.

The Treaty of Maastricht on the European Union, signed on 7 February 1992 and that came into force on 1 November 1993, did not constitute the qualitative leap forward in social policy that could have been hoped for. The Social Policy Agreement – this too signed by eleven of the twelve Member States – contained in the Social Policy Protocol annexed to the Maastricht Treaty set out the modalities whereby states signatories of the Agreement can establish closer cooperation in social policy areas, since the Protocol authorized them to “have recourse to the institutions, procedures and mechanisms of the Treaty for the purposes of taking among themselves and applying as far as they are concerned the acts and decisions required for giving effect to the above-mentioned Agreement” (para. 1 of the Protocol) (Watson, 1993; Whiteford, 1993). But Economic and Monetary Union – certainly one of the main issues in the new treaty and *the* main issue of its community dimension – had the effect of re-launching, by default, the question of social policy within the Union. As set out in Article 121 § 1 EC, the convergence criteria established at Maastricht for Member States wishing to participate in the third stage of economic and monetary union and join the single currency required these states to control their inflation (which in principle should not exceed by more than 1.5 percentage points that of the three best performing Member States in terms of price stability in the year before the examination of the situation of the Member State involved). They also imposed a ratio of the annual government deficit to gross domestic product (GDP) that should not exceed 3% at the end of the previous budgetary period and a ratio of gross government borrowing to GDP that should not exceed 60% at the end of the previous budgetary period. These criteria encouraged the adoption of deflationary policies, even when this was at the expense of growth and employment in the short-term, which later produced reactions. The first signs of this new awareness appeared with the White Paper from the Commission in 1993 on growth, competitiveness and employment, the conclusions of which were approved by the European Council on 11 December 1993 (Commission of the European Communities, 1993). But there was little enthusiasm among Member States to follow all the proposals in the White Paper, and it was not until the Extraordinary European Council on Employment in Luxembourg, on 20-21 November 1997 – the first ever devoted entirely to employment – that the need for better coordination of the employment policies of the Member States was clearly recognized. The major achievement of this European Council – other than the higher profile now taken by employment on the European political scene – was to anticipate the coming into force of the Treaty of Amsterdam, signed in 1997 and that came into force on 1 May 1999, which inserted a new title on employment into the Treaty of Rome and provided for adoption by the Council, on a proposal from the Commission, of guidelines on employment that the Member States “take into account in their employment policies” (Article 128 § 2 EC). Significantly, recourse to such “common lines of approach for both objectives and means” according to the conclusions of the European Council in Luxembourg (para. 2), are conceived on the model of the “broad economic policy guidelines” of the Member States and the Community which, since the Maastricht Treaty, aim to ensure

³⁸ COM(89)248, of 31 May 1989; and COM(89)471.

a degree of convergence in the economic policies of Member States in the economic and monetary union. In the same way that the economic interdependence of the states justified defining their economic policies as a question of common interest, so it justified making their employment policies part of a coordinated approach³⁹. At the same time, alignment did not mean equivalence, and Article 128 § 2 EC specifies that the employment guidelines “shall be consistent with” the broad economic policy guidelines – that is, remain subordinated to them.

4. Stage four (1997-2009): from the Treaty of Amsterdam to the Treaty of Lisbon

The Treaty of Amsterdam of 2 October 1997 essentially reintroduced the Social Policy Agreement of 1992 into the EC Treaty, something made possible by the intervening change of political majority in the United Kingdom. The result was on the whole unsatisfactory (Betten, 1997; Robin-Olivier, 1999). The Chapter of the EC Treaty that now contains the “social provisions” does not formally recognize the fundamental social rights. Although the Community and the Member States shall act on social matters “having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of Fundamental Social Rights of Workers” (Article 136 EC), Article 137 EC provides modestly that the Community “supports and completes the action of the Member States” in a certain number of fields (workers’ health and safety, working conditions, information and consultation of workers, integration of persons excluded from the labour market, equality between men and women) through the adoption of directives, which must contain “minimum requirements for gradual implementation”; the Council can also adopt unanimously measures for the social security and social protection of employees, the protection of workers in the case of redundancy, on the representation and collective defence of workers and employers, for determining the employment conditions of third-country nationals legally resident in the Community. Still excluded from any form of harmonization are pay, the right of association and collective action (strike or lock out). The Treaty of Nice, on which political agreement was reached in December 2000 but that did not enter into force until 1 February 2003, subsequently reworded Article 137 EC but made only one important modification⁴⁰. The open method of coordination (or “OMC”), which under the Treaty of Amsterdam was envisaged solely for combating social exclusion, was extended to all the areas covered by Article 137 EC. Article 137 § 2a) now provides that the Council may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonization of the laws and regulations of Member States.

³⁹ As was stated by the conclusions of the European Council in Luxembourg of 20-21 November 1997: “The idea is, while respecting the differences between the two areas and between the situations of individual Market States, to create for employment, as for economic policy, the same resolve to converge towards jointly set, verifiable updated targets”.

⁴⁰ Moreover, the Treaty of Nice removed the reference contained in the Treaty of Amsterdam version of Article 137 EC to the possibility for the Council acting unanimously to take measures concerning “financial contributions for promotion of employment and job-creation (...)” (see Article 137 § 3, para. 5 EC, in its previous version). In addition, the version amended by the Treaty of Nice states that the provisions adopted pursuant to Article 137 EC “shall not affect the rights of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof”, a point absent from the version adopted at Amsterdam.

The European Council of Lisbon of 23-24 March 2000 was where the OMC really emerged, as an authentic alternative both to pure intergovernmentalism and regulatory competition between the States, and to transferral of additional competences to the Community and greater harmonization. But the immediate impetus for innovation in methods of governance came from the concern to combine, in a balanced framework, improving the economic competitiveness of Member States in the context of economic globalization, with social cohesion. The objective of the Lisbon strategy, as expressed in the Council conclusions, was to prepare the transition to the knowledge-based society and economy, to “modernise the European Social Model, investing in people and combating social exclusion” and encouraging economic growth. For the purpose of conducting an overall strategy to achieve these objectives, a new open method of coordination is introduced, “as the means of spreading best practice and achieving greater convergence towards the main EU goals” (para. 37 of the conclusions of the Lisbon European Council).

The open method of coordination is primarily a new mode of governance. It is based on fixing Union guidelines for translating into national and regional policies, establishing indicators to facilitate comparison, and peer review. The goal is to combine a decentralized approach involving the social partners and civil society actors, with coordination ensured by evaluation of national action plans for employment and social inclusion⁴¹. It is this dimension in particular that has focused the attention of the scientific community (Scott and Trubek, 2002; Pochet and Magnusson, 2005). From the perspective of defining the balance within the Union between economic objectives and social objectives, its contribution has been ambivalent. In some cases, national governments have been able to use the guidelines and recommendations adopted under the European employment strategy, or the common objectives endorsed for combating social exclusion, to gain acceptance from their public opinions or parliaments for unpopular reforms that, without this legitimation, would probably not have been accepted (Visser, 2005). This depoliticization of national policy-making over welfare and employment, combined with the instrumentalization by Member States of the best practices recommended for the Union, has on the whole encouraged the introduction of reforms tending to an activation of welfare benefits, and aiming to get the economically inactive into the labour market, in particular to meet the challenge that demographic trends in Europe pose to the future of our social security systems. More fundamentally, the objective of strengthening social cohesion, which was manifested by the adoption of national action plans for social inclusion, never really appeared independent of the objective of raising the employment rate and thus ensuring macro-economic stability. This was made explicit by the decision of the European Council of spring 2005, following a mid-term evaluation of the Lisbon strategy, to re-launch the strategy by focusing it more explicitly on growth and employment, which will lead to the adoption by the Council of integrated guidelines consisting of broad economic policy guidelines and employment guidelines⁴².

The open method of coordination as implemented in employment policy (the Luxembourg process) and in combating social exclusion (in the broader framework of the Lisbon strategy) does not involve the adoption of new binding obligations for Member States but the definition of common objectives combined

⁴¹ For the genesis of the method, it is worthwhile consulting the essays by the members of the group of experts brought together under the Portuguese presidency of the Union in the first semester 2000, edited by Maria Joao Rodrigues (Rodrigues, 2004).

⁴² The conclusions of the Brussels European Council of 22-23 March 2005 (doc. Council 7619/1/05, REV. 1) indicated furthermore “As a general instrument for coordinating economic policies, the BEGPs should continue to embrace the whole range of macroeconomic and microeconomic policies, as well as employment policy insofar as this interacts with those policies; the BEGPs will ensure general economic consistency between the three strands [economic, social and environmental] of the strategy” (para. 38). On 12 April 2005, the Commission presented its integrated guidelines for growth and employment for the period 2005-2008.

with an organized sharing of national experiences to foster mutual learning between Member States. In this way it has led all the actors involved in these developments to employ a common vocabulary, reflecting a shared perception of the challenges to be faced and of the means by which to move towards the objective defined at the Lisbon European Council in March 2000⁴³. The central idea that runs through these changes is expressed clearly by the Committee of Social Protection in the report submitted to the Council Employment, Social Policy, Health and Consumer Affairs of December 2002, which revised the common objectives of the OMC for the fight against social exclusion, initially endorsed by the Nice European Council in December 2000: “Employment is the best safeguard against social exclusion. In order to promote quality employment it is necessary to develop employability, in particular through policies to promote the acquisition of skills and life-long learning. The implementation of the objectives to which the European Union has committed itself within the European Employment Strategy will, therefore, make a vital contribution to the fight against exclusion. Economic growth and social cohesion are mutually reinforcing. It is a precondition for better economic performance that we create a society with greater social cohesion and less exclusion. Social protection systems also play a key role. In this context, the national and social assistance and minimum income schemes are important instruments in social protection policy. It is vital, in the context of an active welfare state, to create modern systems of social protection which promote access to employment. Retirement pensions and access to health care also play an important role in the fight against social exclusion”⁴⁴.

This general approach was reinforced following the mid-term review of the Lisbon strategy 2000-2010. The report from the high-level group of experts chaired by W. Kok, the Dutch ex-Prime Minister, of November 2004⁴⁵, immediately approved by the European Commission⁴⁶ and by the Council of the Union, noted that the Lisbon strategy had not delivered the expected results, in particular because of an overloaded agenda and conflicting priorities, and inadequate commitment among the Member States. The refocusing on growth and job creation aimed to act as a priority on one of the three strands – economic, social and environmental – previously defined in the Lisbon strategy, as reviewed by the Göteborg European Council of July 2001⁴⁷. Social cohesion is defined in terms that present it as resulting necessarily from improvements in the performance of Member States over employment. It is still among the objectives to be pursued. But the reform efforts will be concentrated less on fighting social exclusion as such than on incentives for employment and on developing provisions that, ensuring a combination of labour market flexibility and employment security, encourage career mobility while founding employment security on adaptability and upgrading skills, and on facilitating business start ups, rather than on the statutory right to keep one’s job.

⁴³ See notably the Social Policy Agenda (2000-2005) (Commission of the European Communities, 2000), approved by the Nice European Council of 7-9 December 2000; and Commission of the European Communities, 2004.

⁴⁴ Fight against poverty and social exclusion: common objectives for the second round of National Action Plans, 25 November 2002 (doc. Council 14164/1/02 REV 1).

⁴⁵ *Facing the Challenge-the Lisbon Strategy for growth and jobs* (November 2004).

⁴⁶ Commission of the European Communities (2005).

⁴⁷ In the Communication to the Spring European Council that ratified the modalities of the new start for the Lisbon Strategy, the Commission proposes “to refocus the Lisbon agenda on actions that promote growth and jobs in a manner that is fully consistent with the objectives of sustainable development. The actions falling under this strategy should reinforce the Union potential to meet and further develop our environmental and social objectives. However, the challenge is to define now a strategy that addresses the areas in which Europe is not performing well (for example, our stagnant growth and insufficient job creation)” (Commission of the European Communities 2005: 13).

5. Stage five (2009-): After the Treaty of Lisbon

The mid-term review of the Lisbon Strategy is provisionally the final act of the dialectic between economic and social objectives in the short history of European integration. It is too early to evaluate its impact. However, three conclusions seem to stand out clearly at this stage. The overall dynamic that we have surveyed runs from a neglect of the social dimension of building the common market, to a major advance in social harmonization in the 1970s and 1980s, and to a slowdown at the end of the 1990s. The ambition set by the Single European Act of 1986 – completion of an internal market by 31 December 1992 – and that defined in the Treaty of Maastricht in 1992 – economic and monetary union and creation of a single currency between the Eurozone states in 1999 – both produced a desire to see progress in economic and monetary integration accompanied by advances in the social welfare sphere. But the techniques employed have been very different – to begin with, adoption of regulatory initiatives; in the more recent phase, open coordination between Member States over policies for employment and for combating social exclusion. Each of these movements was accompanied by a rhetoric of fundamental rights: the Community Charter of the Fundamental Social Rights of Workers of 1989 was followed by the Charter of Fundamental Rights of the European Union proclaimed at the Nice Summit in December 2000 (Sciarra, 2004). But these texts have had a limited concrete impact in the field of social policy, not so much because they lack legally binding status but because the charters do not modify the division of competences between Member States and the European Community. The Charter of Fundamental Rights, in particular, may go some way to expanding the place of fundamental social rights in the elaboration of Community laws and policies, and it may influence how the European Court of Justice defines the balance between, on the one hand, the economic freedoms of movement and competition law, and on the other, social rights (De Schutter, 2002; Hervey and Kenner, 2003). But naturally it is not enough to modify the more fundamental imbalance that results because the rules for the internal market are defined in the Treaty of Rome and in the derived law, whereas employment law and social protection are still determined principally at the level of Member States (De Schutter, 2000). The emergence of Social Europe seems bound to become harder still in the future, since enlargement of the Union to 27 Member States makes decision-making in this area particularly onerous, given the different approaches of the Member States.

The open methods of coordination applied to employment and combating social exclusion, though also in relation to pension and health care reform, aim to take into account the interdependence of Member States within an integrated economic and monetary area, with a view to imposing a common discipline on them and avoiding a situation in which a lack of economic reforms in one state – or poorly designed reforms – has a negative impact on the other states in this area. These OMCs are not intended primarily to limit the risk of competitive deregulation between Member States, which would probably be detrimental to the protection of fundamental social rights. In one way, OMCs have exactly the opposite effect. Under the pressure of regular peer review, they encourage the states to initiate reforms that may be difficult to accept for the population, to the detriment, at least in the short term, of social cohesion; OMCs place these economic reforms, that are necessary to improve the economic performance of the Member States, out of reach of electoral contingencies, and introduce continuity between different national governments. The much-publicized risk of “competitive deregulation”, or of social dumping emanating from the Central and Eastern European countries in order to attract investors to them (for contrasting views on this risk, cf. Vaughan-Whitehead, 2003 and Commission of the European Community, 2004) is perceived as less real than the danger that some states will fail to play the game over the economic reforms needed for the

Union “to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”, according to the new strategic goal defined at the Lisbon European Council of 23-24 March 2000 (para. 5).

It is therefore fundamental that the process of economic reform, including the reform of labour markets and the modernization of social welfare systems to make work pay, should be framed by a reference to fundamental rights (Smismans, 2005; Lo Faro and Andronico, 2005). The high-level group on the future of social policy in the enlarged European Union believed that fears of social dumping must be kept in proportion, first because the differences in labour costs between the new Member States (in particular the eight countries of Central and Eastern Europe) and the old Member States correspond to real productivity differences, and will diminish over time, and second because all EU Member States are party to common international commitments, in the International Labour Organization and in the Council of Europe (Commission of the European Communities, 2004: 13). As we have seen, the latter argument had been used by the Ohlin Report in 1956. But it does not take account of the fact that, over and above the apparent identity of the international commitments, the scope of these commitments and the modalities of their implementation vary greatly between Member States. There is therefore a justification for establishing, actually within the European Union, a mechanism to monitor observance of fundamental social rights by Member States, in order to limit the risk of excessive differences between states and to strengthen the European Social Model (De Schutter, 2005).

Even if the risk of competitive deregulation remains limited including in the enlarged European Union, enlargement, due to the persistence of differences between the various Member States – will nevertheless have the effect of accelerating the process of restructuring of enterprises, forcing them to adapt to the demands of increased competition within the European economic area. These restructurings are not anomalous per se – on the contrary, they are actually part of the Lisbon Strategy, which conceives them as reinforcing the competitiveness of the European Union in a globalised context. But in the most exposed industrial sectors, the social impacts are potentially considerable. Hence the emphasis on the urgent need for solidarity not only between the “old” and the “new” Member States, so as to favour a catching up by the latter – the role of the structural funds in guaranteeing economic and social cohesion is obviously decisive in this respect – but also, within each state, between the sectors threatened by restructuring and other, more sheltered sectors.

Yet the question that arises today is that of whether the Member States have not deprived themselves of the capacity to ensure adequate protection for the weakest sectors (Guild, 1999; Ferenczi, 2005). On the one hand, they are subject to the budgetary discipline imposed on them as part of economic and monetary union and formalized in the stability and growth pact⁴⁸. On the other, they have great difficulty raising the level of taxation in order to pay for social programmes that can no longer be paid for by government deficits. More specifically, the fiscal reforms that can be envisaged today tend systematically to favour enterprises over households and, within the taxation of personal income, the richest sections of the population over the poorest. The mechanics of this are simple: the most mobile factors (enterprises and the private individuals with the highest incomes benefit most from mobility within the European Union) are those that states tend to treat

⁴⁸ Initially, the procedure for excessive government deficits provided by Article 104 EC was fixed by Council Regulation (EC) No. 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209 of 2.8.1997, p. 1). The revision of the procedure in June 2005 (Council Regulation (EC) No. 1056/2005 of 27 June 2005 amending Regulation (EC) No. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 174 of 7.7.2005, p. 5) represented a significant improvement, since it takes into account qualitative factors – i.e. the source of excessive deficits – and the economic heterogeneity in the Member States.

lightest, since overly heavy taxation on these factors may well cause them to establish themselves or reside elsewhere. It matters little that the level of fiscal burden, among the factors guiding companies when deciding where to invest, plays only a relatively secondary role – less important in any case than infrastructure quality, proximity of markets, or the level of qualification of the available labour. The fear that companies will relocate, or that the wealthiest individuals will leave the country – is often enough on its own to influence the direction of reforms. This phenomenon of fiscal competition in the field of company taxation⁴⁹ has increased markedly with enlargement, since several Member States are currently engaged in the strategy that Ireland (where the rate of tax on companies is 12.5%) successfully pioneered many years ago. In 2005, the tax rate on reinvested profits is 0% in Estonia, as against 19% in Poland and Slovakia and 33% in France. In Germany it was reduced from 40 to 25% under Chancellor Schröder's Red-green coalition. Thus, "the average nominal rate of corporation tax in the Union of fifteen went from 48% in 1982 to 32% in 2002. And the most marked accelerations in this fall occurred at the times when economic integration was progressing: in the early 1990s (completion of the internal market) and in the early 2000s (introduction of the euro)" (Moatti, 2005).

That is where we stand at present. From the start of the European Community, attempts to balance the economic dimension by the social dimension have always run up against a limit, that of the refusal by Member States to give up too large a share of their competences over social welfare and taxation. This first obstacle is now joined by a second: the forms of the transaction between the economic and the social – which must define the specificity of the European social model – appear increasingly dictated by the evolution of economic globalisation, and by the Union's concern to remain competitive relative to its large competitors, chief among them the United States. The Lisbon Strategy was intended as much – if not more – to prepare the European Union for facing the shock from globalising economies, as it was to provide for managing the relations between Member States, so as to limit attempts by Member States to resort to free riding strategies within an integrated economic area. But without any strengthening of the mechanisms of solidarity both between and within states, there is a real risk that the social dimension – the perpetual junior partner – will remain subordinated to macro-economic orthodoxy and the imperatives of advancing globalisation. It would seem therefore that more than ever before, if the Member States are to win back the sovereignty they are losing to the markets, they must accept to entrust certain forms of its exercise – through transferral of further competences – to the Union.

6. The Way Ahead (I): Strengthening the reference to fundamental social rights

Yet, the transferral of further competences to the EU in order to achieve a strengthening of fundamental social rights at EU level – an ambitious "floor of rights" at EU level – seems today politically unrealistic; and given the large differences in approach between the EU Member States, it is not clear whether it should even been seen as a desirable objective. Instead of pursuing such a goal, a twofold strategy should be pursued: one should consist in ensuring that the development of EU law shall not threaten the ability of the EU Member States to maintain, or develop, high levels of protection of fundamental social rights, particularly those of workers; another should encourage the EU Member States to make progress in this direction, in order to counteract a tendency to move in the opposite direction.

⁴⁹ The same phenomenon does not affect value-added taxes (VAT), over which coordination exists between the Member States, nor taxation of savings, about which an agreement was reached between the Member States in June 2003. On the other hand, a degree of competition exists over the income tax of private individuals, especially as regards the higher tax bands (Moatti, 2005).

In order to understand how these two strategies are complementary and mutually supportive, it should be recalled that there are two ways in which the development of European integration through the EU interacts with the protection of fundamental rights in general, and with fundamental social rights in particular (De Schutter 2007). First, the transferral of powers to the EU entail the risk that these powers will be exercised in a way that does not comply with the requirements of fundamental rights. This issue has been largely discussed since the 1970s, when it became evident that the European Communities would have impacts going beyond their stated economic purposes, and that the law they developed could affect economic operators in ways that could have an impact on their basic rights. It is this concern which the European Court of Justice⁵⁰ and, later, the European Court of Human Rights, sought to address: both jurisdictions arrived at the conclusion that, unless appropriate checks are provided, the extension of the competences of the EC, and now of the EU, could affect fundamental rights, and that it was their duty to protect the potential victims of such developments.

However, in developing its case-law in the area of fundamental rights, the European Court of Justice has been adopting a selective approach: it has ignored a large body of international human rights treaties to which the Member States are party. When asked to identify certain fundamental rights as worthy of protection, the ECJ currently examines whether the right in question is included, either in the European Convention on Human Rights, whose “special significance” it has long recognized in its case-law,⁵¹ or in another international instrument for the protection of human rights which the Member States have all agreed to. The canonical formula used by the Court is that it “draws inspiration [...] from the guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories”.⁵² In practice however, its use of sources other than the European Convention on Human Rights has been parsimonious and selective. Until recently, the Court completely dismissed the significance of the 1961 European Social Charter (ESC) despite the several provisions it contains of direct relevance to the issues raised in the case and the fact that all the Member States are party to the original 1961 treaty.⁵³ The ECJ appears to have altered its dismissive attitude towards the ESC in the *Laval* and *Viking* cases decided in December 2007, where it accepted “the right to take

⁵⁰ Case 29/69, *Stauder v. City of Ulm* [1969] ECR 419; Case 11/70, *Internationale Handelsgesellschaft v. Einfuhr- und Vorratsstelle Getreide* [1970] ECR 1125.

⁵¹ Case C-260/89, *ERT* [1991] ECR I-2925, para. 41; Opinion 2/94, *Accession of the European Community to the European Convention for the Safeguard of Human Rights and Fundamental Freedoms*, [1996] ECR I-1759, para. 33; Case C-274/99 P, *Connolly v. Commission* [2001] ECR I-1611, para. 37; Case C-94/00, *Roquette Frères* [2002] ECR I-9011, para. 25; Case C-112/00, *Schmidberger* [2003] ECR I-5659, para. 71; Case C-36/02, *Omega* [2004] ECR I-9609, para. 33. Article 6(2) of the EU Treaty only refers to the European Convention on Human Rights, neglecting a reference to other human rights treaties to which the MS have collaborated on or signed (an omission retained by the Reform Treaty in Article 6(3) of the EU Treaty, as amended).

⁵² Case 4/73, *Nold KG v. Commission*, [1974] ECR 491. The wording has not evolved greatly. See e.g. Case C-94/00 *Roquette Frères* [2002] ECR I-9011.

⁵³ CETS 035. See Articles 7, 16, 17 and 19. As to the European Social Charter, it stated (at para. 107): “So far as concerns the Member States bound by these instruments, it is also to be remembered that the Directive provides, in Article 3(4), that it is without prejudice to more favourable provisions of the European Social Charter”. The Joint Opinion of AG Jacobs (delivered 18/1/99, at para. 146) in the *Albany*, *Brentjens*, and *Drijvende Bokken* cases (which dismisses the legal value of the European Social Charter) may offer some explanation for the Court’s attitude. The Court itself expressed no view on this in its decisions. Case C-67/96, *Albany International BV* ECR [1999] I-5751, Joined Cases C-115/97, C-116/97 and C-117/97, *Brentjens’ Handelsonderneming BV v Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen* [1999] I-6025 and Case C-219/97, *BV Maatschappij Drijvende Bokken v Stichting Pensioenfonds voor de Vervoer- en Havenbedrijven* ECR [1999] I-6121.

collective action, including the right to strike”, as part of the general principles of Community law, since it is “recognised both by various international instruments which the Member States have signed or cooperated in, such as the European Social Charter... to which, moreover, express reference is made in Article 136 EC – and [ILO] Convention No 87 concerning Freedom of Association and Protection of the Right to Organise [of 1948]... and by instruments developed by those Member States at Community level or in the context of the European Union, such as the Community Charter of the Fundamental Social Rights of Workers [of 1989], which is also referred to in Article 136 EC, and the Charter of Fundamental Rights of the European Union”.⁵⁴ However, even these cases are ambiguous: the rights proclaimed in the European Social Charter are only recognized as a source of inspiration for the development of general principles of EU law to the extent that they are listed in the EU Charter of Fundamental Rights; and in contrast to what the EU Charter of Fundamental Rights has provided for the rights derived from the European Convention on Human Rights, there is no certainty that the social rights it includes, even when they are drawn from the European Social Charter, shall be interpreted in accordance with the authoritative interpretation given to these rights by the European Committee of Social Rights.

But there is a second way in which integration within the EU may interact with human rights, and with fundamental social rights in particular. The deepening of economic integration within the EU also may create incentives for the EU Member States to adopt legislation or policies that are considered desirable in order to benefit the most from the opportunities created by market integration or in order, at least, not to be put at a disadvantage as a result of such integration. Such legislation or policies may not correspond to what would be most effective to promote the full realization of human rights. But, in the view of the national authorities, they may nevertheless be seen as justified if the benefits outweigh the costs to human rights. Even though it would be allowable for the State to adopt certain measures that improve the protection of human rights, that State could refrain from doing so, in particular, where this would lead companies to relocate their activities elsewhere, exercising their freedom of establishment within the EU and the possibility to provide services or ship goods abroad, from whichever Member State they choose to operate.

This describes, in the most stylized way, the problem known as “regulatory competition”. Although they are traditionally tasked to protect fundamental rights, courts are ill-equipped to address this problem effectively. Courts may, of course, intervene on the rare occasions when regulatory competition leads States to undermine basic rights in such a way that violations are denounced. They provide, in that sense, a minimum – or groundfloor – protection. But such occasions are very unusual. Far more frequent are situations in which national lawmakers – or, in the context of collective bargaining, employers – invoke the requirements of maintaining or achieving “competitiveness” vis-à-vis foreign companies in order to justify, for instance, loosening certain requirements of labour law, of consumer protection, or of environmental regulations, as such requirements are stipulated in domestic rules.

The traditional approach to this question has been based on a crude dichotomy between “deregulation” (at domestic level) or “re-regulation” (at European level), corresponding respectively to the “negative” and “positive” dimensions of European integration (Scharpf 1999: chap. 3). This simplification has been unhelpful and the source of unnecessary confusions. First, by seeing “negative integration” as a potential

⁵⁴ Case C-438/05, *International Transport Workers’ Federation, Finnish Seamen’s Union, v. Viking Line ABP, OÜ Viking Line Eesti*, nyr, para. 43 (judgment of 11 December 2007); and Case C-341/05, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet*, nyr, para. 90 (judgment of 18 December 2007). See in particular the seemingly decisive Opinion of AG Mengozzi, para. 78.

source of “deregulation” at domestic level, it does not make a distinction between the situation in which the requirements of the internal market (particularly the four fundamental freedoms) impose on governments to remove certain disproportionate or discriminatory regulations, that might constitute unjustifiable obstacles to the exercise of free movement, and the situation in which the internal market functions merely as an incentive to deregulate, in order to help achieve a competitive advantage on the other Member States and, in particular, to be more attractive to increasingly mobile capital. Yet, this distinction is essential: in the latter situation, the choice in favor of deregulation is done at domestic level, and it is the result of power struggles between actors competing to define the national public interest; in the former situation, overcoming “deregulation”, as imposed by “negative integration”, requires collective action at EU level, which may be much more difficult to achieve taking into account the multiple veto points that exist and the difficulty of achieving agreement in an enlarged Union with increasingly diverging conceptions of the role of the State in the market.

Second, such a model assumes more or less explicitly that governments will define their positions (both as regards domestic regulations and regulations adopted at EU level) on the basis of the interest of the companies located under their jurisdiction, which they will seek to reward, and on the basis of the need to attract new companies to establish themselves on their territory. This is a very crude assumption, and it will be in some cases unrealistic. In fact, the available evidence is rather that governments sometimes hide behind the requirements of EU integration to condemn certain undertakings (less competitive than those located in other member States), while defending others (improving their competitiveness by adapting, where necessary, the regulatory framework, or providing tax incentives): as noted by Young, “politicians found it convenient to use the single market and the constraints from ‘Brussels’ as cover for changes in domestic policies and as a justification for both inaction and action at home” (Young 2005: 111). Indeed, according to the theory of comparative advantage on which international trade is premised, while firms compete against one another, countries don’t: all countries gain by each country specializing in the production of the good or the provision of the service in which it has a comparative advantage. This implies that the interests of the country as a whole and those of its industries may not converge, where the said industries are less competitive than the industries of other states. Of course, many governments will act in order to protect their industries whichever the efficiency losses involved, notwithstanding the theoretical gains from the international division of labor. But whether or not they do so is a question of political economy, that depends on the ability of economic actors to capture the political decision-making process: it must be examined empirically, rather than assumed theoretically.

Third, the “deregulation / re-regulation” approach is oversimplifying also in that the only alternative to a State exercising its regulatory functions at domestic level seems to be the establishment of a “super-State” at European level, as if the scenario of a European Welfare State were a realistic possibility. There are areas, of course, in which the EU has been attributed competences which it may exercise in order to move in this direction – and workers’ rights are the subject of an important EU body of law. However impressive these advances though, they still remain far from constituting the first steps towards a European Welfare State, or towards the EU as an organisation dedicated to the promotion and protection of social rights. In fact, that scenario is so remote that the alternative is a demobilizing one, not one that truly shows the direction of reform.

We must therefore ask ourselves which alternatives exist both to the risk of deregulation at domestic level (as a result of regulatory competition) and to the chimera of re-regulation at European level (which is often unrealistic). My interest is in situations in which either the EU has no competence to take action, or in which there is no political will to do so – situations in which, in other terms, “re-regulation” at EU level is not a

realistic option. Are we then condemned to the blind mechanisms of regulatory competition? Or are other possibilities open? It is striking that Fritz Scharpf, the main expositor of the “deregulation/re-regulation” approach, mentions “political imitation” as a possible factor weighing against the pressure exercised on national regulators by “regulatory competition” (in areas such as process regulations or taxation of mobile factors or households where such competition may exist), but then states that such “political imitation” will not be considered further in his examination of the regulatory competition debate (Scharpf 1999: 90-91). Why not? How could such communication across jurisdictions be organized in order to ensure that it works for the benefit of an improvement in standards – a “race to the top”, rather than a “race to the bottom”, as in the regulatory competition scenario?

Consider, by way of comparison, what has been promoted in the area of the rights of the child. In July 2006, the European Commission presented a communication proposing an EU strategy on the rights of the child.⁵⁵ The strategy is based on the idea that “the EU’s obligation to respect fundamental rights, including children’s rights, implies not only a general duty to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal bases of the Treaties (mainstreaming)”.⁵⁶ While the Commission recognises that the EU has no general competence to promote the rights of the child, and that any initiative should respect the principles of subsidiarity and proportionality, it notes that the EU may add value to the implementation of the UN Convention on the Rights of the Child, since it can “support the Member States in their efforts, both by assisting them, in certain areas, in taking into account the rights of the child in their actions, and by providing a framework for mutual learning, within which the Member States can identify and adopt the many good practices to be found across the Union. Such an approach, based on broad and coordinated action, would add value to the efforts of the Member States and would strengthen recognition of and respect for the principles of the UNCRC, both within the Union and beyond”.⁵⁷

The strategy on the rights of the child proposed by the Commission complements developments which have already been taking place, informally, at intergovernmental level. A Permanent Childhood and Adolescence Intergovernmental Group, called L’Europe de l’Enfance, was established under the French presidency of the second semester of 2000.⁵⁸ It brings together, on an informal basis, the Ministers of the EU countries⁵⁹ or high-level government officials with responsibility for childhood policies. Since its creation, L’Europe de l’Enfance has been seeking to promote comparisons between the Member States and to identify best practices. The Ministers responsible for childhood occasionally adopt conclusions, which remain at a very general level, but which nevertheless may be seen as an attempt to arrive at a common understanding of the priorities in improving the situation of children and of the need to take children into account in the design and implementation of EU laws and policies.⁶⁰

⁵⁵ COM(2006) 367 final, of 4.7.2006.

⁵⁶ At 3.

⁵⁷ At 6.

⁵⁸ See Annex I to the Communication of the Commission, “Towards an EU Strategy for the rights of the child”, at para. 3.2.

⁵⁹ Initially, in meetings called “European Meetings of Ministers for Children’s Affairs”; now called “Meeting of the EU Ministers responsible for Childhood”.

⁶⁰ See the Brussels Declaration adopted on 9 November 2001; and the Lucca Declaration adopted following the meeting of 25-26 September 2003.

In order to support L'Europe de l'Enfance, a scientific body was established to develop studies and to exchange and compare data on childhood and adolescence.⁶¹ This European Network of Centres and Observatories on Childhood was called ChildONEurope. It was officially launched in Florence in January 2003. Its proclaimed aims are to exchange knowledge and information on laws, policies, programmes, statistics, studies, research and best practices regarding childhood and adolescence, and on methodology and indicators, in order to obtain comparability of information and to undertake comparative analysis about specific subjects. Among other activities, ChildONEurope has analysed the concluding observations of the Committee of the Rights of the Child, the expert body monitoring compliance with the Convention on the Rights of the Child, which have been addressed to the EU Member States.⁶²

The replication of such a method, allowing for peer review on the basis of reliable and comparable information collected by an expert body, could easily be imagined to encourage the EU Member States to implement fundamental social rights as they are listed in the basic instruments they are parties to – in particular the European Social Charter –, adopting an approach inspired by the best practices identified across the 27 Member States. This might constitute a counter-weight to the tendency of “regulatory competition” at the expense of continued progress in the area of fundamental social rights. Yet, it requires no supplementary transferral of competences, and it thus moves beyond the “de-regulation” / “re-regulation” opposition. In part, this is what the EU Network of Independent Experts on Fundamental Rights had sought to achieve between 2002 and 2007. It is certainly something the EU Fundamental Rights Agency, in the future, might wish to explore.

7. The Way Ahead (II): Rights that build capacities

The preceding paragraph proposes that the references to fundamental social rights in the case-law of the European Court of Justice be strengthened, particularly by a more explicit and continued reliance on the European Social Charter; and that, in addition, systematic comparisons be made across the EU Member States in order to encourage them to move towards an improved level of implementation of fundamental rights. The first proposal seeks to ensure that EU law shall never be interpreted as imposing on the EU Member States an obligation to derogate from their obligations under international human rights instruments that protect fundamental social rights. The second proposal seeks to counteract the risks of “regulatory competition”, that many commentators now see as increased by the case-law of the European Court of Justice, particularly in the area of the free provision of services. Taken together, these two proposals seek to address both ways in which economic integration in the EU may interact with fundamental social rights. None of them, however, presupposes that more powers are being shifted to the EU, which in the current situation would be highly unrealistic.

⁶¹ All the information in this paragraph is from the website of ChildONEurope: www.childoneurope.org (last visited on 20 March 2007).

⁶² ChildONEurope's working methods rely heavily on the completion of questionnaires by the participating observatories. In June 2006, these covered 9 EU Member States. 14 other Member States were “associated members”, it being understood that “the latter may decide to form part of the Network at any given time by nominating a national institution able to furnish official public data on the condition of children and adolescents”.

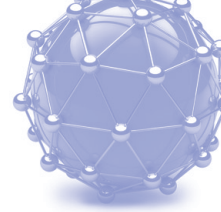
But the two-prong strategy advocated above remains insufficient. It is still defensive in nature. It promises both to ensure a preservation of the social *acquis* and to reconcile market-making within the EU with the redistributive mechanisms of the Welfare State. In that sense, it is a programme that could be espoused by both of the Lefts that are in competition today: the traditional left that defends workers against markets and globalization perceived as threats, and the new left that welcomes markets and globalization, because it is convinced of the essential compatibility of both with a strong, albeit reformed, Welfare State. But ensuring compatibility is not enough. We need, in addition, to move towards convergence: to democratize the institutions of the market in order to ease the tension between the economic and the social. The New Deal, as launched under F.D. Roosevelt, or the use of keynesian tools by European Social Democrats, focused on social policy as a means to ensure redistribution of wealth: but in doing so, it forgot about redistribution of power, and it failed to understand the use of social policy as being about empowerment and capacity.

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Social Europe

1. Characteristics of Social Europe

Referring to the social policy of the European Union or, in other words, the set of State actions aimed at ensuring a number of basic needs and rights to which the population is entitled, and with a view to correcting inequalities in the distribution of income, implies, in the first instance, identifying the degree of regulation or legal coercion in the recognition of basic rights and social security coverage of the basic needs of the population.

Social policy, so defined, has three main instruments: the provision of social services, mainly education and health; the coverage of situations involving an interruption of income by means of a public insurance system to ensure income or a pension when such an event takes place (retirement, death of a family member and failure to develop a productive activity); and the granting of aid in situations of basic needs (housing, greater family responsibilities, unemployment and social exclusion).

Beyond social policy itself, but intimately connected with it, is labour policy. In this case, the idea is to guarantee the basic rights of employees within the scope of their work. It is assumed that labour policies are not intended to directly ensure the living conditions of workers and their families, but to contribute to ensuring suitable working conditions and to allow workers to participate in establishing the said conditions through collective agreements.

There is a sociological perspective in this field, the object of which would be to analyse the extent to which the needs and basic rights of the population are met in three fields mentioned: education and health, alternative income and access to housing and decent living conditions. However, this analysis is not limited to simply recording the existing social reality, but also to introduce an element that goes beyond state actions. It seeks to assess the extent to which there is or should be a set of actions and initiatives promoted by society itself (civil society), which transcend the coercive nature of the State's legal action by relying on a principle of voluntary participation and social closeness.

Similarly, there is an economic perspective, the object of which is to evaluate the suitability and internal efficiency of the resources dedicated to social policies. This not only assesses the feasibility and relationship

between the costs (expenses) and resources (income) of social policies, but also whether (in the same way that the role of civil society based on voluntary work should be extended or restricted) the presence of the market, which seeks its own interests or private profit, in the provision of social services and needs, can and should be expanded or reduced.

The aim of this paper is to focus on the concept and manifestations of a Social Europe, understood as social policies that can be carried out and any components of the welfare state that exist within the strict European framework and the social policies and the Elements of the social state that commonly exist in Member States and that have characterized a constitutional model and political practice, combining the elements that belong to the state and to the market together with economic development and social protection.

It would have been possible to study the social policies that are developed directly by Community institutions based on Community law. However, these policies are rather scarce, as, in the division of powers between the Union and the Member States, economic and trade policies essential correspond to the former while social policies are basically the responsibility of the latter. Therefore, the paper refers to social policies that exist in Member States.

This fact implies that the key aspect concerning the dimension of a social Europe is based on the compatibility of the internal market policies developed by the Union and of the social policies implemented by Member States; taking into account the principle of the primacy of Community law, this means that validly declared EU policies are imposed over those that are the responsibility of Member States.

Indeed, the European Union adopted a momentous constitutional decision in its day which was not subjected to sufficient political debate, by establishing, in Article 4 of the Treaty of the European Union (TEU), that “the activities of the Member States and the Community shall include (...) the adoption of an economic policy which will be conducted in accordance with the principle of an open market economy with free competition”. In this context, all economic and social policies conducted by Member States through public services that may alter the implementation of the said community principle are unsuitable.

However, this Community policy on market unity has to co-exist with the political and legal constructions of the social state reflected in the Community objectives contained in Article 2 of TEU: high level of employment and social protection, sustainable growth, high level of protection and improvement of the environment, raising the level and quality of life, economic and social cohesion and solidarity among Member States.

This approach has been strengthened by the existence of the European Union Charter of Fundamental Rights, proclaimed by all member states in Nice and included as Part II of the draft European Constitution, which, moreover, increases the Union’s social dimension in Part I and Part III.

However, from a citizen’s perspective, what has been perceived has been the liberalisation of former state owned public services that had business or economic element, such as airlines, telecommunications, power supply and the distribution of fuel and gas, railways..., which are now provided under conditions of free competition, eliminating former monopolies. In many cases, even though there has certainly been a significant fall in prices, as in the case of air transport, and a generalisation of new mass market services, such as mobile telephony, this privatization process of public services has been perceived in Europe as a failure

to guarantee the provision of such services and an increase in inequality of access to them based on market rules.

At the same time, and in combination with monetary policies, which impose certain economic indicator requirements concerning budget deficit and public debt, this has led, in combination with the previous liberalization process, the sale of much of the public industrial sector and of network service distribution companies.

The implementation of free competition policies has also led to more rigorous controls of State aid to enterprises, including public companies, as has been the case of the shipbuilding industry in Spain.

All these processes, coupled with the consequences of economic globalization and off-shoring of European companies in other countries with cheaper labour and lower social costs, has led to a certain level of mistrust and fear in relation to the dismantling of the existing social state in different European countries.

It should be noted that many observers attribute the French NO to the failed ratification of the Treaty on the European Constitution to the fact that, during the same period, the European Union was discussing the adoption of the service liberalisation Directive, which strengthened the “liberal” perspective of European policies and increased the fear for the abandonment of a Social Europe by the EU authorities.

It is always essential, therefore, to take into account the compatibility of policies related to the implementation of the internal market, free competition and free movement of capital and goods, with the needs arising from the Social Europe concept, in which such factors as full employment or the quality of life of citizens may imply the need for a greater EU role as an entity of redistribution or the accommodation of certain market elements for the implementation of public social security systems.

We must start, in any case, by establishing poverty in Europe, measured by the Laeken indicators, adopted by the European Council in December 2001, which include 18 indicators that are used to collect data on social exclusion and poverty, which have been adapted by the Social Protection Committee in July 2003 into 12 primary and 9 secondary indicators that influence and support the former by describing other dimensions of the problem.

Despite our welfare situation as Europeans, particularly relevant in comparative terms with other world regions, we cannot ignore data as compelling as those contained in *The State of Working Europe* which states “that 20% of the people with higher income levels in the EU-15 receives 40% of all income, while 20% of lower income earners obtain 7% of the total income”.

But the wealth of data provided by these indicators display that welfare problems are unique in each country, with different poverty maps that do not always give the same results.

From an economic perspective, and based on the absolute lack of resources in the EU budget to address the provision of social needs, national social policy indicators are based on a percentage of GDP that each member state allocates to social expenditure, the percentage in which this expenditure is carried out with respect to the various social policies and sources of financing such expenditure and its medium and long term sustainability, based on population and ageing indicators... This perspective gives rise, by itself, to ascertain the diversity of financial realities in the various European countries concerning social issues.

Finally we shall study the constitutionalisation process that has occurred in recent years in Europe, witnessing how it has been taking over, albeit still insufficiently, social policy issues.

2. The starting point: social status as European reality of the twentieth century

There are two historical elements that should be considered: the social state emerged in the early twentieth century by virtue of two facts: the limits of the market to satisfy the needs of the vast majority of the population and the effect of working-class votes in shaping public policy. Market Crisis and Democracy are focal points for the emergence of the Social State.

The awareness of inequalities in nineteenth century society resulted in the struggle of the labour movement at the end of the said century. One of its key points was the universal right to vote and, thus, by means of a democratic system, take over the power of the state to transform society on equal terms. Therefore, as suffrage extended, the state began to assume a stronger position as guarantor of social needs.

Legislation was drafted to reflect interests other than those that were typical of the liberal period where the state was neutral in relation to the economy. This led to the recognition of the right of workers to organise associations and trade unions, the right to work and the legal regulation of employment contracts, the widespread implementation of public services and the emergence of social benefits in the case of unemployment and retirement.¹

This is the fundamental perspective of what would be called the social state: as the market is incapable of satisfying social needs, the state assumes the role of ensuring subsistence by providing benefits and a redistribution of wealth.

The formula of the democratic and social state was proposed by Louis Blanc during the Paris Revolution of 1848, which, as is known, resulted from a situation of mass unemployment, and the basic aspect of which was a demand for secure employment. Since then, all proposals put forward by the organised worker movements will contain a key material constitutional element involving the extension of the concept of political and legal equality to social and economic equality, in which the State must play a key role in guiding economic policy².

This process culminated with the approval of constitutions in most democratic European countries after the Second World War. They all include a number of features that define a broad framework involving social policies. Consequently, they link property to their social functions, recognise the right to provide certain public services, progressiveness in taxation, and the possibility of the state taking over certain economic sectors due to their general interest³.

¹ See Giannini (1979), “Le pubblici poteri negli Stato Pluriclasse” in *Rivista Trimestrale di Diritto Pubblico*, nº 2-3.

² As summarized by García Pelayo (1977) in relation to the values of the social state and the liberal state, “The free and democratic social state not only does not deny these values, but rather intends to implement them by giving them a basis and material content, based on the assumption that the individual and society are not isolated and contradictory categories, but two terms of mutual involvement in such a way that they cannot exist without each other”. García Pelayo (1977), *Las transformaciones del estado contemporáneo*. Madrid. Alianza Editorial.

³ In the words of Hesse (1983), “scientific, technical and industrial development, the contemporary growth in population, the specialisation and division of labour and the consequent increase in the density and mutation of vital relationships have resulted in the growth and changes in the tasks of the State, its ‘plurality’ and ‘democratisation.’ The state has taken on more and more tasks because the modern economic, cultural and social life requires planning, managing and configuring; giving rise with increasing intensity the task of ‘existential provision’ and considering social security and assistance a task to be performed by the state”. Hesse (1983), *Begriff und Eigenart der Verfassung*. Madrid. Española Centro de Estudios Constitucionales.

The result has been that today's European states present variable positions, as a result of political pluralism, where the greater or lesser regulation of the market is possible with a corresponding greater or lesser impact in the field of social protection. But nobody questions today, in the field of political events, the leadership of state and other public authorities in achieving certain policy objectives that are always linked to social policy objectives.

3. The turning point: loss of state hegemony in setting social policies

Until the 1980s Europe displayed the full democratization of public institutions under the dogma of the people's sovereignty, including the principle of equality as a constitutional value and the mandate given to the governments to guarantee a minimum quality of life threshold for all citizens through public services and benefits.

However, over the last two decades of the last century, two events have taken place that have jeopardized the ability of European states to maintain the welfare standards they had been providing their people with. These two events are: the appearance of a new production system based on the widespread implementation of new technologies and the resulting globalisation of the economy.

The social state model pact implied, in essence, a political and social pact under which the market assumed that a significant proportion of the gross domestic product would be taken from the private sector to finance the a number of public services and social benefits. However, the two new aspect just mentioned questioned the ability of states to meet the commitments established in the post-war social contract.

New technologies have resulted in three consequences for the social state model described above. Firstly, these technologies require a new accumulation of capital due to the high costs involved in their deployment and in maintaining investments in research that are necessary for the continued renewal of the manufactured products and services offered. This has led, over recent decades, to a situation where the social state model has become an important competitor in the capital market, either due to the percentage of funding it obtains via taxes, or because the amount of capital required to finance its deficit. Less tax mean more money in the hands of consumers and a relief for stocks in the market.

Equally, the globalisation of the economy made possible by new information and communication technologies mean that the wealth is produced in worldwide, affecting the ability of States to establish taxes on the generation of wealth to fulfil their redistribution requirements as established by the political desire of a democratic society.

Similarly, the absence of an international authority regulating the basic aspects of the economy means that it is no longer possible to redistribute wealth among nations via political and democratic means. As national states are unable to regulate a worldwide market, the rule of competition is transferred from the market to the state, imposing its own rules of supply, demand and maximum profit.

Indeed, new technologies enable the globalisation of the economy, and the economy, in turn, places the rules of the market above political and democratic institutions. With the implementation of a global market, competition occurs not only in terms of the economic model, but of the social model.

It is well-known that the cost of products is affected by the amount of resources that governments allocate to the social state and, therefore, the logic of admitting international competition without democratic political boundaries, implies admitting that the most competitive will be those that pass less social state costs on to their products.

The danger in this scenario, and we have already seen some examples in recent years, is that it may exacerbate tensions within European states in terms of racist or xenophobic intolerance or in terms of a lack of territorial solidarity that exacerbates nationalism.

If, due to the effect of global economic competitiveness, European States cannot divert sufficient resources to meet the social demands of their citizens, we will be facing the risk of generating a major “democratic deficit”, not in terms of European institutions, but in terms of national institutions.

Therefore, the political models based on correcting the adverse effects of sheer market rules through the introduction of public social policies within a mixed economy and social state model need to create new tools to defend the operation of this model. To prevent the globalisation of market rules imposing their own conditions over the constitutional values stated in countries where the social state model is recognized

This is the challenge that the Social Europe concept must address: make the political and economic power at European level, act in favour of a social state model.

4. Current European Union limitations for boosting social policies and ensuring social policies in European states

There is no need to dwell on the profound changes that the consolidation of the European Union has implied for European countries in terms of transforming decision-making processes on major issues relating to economic sovereignty. We must remember that the current political integration model commenced with the creation of a Common Market. On the other hand, European states have preserved their prerogative on key decisions relating to social sovereignty. Consequently, as we shall see, the Community instruments relating to the regulation of economic policies are far more intense than those governing social policies.

This does not mean that the European integration process, especially since the creation of the European Union, has not stressed the need to maintain social cohesion principles as identifiers of the European model. But this process has also been accompanied by policies geared at creating the internal market and at privatising economic public services, based on the need the European economy has to compete in global markets.

This has generated a confusing picture for non-specialised outside observers in relation to clarifying the priority between economic and social policies included in Community Treaties.

Indeed, Article 2 of the Treaty of the European Union (TEU) included the following EU objectives:

- a harmonious and balanced development of economic activities throughout the EU;
- a high level of employment and social protection;

- equality between men and women;
- sustainable non-inflationary growth;
- a high degree of competitiveness and convergence of economic performance;
- a high level of protection and improvement in the quality of the environment;
- raising the level and quality of life;
- economic and social cohesion, and
- solidarity between Member States.

In turn, Article 3 TEU stated that, in order to achieve the objectives set out in Article 2, EU actions shall include:

- a policy in the social sphere comprising a European Social Fund;
- the strengthening of economic and social cohesion;
- a policy in the sphere of the environment;
- the promotion of research and technological development;
- encouragement for the establishment and development of trans-European networks;
- a contribution to the attainment of a high level of health protection;
- a contribution to education and training of quality and to the flowering of the cultures of the Member States;
- a policy in the sphere of development cooperation and
- a contribution to the strengthening of consumer protection.

These objectives and policies clearly refer to the values of the social state and should lead one to expect a high degree of involvement of European public authorities in achieving them. However, in order to do this, EU authorities should have specific powers to regulate the sectors concerned and have the financial resources to promote them. But the legal basis of these powers for the implementation of social policies is very weak, compared with the powers to implement an effective internal market.

Indeed, one can say that the TEU provided a very powerful statement for an economic constitution and a very weak statement for a social constitution.

On the one hand, Article 4 TEU provided:

“1. For the purposes set out in Article 2, the activities of the Member States and the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein, the adoption of *an economic policy which is based on the close coordination of Member States’ economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.*

2. Concurrently with the foregoing, and as provided in this Treaty and in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU, and the *definition and conduct of a single monetary policy and exchange rate policy the primary objective of both of which shall be to maintain price stability* and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.

3. These activities of the Member States and the Community shall entail compliance with the following *guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.*”

On the other hand, Article 16 TEU states:

“Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.”

If we look carefully, while Article 4 refers to “include” and “principles”, Article 16 the expressions used are “take care” and “shared values”, making the former clearly more powerful than the latter.

Similarly, the EU economic policy based on the principles of an open market economy with free competition was widely included in the Treaties⁴:

- in Article 14 TEU which establishes the creation of the internal market;
- in Articles 28 and following TEU, prohibiting restrictions to the free traffic of goods, capital and services;
- in Articles 81 and 82 TEU which establish the main rules of competition by prohibiting agreements and concerted practices and the abuse of dominant market positions;
- in Article 87 TEU, which establishes the community controls to aid provided by States to certain companies or production sectors;
- in Article 104 TEU, which limits and regulates the public deficit and debt levels of Member States, and
- in Articles 105 and following TEU, that include the instruments for implementing Community monetary policy.

Therefore, from the perspective of Community law, the drafting of the new Treaty of the European Union introduced the key elements to rebalance, in its own structural principles, the key elements of free market policies and social policies, defined by the European economic model as “social market economy”, and the weight that the social rights recognized in the Charter of Fundamental Rights of the European Union might have on the interpretation of the European social model.

⁴ Maduro (1998), *We the Court. The European Court of Justice & the European Economic Constitution*. Oxford: Hart.

As pointed out by Giddens⁵, the concept of “social justice” should be introduced as a key element of the Lisbon debate, which should not only consider elements of economic growth, but also palliatives to the sacrifices that the said growth may generate for a significant portion of the European population.

The result of this process in the present Lisbon Treaty is more promising in relation to achieving a better balance between market policies and social policies.

Thus, Article 2 of the Treaty on European Union states:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States. Moreover, the societies of the Member States are characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.”

If we compare this statement with the former Article 6 of the Treaty on European Union, there are new values in relation to equality and solidarity.

These values are developed more explicitly in art. 3 TEU:

“The Union will combat social exclusion and discrimination, and will promote social justice and protection, equality between women and men, solidarity between generations and the protection of the rights of the child.

The Union shall promote economic, social and territorial cohesion, and solidarity among Member States.”

Art. 9 of the Treaty on the Functioning of the European Union (TFEU) also states that:

“In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”

It is true that former art. 4 TEC is contained within art. 119 TFEU, as an instrument to achieve the purposes set out in art. 3 TEU. However, the definition of these goals, which includes the establishment of the internal market, presents new shades:

“The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability in a social market economy, aiming at full employment and social progress and a high level of protection and improvement of environmental quality. It will also promote scientific and technical progress.”

⁵ Giddens (2006), “Debating the Social model: Thoughts and Suggestions”, in *The Hampton Court Agenda: a Social Model for Europe*. London: Policy Network, p. 96.

This statement of purposes includes the “social market economy” concept, which introduces a new element to the European Economic Model⁶. Even without attempting to revive its historic significance from post-war Germany⁷, this new standard was discussed within the Working Group XI on Social Europe, at the Convention for drafting the European Constitution Treaty. It was intended to highlight “the nexus between economic and social development and the efforts to ensure greater coherence between economic and social policies”⁸. In this vein, it was noted that the novel inclusion of the social market economy concept “expresses a process that is taking place in the European Union from a concern for the market to the relationship of equality, not subordination, between social and economic objectives in the sense that they are part of the spirit that conceived the European Union and the path ahead”⁹.

We also noted in its day¹⁰ that this concept “represents”, in short, an attempt to reflect this new vision of the relations between the economic and social integration project in the very definition of the EU’s constitutional economic model”.

This new balance between an internal market only based on free competition and the values of social cohesion is also evident in the wording of Article 14 TFEU, which states that:

“Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.”

This precept must be related to the art. 36 of the Charter of Fundamental Rights of the European Union which states that:

“The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.”

Both articles acknowledge that there is a mission, not only in the Member States but also in the European Union to provide certain services that have an economic element, in accordance with principles and economic and financial conditions that are not those of a market operated in conditions of free competition, with a view to achieving social and territorial cohesion.

⁶ See more in, Ortega y Arroyo (2007), “Constitucionalismo europeo y Europa Social”, in *Revista Española de Derecho Europeo*, julio-septiembre 2007.

⁷ Joerges y Rödl (2004), “Social Market Economy as Europe’s Social Model”, en *EUI Working Paper LAW 8/2004*, p, 17 y ss.

⁸ Grupo XI Final Report, CONV 516/1/03. Brussels, February 4, 2003, pag. 10.

⁹ Malatet y Marsal (2005), “Constitución europea y derechos sociales” in, *Documentación Administrativa* n° 271-272, p. 93.

¹⁰ Ortega y Arroyo, *op. cit.*, p, 350.

In short, although this new social dimension balancing free competition is in need of legislative and jurisprudential development by EU institutions, it is also true that the new Lisbon Treaty includes a new legal basis that allows the introduction of social issues in the very concept of European economic constitution from a structural level and not simply as a residual outcome of policies based on the free market.

This structural level is essentially provided by the systematic identification of art.3 TEU, which introduces the reference to social market economy, which appears in Title I, dedicated to “Common Provisions”, and in arts. 9 and 14 TFEU, highlighting the fight against social exclusion and the introduction of new principles and economic and financial conditions for services of general economic interest, that appear in Title II dedicated to the “Provisions Having General Application”. On the other hand, art. 119 TFEU, former art.4 TCE, appears confined to heading Title VIII which contains one of the policies of the Union, the Economic and Financial Policy.

5. The economic implications of globalisation in the regulation of the European Market. Privatisation, free competition and universal economic services

As already noted, in the last decades of the twentieth century and within the framework of a new type of European constitutionalism, until then quite consistent with the tenets of a Legal Social and Democratic State, the idea arose of creating an integrated European market that would become an expansion of the economies of the Member States with a view to tackling the global technology and globalisation challenge.

Thus, the debate on services and public enterprises that occurred at national level, driven by the neoliberal ideology, was reopened in depth by the hand of Community law that would require that certain services or activities, that citizens received in the form of public services or subsidised public enterprises, significantly in the energy, transport and telecommunications sectors, should be organized through market rules.

Beyond this, there were economic and industrial policies aimed at achieving a European supply and demand region for these sectors to make European technology and the economy competitive in relation to the economies of other world regions, such as Japan and the United States of America at that time.

Based on the above, the European Union adopted a momentous constitutional decision by establishing, in article 4 TEU that “the activities of the Member States and the Community shall include (...) the adoption of an economic policy which will be conducted in accordance with the principle of an open market economy with free competition”.

In this context, and due to the principle of primacy of Community law, all the constitutional bases of the Member States were displaced; Member States that consented to the free regulation of administrative contracting regimes, the free granting of subsidies and running loss-making public services and corporate activities organised as monopolies.

The first element has been gradually regulated by Community rules, so that the State, in relation to public expenditure resulting from its budgetary capacity, does not violate the EU principle of free movement of capital and companies by restricting the possibility of non-national companies competing for public contracts or granting the said contracts to companies that do not operate under rules of free competition.

However, this EU policy priority based on the unity and priority of market policies had to co-exist with another major European constitutional rule contained in Article 2 TEU, which states that EU objectives include a high level of employment and social protection, sustainable growth, high level of protection and improvement of the environment, raising the level and quality of life, economic and social cohesion and solidarity among Member States.

The result of this coexistence of European constitutional values – free competition and social cohesion – is what is reflected in the jurisprudence of the ECJ (Corbeau and Amelo cases) and in the positions of the Commission regarding the guarantee of universal services in sectors subject to market competition, which culminate in Article 16 TEU which recognises “the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion” and, in this sense, the Community and the Member States “shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions”.

It has been said by some that Community law liberalises services of general economic interest and subjects them to the discipline of common law. Against this, certain clarifications of interest should be made.

First, it must be remembered that before the said liberalisation, network services were subject to private law regarding the relationship of the operator with the user. In addition, the power of public regulation in these areas can be extremely detailed and incisive, to the extent, as in the Spanish telecommunications sector, of elevating conflicts between users and operators to an administrative procedure that culminates, in the case of an appeal, in a lawsuit.

What Community law really innovates in relation to these services is everything concerning the imposing of the freedom of private companies in a regime of competition, with additional notes on the separation between the position of the regulator and the operator and the effects of the right of interconnection and network access. But these innovations are not directly aimed at regulating the position of users. The rules governing this position are essentially the so-called universal service rules, but they can be supplemented with specific consumer rights, such as the Spanish General Law of Telecommunications.

However, the universal service rules do not allow the emergence of a new category of public services, as they are obligations imposed by the regulator on the operator to provide a service or activity within the relevant category in the sector.

As the organisation of the liberalised services is not a material competence of the Community, it has not intervened to adopt a Community policy, but to eliminate national policies by subjecting them all to the unifying effect of the market.

This is where the qualitative element appears: a universal service is not public policy, but a burden on the market. A burden based on placing the recipient of the economic activity first and foremost; thus, the regulation of the universal service structurally adapts better to the regulations that Consumer Laws impose on the provision of services than to the implementation of a policy of social equality.

The social cohesion dimension attributed to universal services is based on the consideration that we are dealing with activities that are necessary for the functioning of society and on the historical cycle that it is the market which can best organise its operation through investments in technology and the effects of competition.

Perhaps due to this confidence in the market there is no explicit government guarantee clause to maintain services in the event of an economic or material breakdown of the principle of continuity. In any case, it should be noted that the Spanish telecommunications law includes the above-mentioned guarantee, by giving the state the opportunity to take over the activities of operators who do not provide the service under appropriate legal conditions.

This opens a further reflection on whether the existence of such government operational guarantees if the operator should disappear are putting these services into the ideological orbit of public services as defined by Duguit as activities which, according to their relation to social interdependence, must be guaranteed by the state.

In any case, we can see, through a dual review, the differences between public services and universal services. Keeping with the classic features of the former, we would say that universal services do not require any public organisation, rather a plurality of organisations operating in competition. However, they are subject to strong public regulation and administrative control on the legality of the contractual relationship which exists between the operator or the user. In other words, the contents of the clauses of the concession specifications may appear as regulations in the pages of Official Gazettes. The purpose of universal services is the protection of general interests, as is the case with public services, but they are organised in a way similar to sectorial systems, such as taxi services or chemists.

Now, looking at the characteristics of liberalised services under universal service regimes, we can see the situation in which users are placed. Starting with the rule of freedom to provide in competition, the greatest benefits arise from the freedom of choice between services of different quality and any improvements in price and quality may come from competition. However, the financial dimensions of this type of services usually lead to a context of oligopolies. This raises the fact that, from the consumer's point of view, there is no right to require the concurrence of a certain number of companies. If an oligopolistic situation occurs in the market, claims may only be lodged in the case of collusion. Perhaps, the error is to suppose that an oligopolistic situation will not exist in these sectors and, consequently, develop regulations consistent with the situation.

The separation between regulation and operator must combat the effect of regulations based on the American experience. Independent authorities are possibly questionable where the state has privatised its companies and where there are no political risks that relevantly affect free enterprise and, in any case, as these authorities include employ experts in the sector, their full independence should be guaranteed. This guarantee of neutrality requires a clear status of the professional future of these experts when they leave their public position. In any case, the guarantee of independence over a sector should be such that the political level should be able to permanently modify the operating conditions in the market for the benefit of users, especially as regards the extension of the contents of universal services.

The principles of equality and continuity are, however, connected to the new principle of universality of which we will talk later. Nevertheless, the provision of subsidies for sectors that need them must ensure that no covert public aid is given to certain companies.

The adaptation to technical improvements remains a political criterion against which there is no subjective right of users and their demands through legal channels is difficult to organise. In any case, it should be noted that failure to adapt to these improvements was the historic cause of the "municipalisation" of services in the last century.

That leaves the principle of universality that contains serious doubts about its implementation. We must remember that this principle, in its American origins, essentially called for the interconnection of networks against a subdivision based on private initiative that would limit the expansion of the service. If now the idea is to bring the service to any location in the territory where there are potential users, we would be creating a subjective right to the implementation of the service, at a cost that would be transferred to all users via the price.

But, if we have seen the rejection of the dogmatic construction of constitutional social rights, as true subjective rights before the State, given their tremendous economic burden, how is it possible to expect the market to take on this cost, if the public companies did not do so themselves when acting as a subsidized monopoly? What will happen if there is no leading operator for a given service? These questions imply that the principle of universality may end up deriving into the principle of equal access when the facilities are available to users or that the content of a universal service is declared in its minimal version. It is true that public controls are intense, but it is also true that a free private enterprise system does not mix well with the contents of the principle of universality.

In short, the service liberalisation process under a universal service regime derived from Community law has altered the previous positions of the State and users in relation to these services. The state has lost the ability to develop policies, as it does not control the emergence of the agents that provide the service. In other words, it is the use of powers of intervention and their intensity as an element of discretion that disappears.

On the other hand, while we privatise the management of economic services of general interest, correct market relations remain in the public arena through Consumer Laws. Similarly, although we are moving a monopolistic regime towards competition, the control of competition rules remains in public hands by assigning their supervision to the relevant Administrations.

All in all, this supervision operates as a mere protection of the law, without involving the administration of the composition of interests between the possibilities of supplying the service and the demand for them.

Despite the potential for legal changes that Community law has provided being important, the shift to the liberalization of services that are to be provided under competition, would not have been possible if the conceptual weakness of the legal-public regime of public services had not been detected previously and if no response had been given, through the universal service concept, to the growing demands for guarantees against the possible failure of service operators to provide the said services.

The initial scheme of public services, based on ensuring certain provisions through public agencies regulated by public law, could not be coherently conceptualized from the very beginning and gradually, the growing contradictions arising from the unrelenting increase in the scope and forms of public activity generated a crisis in their ability to go beyond a political or social concept.

On the one hand, the distinction between public or authority functions, which implied reserving activities for the state, have been overtaken by a three-way system. Firstly, by delegating public functions on individuals and legal entities, such as the historical direct management methods conducted through trading companies, the delegation of powers to the holder of a concession holder, or the recent delegation, via contract, together with forms of certification, such as with MOT inspections that contradict general law on public contracts.

Secondly, the acceptance of private certificates, ensuring compliance with government requirements, regulating private activities, as is the case with environmental audits or environmental impact statements, and even the so-called technical standards which are taken as final requirements for the development of production activities and services. The Weberian model of administration, legitimized by technical knowledge, has entered a deep crisis with unforeseeable consequences in the field of bio-chemical research and technology.

Thirdly, the roles of authority have not prevented the emergence of a parallel market; significant examples are security companies and postal services.

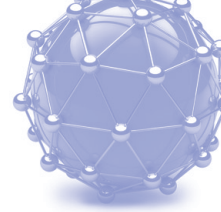
A second sign of the conceptual crisis is an attempt to distinguish between administrative, social and economic public services. From the standpoint of economic activity, a parallel market has also arisen in administrative and social services. Examples are administration agencies, private healthcare, private education, private tourism, services for the elderly, culture, scientific research... The criterion implicit in the distinction with economic criteria has been the fact that the State, in order to provide the said services, adopted a corporate system and an eventual private legal personification. But this does not mean that alongside the so-called social services, there are no large markets capable of claiming the introduction of free competition. The fact that, at community level, measures have been taken in relation to postal services, means that, from the perspective of the private business sector, it is possible to demand further competition for other social services. I would like to note, however, that precisely in these areas, what has been revealed is the compatibility of public services and the market, to the extent that, without calling into question the scope of intervention designed by public bodies, the market has found its own space of activity, offering qualitative aspects. Similarly, the existence of a parallel economy in public services implies that it is not easy to determine whether or not to include them within the Community concept of "services of general economic interest" in that both elements, the economic outlook and the general interest outlook are present in these so-called social sectors. Among other things because, conversely, it is not possible to ignore the social function performed by services known as economic supply networks. Both social and economic services have a social dimension and both are operating in a market. The corporate form of public actions has not even existed always, as was the case with postal services and, in its day, railroad services. Similarly, public radio and television services, cultural and entertainment services... were developed in a corporate manner and are still not classified as economic services.

The great mistake of essential services reserved for public ownership has been a great paradox, because they have focused the attention of the public service concept, as opposed to the market concept. This paradox can be seen if we realise that where public functions are performed, the market has been allowed and, where economic functions are performed, the issue of reserving rights has been raised. Uniting this reservation and the monopoly, the state's presence in the economy implied a significant contradiction in relation to free economic enterprise, and, at the same time, the dissatisfaction with government economic management and the appearance of political corruption led to the criticism of public services, which was present when the EU undertook the liberalization process of state sectors of economic activity reserved for state monopolies. Consider, however, what would have happened if the so-called financial services had accepted free private enterprise in parallel to public activities, and if the right to interconnect and access public networks had been introduced.

It seems clear that neither the subjective element, or formal legal element, or the objective element are capable of limiting public services in relation to which services may be provided by the market. It would be

possible to talk about public services as a supply function that the government can freely set up, with varying levels of security and legal protection, based on fulfilling constitutional ends, provided that such freedom is not restricted by the EU principles of market economy and free competition.

As noted in the previous section, the wording of the new Lisbon Treaty had already provided the legal basis that allows a new formulation of the European economic constitution, which should limit the economic and financial principles and conditions that enable, not only states but at the Union also, to establish services of general economic interest to attain social and territorial cohesion.



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From the crisis of the Economic and Monetary Union to the crisis of social Europe

Summary: 1. Introduction.—2. The model originally planned for the Economic and Monetary Union and its connection with social policies.—3. New demands from the Economic and Monetary Union model within the framework of the Lisbon Treaty.—4. The dilemma of applying fiscal stimulus or austerity policies: peculiarities of the Economic and Monetary Union.—5. The implementation of adjustment plans in relation to the debt crisis in EMU: social spending cuts.—6. Strengthening economic governance: A new framework for social cohesion?—7. Conclusion.

1. Introduction

The so-called social Europe has traditionally been associated with the European integration model despite the fact that the creation of the common market did not imply a common social policy or a common protection scheme; the welfare state has become a standard of this group, historically present in all its members. The common market was, since the Treaty of Rome, understood to be the path that would lead to the objective of improving the living standards of citizens; thus connecting, from the beginning of the project, social development to the development of the economic model. Consequently, membership in the market has significantly marked the direction of common social policy; essentially aimed at issues connected with employment, working conditions and worker mobility. Necessarily affected by the free movement of workers and capital or by competition policies, the common policy has been progressively extended to other fields such as equality or combating social exclusion. However, the “core” element of social policy has remained in the hands of Member States and the limited influence of the common social policy has become clearer as the integration project has advanced.

The process that is influencing the social Europe dimension most today is the passage of the Single Market to the Economic and Monetary Union, providing a framework within which economic convergence is imposed on the “Social Europe” by establishing the decisions that can be taken in this field at both Community and state level.

The doubts raised in relation to the social model that was already on the table, as a symbol of something enormously expensive to maintain, have increased with the outbreak of the financial and economic crisis. Although there is no real “European social model”, there are some common features in the Member States and in their social policies that have been affected (such as the greater equality in income or the greater protection against contingencies such as illness, unemployment or old age than anywhere else in the world). There are certain facts that reveal at least an apparent contradiction: the European Union seems to be implementing measures to cut spending while the U.S. carries on with its stimulation policies, the EU appears to be dismantling its social model – giving priority to reorganising its finances – while the United States is displaying an apparent strengthening of social protection with the reform of healthcare coverage.

Given this situation, we will be analysing the most important aspects of the influence that the Economic and Monetary Union has on social policies, paying special attention to any connection with responses to the current economic crisis, which has become a real test for the European Union’s cohesion and economic integration model.

2. The model originally planned for the Economic and Monetary Union and its connection with social policies

Although the founders of the Community believed that social protection would be achieved through economic integration, the truth is that it can be detrimental to social protection systems and even more so in an Economic and Monetary Union. One can argue that economic growth caused by integration will lead to greater growth and that this may provide more opportunities to finance social protection systems; however, on the other hand, it can be argued that given the international competition caused by economic integration, the population may demand more social protection. On the other hand, globalization leads to greater mobility factors, with people moving to other places hoping to enjoy social benefits and this may lead to a downward convergence, reducing the most generous protection systems as the competitive position of these countries weakens. It is not, therefore, clear, from a theoretical point of view, whether economic integration leads or not to more or less social protection or and if there will be a spontaneous convergence of systems.

The inclusion, among the objectives of the Union, of economic and social cohesion and solidarity among Member States is performed simultaneously with the launch of the Economic and Monetary Union. It is the Maastricht Treaty which strengthens these two aspects, already present in the Single European Act, and where the efforts made over four decades to avoid fluctuations among European currencies bears fruit. Finally assuming that to achieve this goal and to share monetary policies the economies of the members should be more similar to each other, i.e. they should “converge”, the fields in which the said approach should be carried out were identified. These parameters – the “convergence criteria” – refer exclusively to economic and financial criteria. As the basis is the reorganisation of public finances, they chose not to give instructions on social criteria or on those related to the development of the welfare state (standard of living, employment rates, youth employment...), which proved a determining policy option for the future of social policies.

Until then, European social policies had certainly developed in a somewhat limited manner by being in the hands of member states; states with different tax systems and different welfare state concepts.

Throughout the European integration process, the focus on social issues has been expanding, from being centred on the mobility and conditions of workers to incorporating other areas – from equality to social exclusion – and to making some approximations to the efforts of convergence in social policies, especially in order to prevent “social dumping” among member states and not to impede the free movement of workers.

The emergence of the Economic and Monetary Union model coincided in this respect with the “crisis” at the beginning of the 1990s, when high unemployment levels led to the design of an employment based community action approach. As part of that effort, and with the Maastricht model in sight, the proposal by several states of establishing enforceable number-related criteria regarding employment was of great interest, an issue that did not materialise due to the opposition from some members who found it impossible to face such a challenge. However, the scheme that had been used for economic convergence through the open co-ordination method began to be transferred to some extent to the social field, applying it firstly to employment policies (with the establishment of Community guidelines and supervision of national employment and growth plans), and then, to social exclusion policies. This social convergence process would always be a “low intensity” model compared to the economic convergence process, with a low level of commitment by both the EU and the States, without applying numerical limits or penalties in the case of non-compliance.

It is clear therefore that the development of the EMU focused on economic convergence, leaving social convergence as a natural consequence of the former. The main concern was the drive of the economy, considering its association to social welfare as a secondary consequence. Therefore, in the 1990s, the Commission and the Council embarked on a more active strategy to strengthen the objective of social policy convergence. The Lisbon Agenda (2000) adopted the convergence of social policies and objectives as a goal as part of the objective of making the EU a highly competitive and dynamic economy based on sustainable economic growth and greater social cohesion (Caminada, 2010). The Treaty of Nice, in 2001, assumed the advancement of social policies through the Open Co-ordination Method, recognizing that social policies should be left to the states under the principle of subsidiarity: states not only have to work in a coordinated manner and under supervision in relation to social exclusion or employment issues, but they also have to define common goals and social indicators.

As noted above, the EMU model is based on sound public finances – particularly controlling the public deficit – which will allow the economy to enjoy low interest rates which, in turn, will stimulate investment and economic activity. The consequence of this will be greater job creation, which will generate state revenues through tax payments that, in turn, will result in a further reduction of the deficit and enable the maintenance and further stimulation of this “virtuous cycle” of the economy. The model connects, therefore, social elements with economic development through job creation, which obviously generates social welfare, enabling States to have sound balance sheets and to assume a greater capacity for social spending.

While it is true that, a priori, a more dynamic economy will obviously seem capable of sustaining a welfare state, nothing guarantees that sound State finances will lead to better health or education systems or to social improvements for the public. On the one hand, the aforementioned “virtuous cycle” is a forecast based with a favourable economic situation, as we shall mention below in relation to the current crisis, and, on the other hand, the connection between economic and social issues is threatened because the enormous pressure put on States not to exceed deficit thresholds set out in the Stability Pact leads them to target social spending as one of the areas where reductions are possible.

This situation is exacerbated by the transfer of economic policies that comes with participation in the EMU, which limits the possibilities of Eurozone governments to manage their own economies. Traditional resources based on the increase of public spending to stimulate the economy were limited by the low 3% of GDP deficit ceiling, as was the use of debt for funding (60% of GDP). Once these two options had been limited by the commitments to the Stability and Growth Pact, Member States could not use a classic tool to regain competitiveness, such as the devaluation of their currencies, once they had transferred this power as part of the unification of monetary policies, in favour of Central Bank Europe. This institution has to key tools in its hands to manage the economy: the power to print more money and to establish interest rates.

Based on the above, the basis of the economic policy of Eurozone States is fiscal policy, virtually the only means of handling the economy that is still in the hands of Member States. This put great pressure on social spending as a substantial part of public expenditure in European countries and led, in the 1990s, to an intense debate on the welfare state. At the same time, the prominent role that fiscal policy had achieved became a further complication in the transition to greater harmonization in the European Union and the possible transfer of this important element of national sovereignty in favour of a single fiscal policy also led to another interesting debate.

This restraint of state policies necessarily had to put pressure on social spending as a way to meet the commitments of the Eurozone; however, several factors limit these potential cuts in social spending. On the one hand, we must consider that the development of the EMU in its early years was accompanied by a period of general economic prosperity (once the crisis of the early 1990s had ended). On the other hand, when states violate Stability Pact commitments we find that the penalties are not applied; the system of fines provided for in the SGP has never been applied and Germany's failure to comply led to its reform and flexibility. The Council forced this step in the face of the reluctance of States to impose sanctions on others due to the interconnection of their economies and because they themselves be in default at some stage. Consequently, the supervision exercised by the States over their spending and the pressure on social expenditure was also softened.

Finally, taking advantage of that favourable situation and generalising, it can be argued that European governments do not have to face their voters after imposing in-depth structural reforms that would affect significant aspects of their social policies. These reforms, which relate to substantial elements of Country's welfare and budget systems (policies aimed to help an ageing population, pension systems, health care, labour markets, unemployment benefits...) were provided in the spirit of economic convergence. It seemed obvious that member states could not maintain the rules set out by the economic and monetary union by applying temporary "patches" and that they would be forced to address these structural reforms. However, the economic climate and lack of political requirements have enabled us to carry on without them; delays in these issues will put social policies in a very complicated situation in relation to changing circumstances.

3. New demands from the Economic and Monetary Union model within the framework of the Lisbon Treaty

This change in the economic environment will pose new needs not covered by EMU model and will question the legal framework recently implemented by the Treaty of Lisbon. The problematic aspects involved during the adoption of the new Treaty – in force since December 2009 – such as the distribution

of votes in the Council, the EU presidency or a High Representative for foreign affairs, left an ambitious reform of the economic governance system in the background.

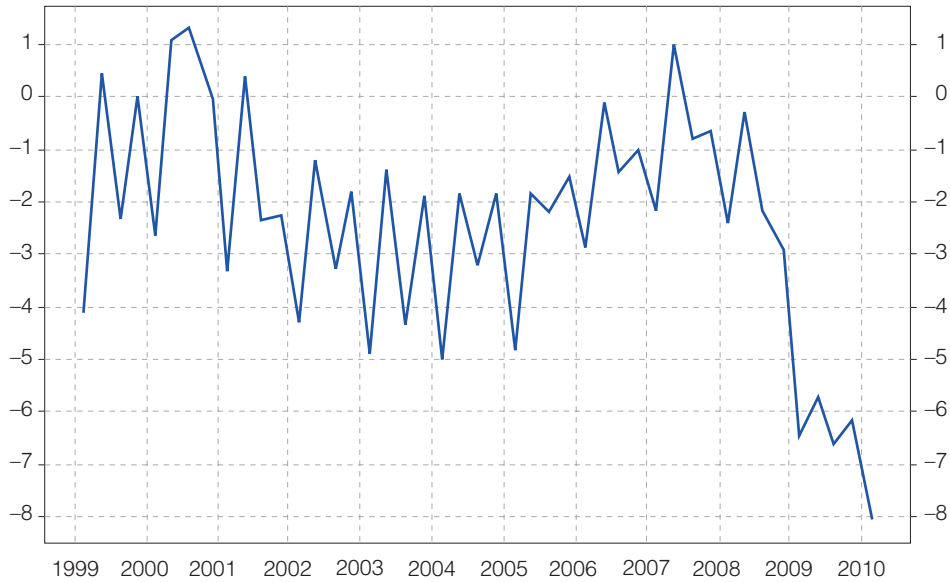
Although this issue had been discussed to a certain extent, the Lisbon Treaty maintained the distribution of powers practically unchanged. Leaving aside the occasional requests to create a real governance system for European economic policy, and except for the Eurozone's monetary policy, this aspect is left to be dealt with by the governments alone or, at most, in a coordinated manner. The Lisbon Treaty established the principle of subsidiarity in this field so that the full harmonization of economic policy could only be justified on the basis of obtaining better results than through the independent action of the States (Mulas Granados, 2009).

While the political will of EU governments did not lead to a higher level of harmonization, the Lisbon Treaty did introduce some small but interesting changes in the governance of the Eurozone with the strengthening of three supranational government institutions. On the one hand, the role of the Eurogroup was strengthened, providing the opportunity to adopt rules to strengthen the coordination and supervision of budgetary discipline and giving it the power to set the conditions for other Member States to join. The European Central Bank was also strengthened by stating its financial independence and acknowledging it as an institution of the European Union together with the Council, Parliament and the Commission. The latter consolidated its initial position in the implementation of the Stability and Growth Pact, in such a way that now unanimity is required to block a proposed penalty for a defaulting State. Its role in coordinating economic policies has also been confirmed, so that when the policies of a Member State disagrees with the General Guidelines or jeopardizes the smooth functioning of the EMU, the Commission may give the relevant government a warning.

These advances have been tested almost immediately with the outbreak of the financial crisis that led to other new and unexpected needs concerning the governance of a common economic policy. The approach in relation to the latter is completely different in 2008, advancing from institutional reform (as stated in the Lisbon Treaty) to the development of specific tools to respond to the financial collapse and its immediate social consequence: unemployment.

The outbreak of the crisis presents a unique panorama in the EU as several governments feel excessively bound by the Stability and Growth Pact and the ECB's single monetary policy when handling their economies. Some have even suggested that staying in the euro was dangerous for economies affected by the crisis due to the impossibility of implementing appropriate solutions to their own situations: to allow lower interest rates to stimulate growth than those set by the ECB and even currency devaluations to improve exports. In addition, the European Central Bank has been criticised for its lack of control and supervision over the financial system.

From the model described above, based on public deficit control, we went, at first, to a constant deficit increase. When the housing bubble burst and the subsequent credit crunch set in, falling investment, demand and employment increased the gap between state revenue and expenditure. The "virtuous cycle" expected under the Community model gave way to a "vicious cycle" that led to subsequent deficit increases. The initial model enjoyed low interest rates, investment and demand incentives and, consequently, inflation (for which the role of the European Central Bank controlling inflation was a key element). In contrast, at the outbreak of the crisis, that stimulating role of interest rates, tending to 0, did not work and the scenario to be avoided was no longer inflation but deflation. States had to address the lack of private investment and incur increases in their spending, bringing their deficits beyond the limits of the Stability Pact.



Source: European Central Bank.

Public deficit evolution in the Eurozone in % of GDP

Deficit and debt of the eurozone countries (2009 figures in % of GDP)

	Deficit	Public debt		Deficit	Public debt
Germany	-3.3	73.2	Spain	-11.2	53.2
France	-7.5	77.6	Ireland	-14.3	64.0
Austria	-3.4	66.5	Netherlands	-5.3	60.9
Finland	-2.2	44.0	Slovakia	-6.8	35.7
Italy	-5.3	115.8	Slovenia	-5.5	35.9
Belgium	-6.0	96.7	Malta	-3.8	69.1
Luxembourg	-0.7	14.5	Cyprus	-6.1	56.2
Greece	-13.6	115.1			
Portugal	-9.4	76.8	EU-16	-6.3	65.95

Source: Eurostat.

Along with this transformation of the “ideal virtuous cycle”, the entire economic integration model suffered a rethink. We then saw a number of proposals, sometimes contradictory, on how to address the crisis from the viewpoint of European integration. Some proposed to raise the level of integration, leading towards fiscal integration, as a way to overcome the crisis with stronger and more coordinated responses.

At the same time, some people took the opposite view: lower the level of integration as a mechanism to alleviate the consequences of the crisis. Some member states also displayed protectionist intentions and suggestions to suspend certain requirements that were considered to hinder competition at that time. All these proposals have an effect on social policies to some extent, but among them, the approach to suspend economic discipline and expenditure control or not, which led to a major political and economic discussion, really had a bearing on this issue.

4. The dilemma of applying fiscal stimulus or austerity policies: peculiarities of the Economic and Monetary Union

In its origin, and given its impact on the functioning of the financial system and on credit cuts, the crisis was described as a crisis of “confidence” and a crisis of “liquidity”. Based on these two aspects from the point of view of maintaining economic discipline or not, we must choose between focusing on increasing confidence or liquidity, as the measures that enhance either one are contradictory. A financial restructuring effort, with the subsequent cut in spending and its direct impact on social policies, seems to be a suitable method for states to regain market confidence. However, the alternative that promotes liquidity, advocates more flexible budgetary rigour and an increase in public spending; this is the approach that, at least at first, supports social policies, providing support networks for those who suffer the direct consequences of the crisis.

This dilemma, a traditional one in the economy, was discussed intensely within the EU, with divided opinions among the various partners. On the one hand, fiscal stimulus policies are linked to providing incentives to boost demand and employment but the downside is that they lead to an accumulation of debt and, consequently, generate mistrust among financiers. This may lead to an increase in the cost of credit, penalizing investment and deepening the crisis.

The success of these policies will largely depend on how spending is distributed (whether it is aimed at structural reforms or short-term solutions, whether it is used to increase money dedicated to long-lasting infrastructure, innovation and technology or education...). If we are considering the implementation of fiscal stimulus in an integrated market with a single monetary policy, such as the Eurozone, responses must be coordinated. Fiscal benefits are greater, the greater the convergence of fiscal policies. The problem lies in the imbalances between the countries that recover first and those that take longer to do so and in the fact that only the former increase spending. Finally, a key aspect of these policies will also be the moment when they are applied; the beginning of a crisis may be an ideal time to see their best effects since their implementation buys time until the size of the economic problems can be identified and until the situation is assessed to see whether it can be automatically redirected without demanding too many sacrifices from the population.

These sacrifices are inevitably linked to austerity policies, the best effects of which are financial restructuring and, consequently, an improvement in market confidence. However, spending cuts and tax increases affect demand and growth and, subsequently, social welfare. Once again, a crucial aspect will be the precise way in which these tools are applied; any considerations on the limit of expenditure and its dangers will be conditioned by the incomes affected by these measures, the population sector targeted by tax increases or reductions in social services (the elderly, unemployed youths...) and the specific areas of social spending that are affected by cuts (birth support policies, education, health...).

Keep in mind that a crisis adds to the possibilities of increasing inequality; as the key target is growth, the poorest are likely to see a reduction in public support as the demand for those social services grows. The greater the number of unemployed, the greater the number of new groups of poor, new sectors of the population demanding social benefits and public services. As Dhéret (Dhéret, 2010) states, the poor are always the most affected party from cuts in public spending as they are more dependent and worse off when it comes to “competing” with people with higher levels of education to access public services; this places this issue “under the spotlight” because, as the risk of exclusion increases during a crisis, the role of public services is crucial for social cohesion. The latter is one of the central issues of the Strategy 2020 (European Commission, 2009) launched during crisis. This “road map” highlights, once again, the connection between economic and social issues. The priority objectives, set as goals shared by the Union and the Member States, focus (together with an improvement in research and development and a greater commitment to reducing emissions) on social issues: increase the employment rate to 75% of the population aged between 20 and 64, improve educational standards and promote social integration, mainly through the reduction of poverty. These proposals were criticised by some Member States as reflecting the real unwillingness to adopt certain policies and wanting to put a stop to the interference of the EU in social policies.

In view of all these aspects, it may be surprising that, despite their different social and economic models, the measures taken in the first phase of the crisis by the European Union do not differ from those followed by other OECD countries. Most combine short-term increases in spending with long-term cuts in revenue – within a context of overall reduction in personal income taxes and freezing spending at least in public employment, to avoid further costs – sustaining, in general, investments in infrastructure, social support networks and clean technologies (IMF, 2010). Within the EU itself, the variety of specific responses, that contradict the idea that the fiscal framework imposes a single tax policy, must be noted. Consequently, Germany, the traditional defender of the tax cuts implemented one of the broadest stimulation packages while those of France or Great Britain, which were asking the other members for major interventions, were less ambitious.

It is of great interest to note that the United States and the European Union, used similar stabilizers in the first phase of the crisis, despite differences in their rules and their central banks. In the United States, the Federal Reserve’s independence was temporarily suspended while in the European Union it was strengthened. Paradoxically, and contrary to the philosophy of good governance, prioritizing economic stability led the American authorities to ignore the limits set by the said institutions while the European states insisted on respecting them for political reasons (Schelkes, 2009).

At first, the responses given by governments to the crisis were assessed according to the size of the bailout funds and the speed with which they were implemented. After the fiscal stimulus implemented at the end of Bush’s term, Obama signed his recovery and reinvestment plan (American Recovery and Reinvestment Act, ARRA) in February 2009, authorizing the expenditure of 787 billion dollars. At the same time, the EU launched its Economic Recovery Plan agreed in December 2008, within a common framework for monitoring budget expenditure by states. Of the EUR 200 billion stimulus provided, only 30 billion came from the Community budget.

At the time when the United States and the European Union were applying anti-crisis measures, Krugman (Krugman, 2009) stated that the “large welfare states” were not the cause of the crisis in Europe but rather an essential part in mitigating that crisis. The problem is not, as he says, the wrong response

to the crisis – a response he qualifies as minimal compared with that given by the United States. On the contrary, he stresses that the only thing in favour of Europe is what is most criticised: the size and power of their welfare states that, while softening the impact of the crisis, are not a substitute for “positive action”. The poor European response is, in the opinion of Krugman, a question of political leadership as there is no institution with a global budget capable of generating a counter-cyclical spending situation to the crisis. There is no government capable, at a key moment, of assuming fiscal responsibility for the entire Eurozone, only national governments, each with their own interests.

In the United States, almost half of the deficits of the federal states are covered by the common budget. Meanwhile, the EU budget cannot be used to “compensate” the excesses of the States; the EU budget is not only small in relation to the percentage of GDP but it also has to be balanced each year and, therefore, even if it were greater, the biggest problem would be that there is no room for manoeuvre in relation to the economic cycle (keep in mind that the absence of a common stabilising budget can explain the relaxation of the rules of the Stability and Growth Pact, self-imposed by States and ECOFIN). Finally, the European Central Bank does not have the room for manoeuvre that the U.S. Federal Reserve has, which may embark on certain policies with the backing of a unified government that shares the risks. For the author, this implies that the governance model in the European Union is structurally weaker in times of crisis.

This weakness would be tested once again in the next phase of the crisis, “the debt crisis” when the difficulties in Greece – and later in Ireland, Portugal, Spain, Italy – to obtain market funding became the key element over other economic and social problems. The debt crisis, unprecedented in the developed world, except during the World Wars, is the result of the financial crisis and of the prolonged use of fiscal stimulus. This had to cease more or less abruptly due to the mistrust of the markets as the States that persisted in these policies were penalized.

Behind Greece’s funding problems lies the entire Eurozone, connected economically and also connected in the assessment and credibility with which the markets gauge it. Expenditure, increased through debt issuance, complicated the restructuring of public finances with a view to maintaining the social protection system in Europe, which leads to new debt issuance to maintain health and pension systems. We are at a crossroads in which the effort the poorest countries have to make increases.

The debt crisis particularly affects the Eurozone given its unique characteristics, including its social and demographic structure with high population ageing rates. Moreover, its economic model, i.e. the scheme designed in the Economic and Monetary Union, was a determining factor in the severity of the debt crisis and in the need for austerity policies.

The transfer of monetary policy has penalized countries as they cannot print money and devalue as alternative measures to restore competitiveness and are forced to cut spending, which necessarily has an impact on social policies. The possibilities of extending growth support with stimulus measures (such as in the U.S.) are limited in the Eurozone by the way it has been designed, by its own objectives. For a country that is not part of the Economic and Monetary Union, the possibility of printing money has some “logical” limits (crowding out, inflation), but no technical limitations and, therefore, it could sustain public spending through printing money. Against this, those who have transferred their monetary sovereignty find greater limitations to overcome the crisis. This raises many voices in the European Union who look to other states, wishing they had their independence in monetary policies and their freedom to use other instruments to promote employment and growth without penalizing social policies.

5. The implementation of adjustment plans in relation to the debt crisis in EMU: social spending cuts

The first step taken when the debt crisis struck was to abandon stimulus policies. The Council of March 2010 and the Strategy 2020 suggest removing the exceptional support measures taken to combat the crisis, once the economic recovery had been fully guaranteed. The real question is whether conditions exist that confirm that recovery or whether the withdrawal of stimulus measures are mainly due to financial distress and excessive indebtedness.

In this sense, the OECD eventually required the monetary authorities to end the exceptional stimulus measures “without exacerbating the weaknesses of the financial markets,” considering that the debt/GDP ratio was unacceptable (Gurría, 2010). Given the pressure caused by the ageing population in the EU, the increase in debt would lead these countries expose themselves to the volatility of the markets and reduce their room to manoeuvre in order to react to economic problems. Consequently, fiscal consolidation was considered as the key response to the debt crisis. It was assumed that the loss of confidence in governments to redress the fiscal situation would only lead to increases in their expenditure, and economies as a whole, in the long term.

Despite the theoretical and political discussion on these issues within EU member states, the time arrived when austerity measures became unanimous. Although the idea that fiscal expansion stimulated growth and that cuts penalized growth had been defended from the beginning of the crisis, there are signs that this is not so; if the cuts fix a very large deficit this can lead to economic activity by gaining confidence and reducing the risk premium.

Both the European Central Bank's position as the Commission's position have been favourable to the fiscal consolidation effort, arguing that this would restore confidence and stimulate (rather than stall) European economic growth. The International Monetary Fund, meanwhile, reiterated throughout this stage that it was inevitable that all developed economies, including the Eurozone, of course, has to adopt fiscal consolidation measures. In support of this, it stresses theoretical arguments contrary to Keynesianism and that defend the possibility of stimulating the economy, even in the short term, by eliminating budget deficits. A large empirical and theoretical study (IMF, 2010) collects some of the most important aspects related to fiscal consolidation among which a reduction in debt is linked to falling interest rates and, therefore, to the encouragement of investment. It notes two further aspects that serve to help cushion the impact of fiscal consolidation in consumption and investment: falling interest rates and the falling value of the national currency, through devaluation, play an important role in promoting exports. It is of utmost importance to reflect on the fact that these two “cushions” are not, in the case of Eurozone countries, in the hands of national governments. The transfer of monetary policy places these tools in the hands of the European Central Bank and they cannot be adapted to the differences in competitiveness or growth experienced by individual members.

These advantages indicated in the theory are not enough to cause the political class to implement cutting measures in a hurry. Quite the contrary, they are the last resort after the use (and abuse) of fiscal expansion. The timing of these measures in the EU has been, therefore, delayed, due to a political reluctance to implement such unpopular alternatives, and determined by the existence of serious difficulties in accessing credit. Although these are risky policies, that produce widespread social rejection, their advocates argue that the deficit cannot

be stretched indefinitely. This undermines the confidence of businesses and consumers and finally requires lowering government and debt risk levels through fiscal consolidation, increasing private spending to recover confidence. It is argued that austerity can therefore increase consumer and business spending and stimulate investment by reducing negative expectations on possible tax changes.

Regarding the electoral consequences of deficit reduction, a recent study is especially relevant (Alesina, Carloni, Lecce, 2010); the paper, involving 19 countries over 33 years shows that, despite popular protests, the consequences in electoral terms have not been negative for governments, particularly when they have managed to cut the deficit through spending cuts rather than increasing taxes.

The Nobel Prize Winner, Stiglitz (Stiglitz, 2010) also raises alternatives to austerity: the rules of the game in reducing the deficit. He focuses on the United States by highlighting how deficit reduction must take into account the way spending has been undertaken over the last decade: absurd expenditure on futile wars, great inequality, under-investment in infrastructure, public support subsidizing certain sectors (banking, agriculture, energy...). His deficit-cutting approach implies promoting efficiency, boosting growth and reducing inequality. He suggests (in this sense he gives a recommendation that is fully valid for the EU) cutting military spending, increasing high-yield public investments – although extending the short-term deficit – and creating a more efficient and fairer tax system that does not penalize lower incomes when faced with speculators.

The idea is, therefore, to prevent, as pointed out by the OECD (Gurría, 2010), fiscal consolidation from opposing or being detrimental to growth. Even if it is not possible to avoid tax increases, governments should first try to reduce public spending because it ensures the sustainability of fiscal consolidation and reduces the impact on economic growth in the long term. In this regard, and among his recommendations when it comes to cutting spending, he points out, from the perspective of growth, that some costs are less productive than others and that certain types of expenditure can boost growth, such as education, health costs, innovation and infrastructure development. From the point of view of taxation, he recommends reviewing the tax structure to make it more growth-oriented, shifting the emphasis of taxation from workers' income to consumption, property and taxes on pollution. For its part, the International Monetary Fund (IMF, 2010) highlights how fiscal contraction that relies on spending cuts tends to have more limited effects on growth than that based on tax adjustments; this is usually due to the fact that Central banks provide more monetary stimulus in the former case than in the latter (monetary stimulus being particularly weak in the case of increases in indirect taxes, such as VAT, which cause prices to rise).

The question is not so only whether governments can afford the adjustments required by the economic crisis but the distribution of income and expenses, who pays for the adjustment. Most spending cut plans in the European Union have been designed according to current theories that consider that cuts in social spending and public wages lead to more lasting benefits compared to adjustments through tax increases and cuts in public investment. However, despite this, the problems of risk and credibility have not been settled, because, although credibility can be lost very quickly, it is difficult to recover. Although Greece has had to extend its adjustment plan to other areas, Spain, Portugal, Italy and Ireland have focused their cuts on aspects that are considered less damaging for economic recovery; all plans have affected social spending.

The adjustment programmes of the countries most affected by the debt crisis also feature other aspects that have been recommended to accompany spending cuts so as not to penalize growth, such as lax monetary policies and structural reforms.

With regard to greater financial facilities, and given the confidence crisis of the markets, the European Union, in May 2010, launched an unprecedented measure to gain the confidence of financiers: the creation of a community stabilization fund covering Eurozone countries. The goal is not only to ensure access to funding for Greece, Spain or Portugal but to prevent speculative attacks from spreading throughout the euro. It is, in short, an attempt to stop an attack on the Eurozone and a decline in the global economy.

The stabilization fund implies issuing bonds backed by the European Union with a value of up to 60 billion euros, together with another 440 billion euros from a fund guaranteed by Eurozone countries and a potential 250 billion from the International Monetary Fund. Along with this, the European Central Bank agreed to buy government debt to restore balance to dysfunctional markets and open new lines of credit for banks.

The assessment of this Community action is complex: on the one hand, it is a valuable display of financial (and political) power to calm the markets. In addition, its implementation provides more time for countries that are having greater difficulties in adjusting their economies. Moreover, this rescue plan has been criticized for its vagueness and the role played by the European Central Bank. The purchase of government debt by the ECB may affect its independence and, in turn, its credibility in its main role as an institution capable of controlling inflation in the Eurozone. Finally, there is a danger that the rescue package, by “buying” more time for governments, will delay the implementation of structural reforms and addressing the lack of competitiveness in foreign markets. In short, this measure will not prevent such a crisis from happening in the near future.

The validity of the approaches mentioned above on fiscal consolidation efforts is being put into question in several ways, starting with the fact that the arguments used to defend it are based on the experience of countries that, when they applied these measures on spending cuts, did so together with a reduction in financing costs or devaluing their currencies. As noted above, Eurozone countries are unable to apply the said two measures and if the currency is not devalued or if interest rates do not fall, the effectiveness of fiscal austerity falls more heavily on the need for structural reforms.

The OECD (Gurría, 2010) identified structural policy priorities to promote economic growth, including, considering those that present a greater connection to social policies, educational reforms, transferring (once the crisis is over) unemployment benefits to strengthen job search services, strengthening family care services (nurseries, paternity leave...) or providing incentives to encourage the participation of women in the labour market, among others. These reforms, which are desirable in themselves, also respond to some of the clearest consequences of the crisis, such as the weakness of labour markets and the risk that high unemployment may become a structural problem.

In the case of the Eurozone, speaking of structural reforms is synonymous with undertaking profound changes in the labour market and social security systems. The Council, in its conclusions of March 2010, states that “structural reforms are essential for a strong and sustainable recovery and for preserving the sustainability of our social models”. The truth is that, when implementing structural reforms, the high cost of the social models of Member States to cope with globalisation becomes clear. Each country cannot compete with third countries with such a high social cost model. In this sense, either the strengthening of the model or its harmonisation in the internal market or the reduction of the differences between the European Union and the “outside world” are called for.

Despite the reluctance of some political and social sectors, the real situation appears to require the second option if we want to deal with market forces. The diversity generated with the addition of the latest Member States has contributed to this; as these are all countries with lower labour costs. The distortion caused

due to a much broader variety of labour costs in a market where mobility is widespread, serves as a first assessment of the reforms needed to face the competitive forces of globalisation. Based on this requirement, the Commission has expressed its intention to monitor trade deficits and external deficits also, which, in countries like Greece or Spain, is the expression of a greater evil: the lack of external competitiveness.

The momentum towards a more competitive economy is painful from a social and electoral standpoint; in an ideal scenario, structural reforms should be accompanied by fiscal expansion, but this, as indicated, is not possible in countries that are applying adjustment plans (Greece, Spain, Ireland, Portugal..). In this context, given the inability of Eurozone countries to restore external competitiveness through devaluation, any improvement in productivity is based on reducing labour costs. The question is: To what extent will the social protection model be affected?

After the chain of austerity plans in the European Union, investors and markets may consider that an excessive level of austerity has been reached. Similarly to the multiplier effect of spending is handled (it is calculate that one euro of public spending implies an equivalent increase in GDP), the Keynesians argue that each euro which reduces public expenditure involves an equal reduction in GDP. If budget cuts are too drastic, the economic recession will deepen. However, in EU practice, cuts are not being so deep as to bring about the said forecasts as we are seeing staggered cuts (so far, with a range in the different countries in 2010 from 0.5 % in Germany to 7% in Greece) over several fiscal years. Although the impact has been estimated at around 1% of GDP in the Eurozone, there are, however, different womb social and political situations. In the midst of them and in spite of the complexity of the situation, the EU has achieve what it had been unable to achieve before by presenting a new economic governance.

6. Strengthening economic governance: A new framework for social cohesion?

From the point of view of European economic integration, the decision to give a *collective response* to this crisis involves a step further in the governance of the Eurozone and leads to the need for greater *collective discipline*. German voters complain about having to finance Greek workers, therefore, if Germany supports Greece, Greece has to respond. As the SGP penalties for non-compliant states are not working, the delicate situation of the high indebtedness of several members has triggered the alarms and requires new mechanisms.

Therefore, immediately after the establishment of the Fund and of the Financial Stabilisation Mechanism, the Commission promoted a commitment that went beyond ensuring the stability of the financial system and of the euro in the short term and aimed to strengthen economic governance within the Union through medium and long term measures.

The legislative package adopted by the Commission in September 2010 has been described as the most important strengthening of European economic governance since the Treaty of Maastricht. The proposed reforms, in line with Strategy 2020 and the Treaty of Lisbon, are a leap towards strengthening the coordination of the economic policies of member states in the case of imbalances; it imposes a new level of policy coordination and of monitoring and supervision of its implementation, affecting social policy decisions.

Regarding the monitoring and supervision framework, and after the failed implementation of the Stability Pact, the preventive and the corrective aspects have been changed. In the first aspect, the reform

encourages the idea of “prudent fiscal policies” to ensure that Member States do not deviate from the goals, even if they go through favourable economic circumstances. The corrective arm of the SGP, in turn, extends the procedure used for the excessive public deficit. Both elements include economic penalties through deposits made by the defaulting State (0.2% of GDP that becomes fine in case of failure to comply with the recommendation, in corrective element). To ensure its operation, and overcome the deficiencies in the previous execution of the SGP, the “inverse vote” was introduced: the penalty proposed by the Commission is considered adopted unless the Council rejects it by a qualified majority. This design was completed with the minimum harmonization of national fiscal frameworks, which are required to reflect SGP objectives.

In relation to the planning of social spending, more momentous than the reform of the Stability Pact is the introduction of other mechanisms to correct macroeconomic imbalances. Consequently, a new standard system was proposed to assess the risks of the economies of Member States in accordance with economic indicators that allows the Commission to perform detailed examinations of States under risk. When a State is considered to suffer serious imbalances that are likely to endanger the functioning of the EMU, the Council may initiate an “excessive imbalance procedure” (EIP). The EIP requires the state at risk of imbalance to submit an action plan that will be reviewed by the Council. Failure by a State to comply with the Council’s recommendations will result in a penalty which may only be suspended through the reverse vote mechanism. States are therefore subject to supervision and interference in their economies in case of imbalances, which will inevitably affect their decision-making in relation to social spending.

While some of these proposals were being implemented, the EU has been forced by events (new speculative attacks against Ireland) to create a larger and more permanent financial stability fund. Other measures such as punishing excessive debt levels or issuing Eurobonds are still under discussion.

Together with this display of new mechanisms, two possible social cohesion scenarios have resulted in the EU. On the one hand, and given the proven difficulty of imposing penalties, a trend (supported by Germany) has been arising to impose stricter rules for defaulting States that would go from making loans more expensive to restricting their access to EU funds and even to policy decisions in the Eurozone. This would be what we might call a “limited solidarity” model.

Against this, there is another political current that envisages a new economic governance model that will lead to a strengthening of monetary and fiscal sovereignty. This would imply going for a genuine European economic government (not just monetary) with a common budget that would not only maintain but also strengthen European redistribution mechanisms. The latter proposal, very difficult from a political standpoint, would be very valuable as a means of compensating the difficulties that EMU imposes on social spending.

7. Conclusion

The Economic and Monetary Union is in an interesting position that, in recent times, is being solved as the Commission makes proposals or as the Council makes decisions, often forced by events without a clear political direction, rather at the mercy of the interests of individual States or market pressure.

While the Economic and Monetary Union established, based on its design, a number of significant spending constraints, the initial economic boom had given the political decisions made by the States some room for manoeuvre on how and how much to spend on social policy. The current crisis is a formidable

test for the model as the need for austerity measures is *unavoidable*. “Unavoidable” due to external reasons – the dictatorship of the markets – and due to domestic reasons – the design of EMU. For the first aspect we propose the strengthening of economic governance and for the second, the strengthening of European economic governance.

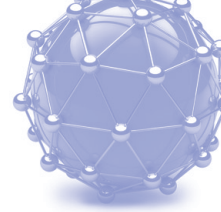
The lack of economic policy instruments due to the collective discipline system mentioned above has left Eurozone States with an incomplete economic governance model at both national and supranational levels. A national fiscal policy without a monetary policy and a European monetary policy without a fiscal policy. The U.S. experience suggests the elimination of this “problem” in the EMU as well as the role of a wide-ranging common budget capable of balancing national expenditure.

Once the game has started, there is no going back, as it does not seem likely that an economy would be able to survive unilaterally without the markets, or, in the case of the most heavily indebted Eurozone countries, outside EMU. The way forward, after the cuts to today’s social policies, leads to further reforms of labour markets to adapt European competitiveness to that of our competitors. This is a way forward in which insolvency should not be of greater concern than injustice, and where the echoes of economic and social cohesion, the core values of the European project, should be heard stronger than ever.

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The rights of future generations and climate change

1. The rights of future generations

The rights of future generations devolve, I believe, from the moral arbitrariness of the date at which one is born. From this it follows that future generations, if they exist, have a right to a level of welfare at least as high as ours. Of course, this assumes that there is a feasible path from the present to the future in which welfare at least as high as ours can be sustained. (Near the end of the life of planet Earth, when the sun heats up, there will be no such feasible path, assuming that *homo sapiens* is still around when this occurs).

Do we have a duty to render future generations *better off* than we are? I think not: for *we* have a right to be as well as *they*, by the same reasoning. Thus, nobody's rights would be violated if all generations were equally well off, from now into the future. (About the past, we can do nothing.) However, we may *desire* that future generations be better off than we are: human development, in the sense of increasing welfare over time, may be a public good for each generation. *We*, the present generation, can decide not to enforce our right to have equal welfare with future generations, and engage in activities which will render them better off than we are. Rights do not have to be enforced if those who hold them agree not to do so.

Aside from human development's being a public good, in the sense that we may desire the human species to perfect itself – to become more educated, less violent, less prone to disease, and so on – parents may desire that their children be better off than they are, and collectively, since everybody in the next generation will be a child of someone in this generation, this, too, could induce us to abrogate our right to be as well off as they are. Childless adults of the present generation may, however, have a grievance against this decision.

No generation has a duty to create the next generation. If a generation decides not to procreate, no one's rights are violated. The unconceived do not have rights. So my comments apply to future generations that exist. Once we do decide to procreate, we have a duty to attempt to render the next generation at least as well off as we are.

In speaking this way, I am implicitly assuming that we represent each generation by a single individual: the average individual, if you will. I am avoiding important issues of intra-generational inequality. There

is ambiguity in saying future generations should be as well off as we are: which “we” is being referred to, the poor, the rich, or the average? In this lecture, I wish to focus upon the intergenerational question, and I consequently ignore, until the penultimate section, the intra-generational question.

2. Facts of global warming

I am concerned, in this lecture, with the impact of greenhouse gas (GHG) emissions, caused by human activity, on global carbon concentration, and the consequence of temperature increase, inducing various crises involving water – a rise in sea levels, severe storms, droughts, elimination of species, the advent of new diseases and epidemics, and so on – which will affect future generations. My conjecture is that if we do not reduce GHG emissions dramatically, we will seriously impinge on the rights of future generations, because they will, with high probability, suffer harms that render them worse off than we are.

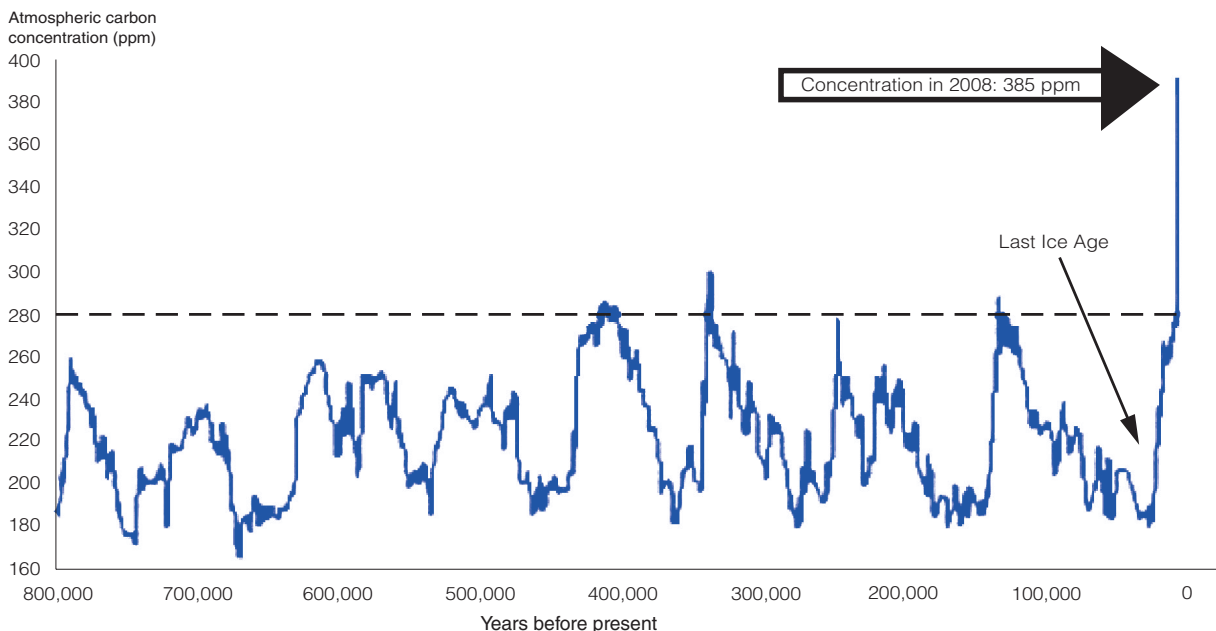


Figure 1

Atmospheric carbon concentration over the last 800,000 years

Figure 1 presents the record of atmospheric CO₂ concentration over the last 800,000 years. That average has been about 220 parts per million (ppm). The very large jump in the last 150 years is due to mankind’s use of energy, since the industrial revolution. The current concentration is about 385 ppm. The oscillations in CO₂ concentration over this period, before 1850, were due to oscillations in natural carbon emissions:

from volcanic activity, and so on. Millions of years ago, carbon concentration was even higher than it is now, and this was probably due to the shifting of tectonic plates, creating volcanic activity. When the land mass that is now India smashed into what is now China, the Himalayan Mountain Range was created: one can imagine the tremendous release of carbon from volcanic activity that accompanied that event, which took place over a period of millions of years.

Natural oscillations have been of much greater amplitude than is indicated in the figure. About four million years ago, in the Pleistocene period, atmospheric carbon concentration was approximately what it is at present: about 400 ppm. At that time, much of the Earth's ice had melted. Sea levels were 16 to 20 meters higher than they are today. It takes a long time for the temperature and carbon concentration to come to an equilibrium. We can assume that the data measured from four million years ago were representative of such an equilibrium. From this it follows that if we simply maintained the present concentration of CO₂ in the atmosphere, Earth would equilibrate to a situation with little ice, and sea levels 16 to 20 meters higher than they are today. The size of the Earth's land mass would be significantly smaller; all coastal cities would disappear unless we were able to construct huge walls to hold back the sea. This equilibration might take 1,000 years to occur. It might take only 500 years, or 200 years. These are unknowns, at present. But there is very little doubt that the long-run temperature equilibrium associated with carbon concentrations that we currently have is high enough to melt a significant portion, if not all, of the Earth's ice. Scientists believe the critical carbon concentration for melting the Greenland ice sheet is somewhere between 350 and 400 ppm.

The relationship between atmospheric carbon and temperature is logarithmic. It is of the form:

$$T = \frac{\sigma}{\log 2} \log C, \quad (1)$$

where C is carbon concentration and T is temperature. There is at present uncertainty as to the value of σ , which is called *climate sensitivity*. Suppose we double concentration: then the temperature changes from T of equation (1) to T^* of equation (2):

$$T = \frac{\sigma}{\log 2} \log 2C = \frac{\sigma}{\log 2} \log 2 + \frac{\sigma}{\log 2} \log C = \sigma + T$$

so we can write:

$$T^* - T = \sigma.$$

The consequence of the logarithmic relation is that doubling of carbon concentration will always give rise to the same increase in temperature – an increase of σ .

There is at present a great deal of uncertainty about the value of climate sensitivity. Estimates range from 1.5 degrees to ten degrees Celsius – perhaps even larger.

Scientists estimate climate sensitivity by deriving independent estimates of carbon concentration and temperature of the Earth over long periods of time. It is beyond my scope and competence to explain the methods by which this is done. My colleague Mark Pagani at Yale University, a geophysicist, thinks, based upon his study of carbon concentration and temperature over millions of years, that climate sensitivity is about 6 degrees Celsius. If he is right, then we can write:

$$\sigma = 6.$$

Since the increase in carbon concentration since 1850 has been by a factor of $385 / 290 = 1.33$, this means that, if carbon concentration stays as it is now, global temperature will rise $\frac{\sigma}{\log 2} \log \left(\frac{385}{290} \right) = 2.45$ degrees Celsius above pre-industrial levels.

We are currently about 0.5 degrees Celsius over pre-industrial temperature, and yet we have already experienced weather catastrophes that are probably a consequence of global warming: for instance, the fatal heat wave in Europe of 2003, which killed over 14,000 people in France, and the heat wave of this summer in Russia, with its concomitant peatbog fires, which has doubled the mortality rate in Moscow.

At the international Copenhagen meetings on climate change of December 2010, most countries agreed informally to take actions which would limit temperature increase to 2 degrees Celsius above pre-industrial levels. According to Mark Pagani, we have already put in place enough carbon to produce an increase in temperature of 2.45 degrees Celsius. Carbon would have to be sucked out the atmosphere, and buried underground, to reach the 2 degree limit. I emphasize that the climate sensitivity of 6 degrees is the *long-run* sensitivity: perhaps in the next few centuries, the current carbon concentration would lead to only a 1.5 degree increase in global temperature.

Currently, the atmospheric carbon concentration is increasing at 1-2 ppm per annum. A first step would be to stop this increase. The second step – of reducing atmospheric concentration – would use technologies that at present do not exist.

Remarkably, perhaps, it is not that difficult to reduce GHG emissions. What must be done is to substitute clean forms of energy production for coal and oil, and to stop cutting down forests, principally in certain developing countries (Brazil, Indonesia). Other sources of energy would be nuclear, solar, wind, and doubtless others (fusion). We have hardly tried to innovate in this field, and all estimates show that with the right incentives, such innovation would bear fruit. In other words, the technological problems are not insurmountable. The main problem in transforming our energy production to clean forms is political: vested interests – chiefly the coal and oil industries – are against it. These interests are doing the best they can to prevent effective action for clean energy in the United States: and if the United States does not take the lead, it will be very difficult to achieve the desired goal. The two largest GHG emitters today are China and the US; together they emit over 40% of total emissions of GHGs. My view is that China has indicated it is willing to match the US in its actions, and so the US is the weak link in the chain. I will return to this later.

In 2006, we emitted globally about 4.4 tons per person, which means about 29 gigatons in total. The US emitted 19 tons per person, the Chinese 4.6 tons per person. The EU emits 8.1 tons per capita. Today,

Table 1

CO₂ emissions per capita, various countries, 2006

Global	4.4 tons per capita
United States	19.0
Canada	16.7
China	4.62
Russia	10.92
Japan	10.11
Germany	9.74
S. Arabia	15.78
UAR	32.8
France	6.24 (nuclear energy)
India	1.31
Mexico	4.14

China is the largest single emitter, and the US is second. Over 70% of global emissions come from China, the US, the EU, the Russian Federation, India and Japan. Many scientists recommend that we reduce global emissions to 2 tons per person by 2050; at the point, the world will have approximately 9 billion people, and thus total emissions would be 18 gigatons. Thus, the goal is to reduce total emissions by 61%. Under this proposal, the US would have to reduce its emissions by about 90% per capita. In Europe, the most parsimonious country is France, due to 80% of its electrical energy being provided by clean nuclear energy. Portugal is also making fast progress towards replacing fossil fuels with renewable energy sources.

To give an idea of the innovation that would be required for the US to attain the goal of two tons per person emissions by 2050, let us suppose that US GDP grows at 1.5% per annum for the next forty years. From the historical record, we can calculate that the ratio of CO₂ emissions to GDP has decreased at 1.7% a year for the past thirty years. If this rate continues, then the ratio of CO₂ to GDP in 2050 will be

$$1.015^{40} * 0.983^{40} = 0.914$$

about 91% of what it is at present, a far cry from the desired cut-back of almost 90%. This shows that a major transformation must take place in the production of energy. Remarkably, scientists and engineers consider this to be feasible. Continuing the calculation, the US population is projected to grow by a factor

of 1.42 by 2050. Then the annual rate at which the emissions-GDP ratio would have to decrease to achieve the goal of two tons per person emissions by 2050 is the root r of this equation:

$$19 * (1 - r)^{40} / 1.42 = 2,$$

which is $r = 0.046$. Thus, we would have to increase the *rate* of technological progress and substitution of clean energy, as measured by the reduction in the emissions-GDP ratio, from 1.7% per annum to 4.6% per annum. Given that we have hardly tried to do so as yet, this is well within the bounds of technological feasibility. Most countries, which emit far less per person than the United States, would have to increase their rate of innovation by considerably less.

The caveat, as I have said, is that the reduction of emissions to two tons per person by 2050 may be far too permissive. If the estimate of climate sensitivity of six degrees C. is correct, then we must eventually reduce the carbon concentration of the atmosphere to 350 ppm: indeed the slogan “350” became a popular one at the Copenhagen meetings.

3. How and what should we consume in the future?

I am a member of a small team of three economists who have estimated optimal paths of human activity in the presence of climate change. We study a model with an infinite number of generations; each generation is represented by a household consisting of an adult and a child. This, of course, abstracts away from all intra-generational inequalities. The adult at each generation experiences a level of welfare which is a function of five goods: the consumption of a produced commodity, his level of education, the leisure time he has, the total stock of human knowledge to date, and the quality of the biosphere, which is measured as the amount of non-carbon-polluted atmosphere. The adult divides his labor into three activities: working in manufacturing to produce the commodity, educating his child, and working in the knowledge industry, producing new knowledge, which includes as well as the arts, science, and literature, development of new technologies for producing commodities. Production of commodities requires, as well as labor, knowledge and capital. And this production produces greenhouse gas emissions which pollute the biosphere. At the beginning of each date, the adult has four endowments: a level of education, a stock of capital, a stock of bio-spheric quality, and a stock of knowledge. At the end of the generation, the child becomes the adult of the next date, and she inherits these four endowments, as they have been modified by the activity of the adult, her parent. Figure 2 presents a picture of the economic activities. In the paper, these are represented by a series of equations which describe all the flows and stocks within and between generations. There are an infinite number of possible paths that could be followed over time of all the relevant variables.

We calibrate the model using US data, not because we are American chauvinists, but because these are reliable and readily available. Thus, what I will describe should be interpreted as paths of economic activity for the American economy. We wish to calculate *sustainable paths of human activity*: ones that will sustain welfare across generations at the highest possible level, given the constraint that we produce emissions which will suffice to guarantee that the global concentration of carbon will not exceed 450 ppm. We take these emission paths from the 2007 report of the Intergovernmental Panel on Climate Change

(IPCC). The path of emissions we choose and the consequent concentration of global carbon are shown in figures 2a and 2b. Constraining the emissions to this path means constraining the production of commodities: for this is the unique human activity in the model which produces GHG emissions.

Based on what I have reported, the concentration level of 450 ppm is probably too high. But this is the level that was suggested as a goal in the 2007 IPPC report. Scientific consensus has changed rapidly, and we will probably have to re-do our calculations with a lower concentration level as the goal.

Thus, of all the paths of economic activity that could be followed, we wish to calculate the path that will *maximize the level of human welfare that can be sustained forever*. Optimization theory allows us to estimate an approximation to this path.

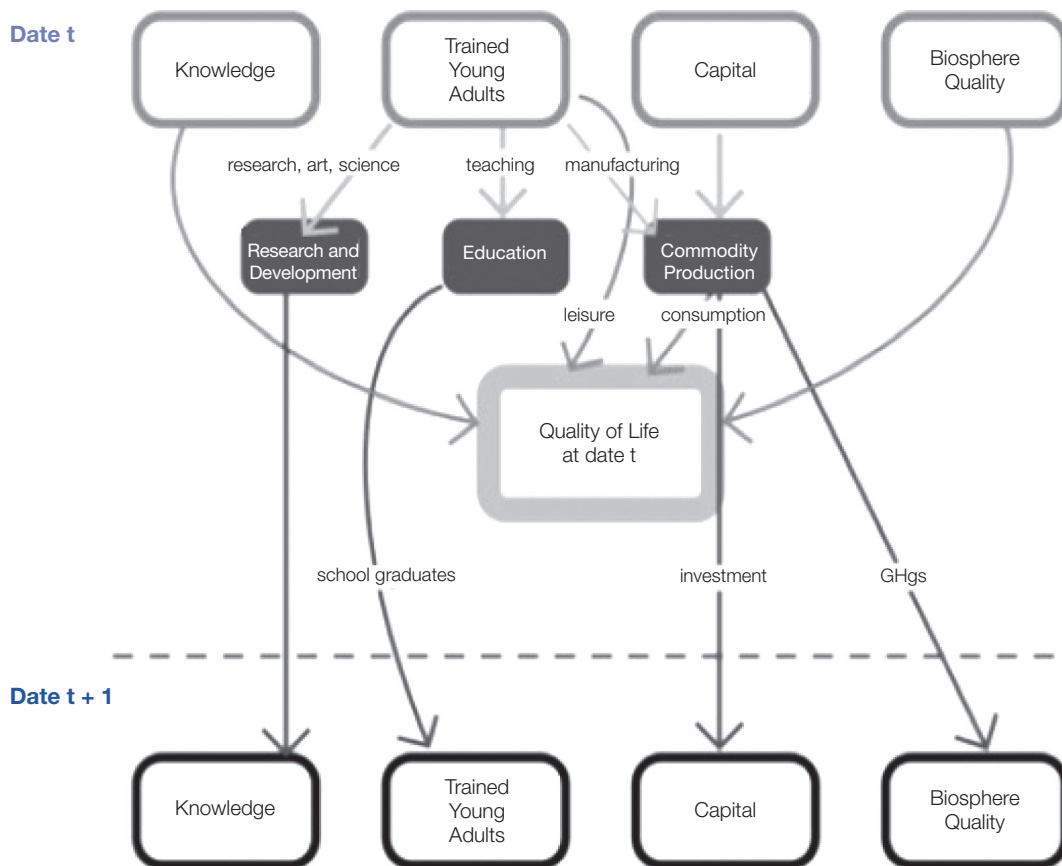


Figure 2

Stocks and flows of economic variables in our model

We begin the model in the year 2000, with the endowments of capital, knowledge, and skilled labor taken from the US accounts. I am not going to present to you all the details of the solution, but just some of the salient ones.

First of all, the IPPC path of emissions is a global path: we must decide how to allocate emissions to the United States, since we are studying the US economy. In what I present next, we assume that the US emits *its per capita share* of global emissions, about 4% of the total. Currently, the US emits 24% of global emissions: so what I am going to present is a much reduced path of US emissions – both in absolute and relative terms.

In table 2, I present some of results of the model. Each generation is to be interpreted as a 25 year period: four generations comprise a century. The first observation is that we are able to sustain a level of welfare 16.9% higher than the average level in 2000 forever – while respecting the emissions constraint, and under the extreme assumption that the US emits only 4% of global emissions. Note that consumption *decreases*, from 27.8 to 23.6. Welfare increases because education increases from 1.4 to 1.88: thus Americans increase their level of education by about 34%. Knowledge increases dramatically, by a factor of over three. As I said, one should interpret knowledge as comprising the arts, sciences, and technology: it includes, for example, extension of longevity from finding new cures of disease.

Table 2

The sustainable path when the US emits 4% of global emissions on the IPPC path

Year/Generation	Welfare	Consumption	Education	Knowledge
2000	1	27.8	1.396	15.64
2025	1.169	32.5	1.648	48.82
2050	1.169	29.9	1.663	55.61
2075	1.169	23.6	1.884	55.61
2100	1.169	23.6	1.884	55.61

In the table 3, I present how the allocation of labor changes from the present to the optimal path.

Table 3

Fractions of labor in 2000 and on the optimal sustainable path

Fraction of Labor in:	Teaching	Production	Knowledge, R&D	Leisure
2000	3.3%	28.3%	1.67%	66.7%
2100	2.8%	27.9%	3.58%	65.7%

Observe that the fraction of labor devoted to production of commodities is almost the same as at present, as is the fraction of total time in leisure. Because, however, labor has increased its skill level by 34%, we might imagine that the leisure activities are quite different from present ones: people will watch more opera

and less soccer. It is interesting that the fraction of the labor force in teaching is reduced somewhat; the most remarkable fact is that the labor time allocated to knowledge production more than doubles. This is a society that has substituted to some degree away from consumption and into knowledge and skill.

I emphasize that these numbers are the ones associated with the path that maximizes the indefinitely sustainable level of welfare. You may well ask how we define welfare. It is the following function:

$$c^{.32} (sl)^{.65} (S^n)^{.02} (\bar{S} - S^m)^{.01}$$

where c is commodity consumption, sl is leisure time multiplied by the educational level of the individual, S^n is the stock of human knowledge and $\bar{S} - S^m$ is bio-spheric quality. Notice that we have put very little weight on the last two items: 97% of the weight is on consumption and educated leisure. Thus, we are not “cooking” the utility function in order to give us “green” results: far from it. What we nevertheless find is that sustainability requires a move away from consumption and into knowledge and education.

As I said in the beginning, this is the path of human welfare that will enforce every generation’s right to be as well off as every other generation: these welfare levels can be sustained indefinitely, for as long as the species exists. But, as I also said, we may desire human development – that is, growth in welfare. In the next tables, I present the results of the following calculation: to maximize the level of human welfare at the first generation (in 2025) *subject to guaranteeing a rate of growth of welfare of 1% per annum forever.* (1% per annum turns out to be 28% per generation.) The emissions constraint is the same as before.

Table 4

Characteristics of the path sustaining welfare growth *ad infinitum* at 28% per generation

Generation	Welfare	Consumption	Education	Knowledge
2000	1	27.78	1.396	15.64
2025	1.159	32.18	1.648	48.39
2050	1.486	38.08	2.156	71.49
2075	1.906	38.80	3.134	91.19
2100	2.444	49.89	4.029	118.16

Now, note that consumption increases. All variables increase quite rapidly. What is the trade-off? Note that the welfare of Generation 1 is now 1.159 times the welfare at 2000, whereas in the zero-growth scenario, the welfare of Generation 1 was 1.168. Thus, Generation 1 sustains a slight decrease in welfare compared with the zero-growth path, to enable rapid growth of welfare in the future. Is this trade-off worth it? That depends on how much people value human development in the future.

In the next table I present the labor allocation associated with this optimal path.

Table 5

Labor allocation on the 28% per generation optimal growth path

Year	Education	Production	Knowledge	Leisure
2000	3.33%	28.3%	1.67%	66.7%
2100	3.63%	27.9%	3.77%	64.7%

Now, we notice that we shift labor resources into education as well as knowledge. Take account of the fact, as well, that the skill of labor has increased from 1.4 to 4.03: so the teachers are almost three times as well educated as they were in 2000. Leisure, interestingly, falls a little: but this is compensated by the increase in the *value of leisure* because people are so much more highly educated.

In short, it is perfectly possible to stay within the emissions constraint, and for welfare to grow at 1% per annum forever. This requires, however, a re-allocation of productive activities, emphasizing education and knowledge production a great deal more than we do at present.

Indeed higher growth rates are also possible. The *cost* of increasing the growth rate is to *reduce* the welfare of the first generation. The welfare reduction shown here appears to be very small. We have calculated that on the 2% per annum growth path (which means 64% growth in welfare per generation), the first generation's welfare falls from 1.169 to 1.146 – a fall in welfare of 2%. Whether or not the first generation wishes to abrogate its right to equal welfare with future generations in order to implement a growth rate of 64% in welfare per generation is an open question.

4. The political problem

Suppose that we, meaning those in our society who care about the rights of future generations, wished to implement one of these paths of human activity. Of course, what I have presented is only an example; one would like to make similar calculations for many different regions of the world. Implementing such a path in a market economy would require significant state intervention: taxes and subsidies would have to be designed that would induce economic agents to transform their activities from the present ones to ones corresponding to the optimal path. For instance, we would have to expend much more money in education; we would presumably have to raise the salaries of those who contribute to knowledge to induce almost three times as many workers to go into that field as at present. I have not discussed the investment rate and capital formation: that, too, has to change from what it is at present, which would require changing incentives to save and invest. In principle, all these things can be done, but not without quite significant intervention in markets. It is just not the case that markets by themselves can deliver an optimal path of intergenerational welfare.

Conservatives will of course oppose state intervention, and so they will oppose achieving these paths of sustainability or sustainable growth. More proximately, the oil and coal industries will oppose transforming energy production so as to limit emissions in the way required. One can ask: Why are the oil and coal companies so sharply opposed to undertaking the transformation required? After all, their executives have grandchildren, too. I believe this is a consequence of several psychological facts.

First among these is cognitive dissonance. In the United States at least, the warnings about climate change are associated with the left. Al Gore is not a flaming radical, but he is a Democrat, and he is perhaps the most prominent advocate of taking action on the problem of climate change. Conservatives reason that if the warnings are correct, then massive state intervention will be required, and since this is anathema to them, it *therefore* must be the case that the claims are unwarranted. If the fox cannot reach the grapes, then they must be sour.

The second characteristic is not wanting to be a party pooper. One of the leaders of high finance in the US described the situation before the financial crash this way: “While the music plays, you must continue to dance.” Nobody chief executive in the oil/coal nexus wants to be the first one to leave the dance floor. If you change your firm’s behavior (say, transform to clean energy) and the move does not pan out, you will be viewed as responsible. However, if nobody changes his behavior and catastrophe results, nobody is to blame: the catastrophe is viewed as an act of Nature.

The third psychological fact is myopia: short-run profits would probably suffer in companies that undertook massive changes in their operations. Given the behavior of the stock and bond markets, managers would be fired, at least in the United States. The situation is similar to what transpired in the banking industry: it is known as herd behavior. It is much safer to follow the herd than to branch out on one’s own. In a herd, there is anonymity.

The oil and coal companies do not simply lobby legislators to prevent legislation for clean energy: they also propagandize directly to the public. Americans, for example, are, in their majority, against increasing gasoline taxes, although these taxes are far below European taxes. The consequence is that automobile engines in the US are far less efficient than in Europe, cars are bigger, and the auto industry naturally lobbies against increasing efficiency, scaring consumers by saying the price of cars would go up hundreds or thousands of dollars if fuel efficiency were demanded. Americans are now paying about \$3 per gallon of gas, which is approximately 0.6 Euros per liter. There is tremendous resistance to increasing this tax: politicians advocate such an increase at their peril.

The responsibility for changing public opinion lies, in my view, with politicians, and first among these, with the president. The US House of Representatives passed a bill last year limiting emissions – not enough, but better than nothing. This year, a bill in the Senate died, a result of the Obama administration’s low priority for addressing climate change. The administration’s two major tasks in its first year and a half in office have been health and finance reform: both are important. The administration evidently did not possess the political capital to fight on a third front at the same time. The opposition to the health reform and financial reform have been extreme. Not one Republican senator or congressman voted for the health reform bill. The Republicans saw this bill as an opportunity to torpedo the Obama administration, and presented a united front against him. When Obama was elected, over half the population supported health reform: by the time the bill passed in the Senate, the popular support had dwindled to one-third, due to the malicious propaganda of the Republican Party against the bill. Europeans may look with incomprehension at this struggle: it is a sign of how powerful the political Right is in the United States, and of how little they are willing to compromise. When one understands that 58% of the economic growth in the last 30 years (1977 to 2007) went to households in the *top 1% of the wealth distribution*, one can see that concomitant transformation of political power to the Right is not a surprise. That such a distribution of the gains from growth was politically feasible is only due to the fact that a large plurality, if not majority, of the American polity has been convinced by the propaganda of the Right that the free market knows all, the government is inefficient and corrupt, and putting more power in the hands of the state (either through health reform or financial reform) is to be avoided at all costs.

One can see the timidity of the Obama administration when one listens to its justifications for pursuing a clean energy policy. These are: providing jobs, national security (that is, reducing dependence on Middle Eastern oil), and climate change – in that order. I have heard no public discussion of the duties the present generation has towards future generations.

While I criticized the behavior of captains of industry, we must also criticize the cowardly behavior of American politicians. It is their responsibility to educate the populace. A good example is John McCain: a respected politician, known as a maverick, who up until recently was a supporter of carbon-emissions legislation. But now it has become clear that he would probably lose the next senatorial election in Arizona, a right-wing state, if he continued to support emissions legislation. So he has done a *volte-face* on the question. Now let us suppose that McCain would lose the next senatorial election if he took a principle position on climate change. Has he not had a long enough career as a politician? Is it not worth losing and maintaining principle? Apparently not.

5. Growth and poverty

One of the most thoughtful arguments against addressing climate change is that doing so would, to some degree at least, require reducing focus upon the welfare of the poorest people today. Freeman Dyson, a well-known physicist, argues that coal is so cheap, that we should continue to build coal-burning electrical plants in the developing world as the easiest way to increase the standard of living of the poor. Sacrificing coal will hurt them. In terms of rights, we must weigh the rights of the worst-off people in developing countries today against the rights of future generations.

It must be added that Dyson is an optimist: he believes that we can put off worrying about climate change for a while. Human ingenuity will figure out how to deal with it after the pressing problem of world poverty has been successfully addressed.

I admit that I lack the expertise to evaluate Dyson's optimistic conjecture. However, I believe the uncertainties associated with increasing global temperature are so great that we must be very cautious. Bangladesh is a country of 140 million people, virtually all of which is below 10 meters in elevation above the sea. It is already subject to frequent flooding. A rise of the sea level by three meters would require the relocation of tens of millions of very poor people. We do not know how fast this rise in sea level will occur. It seems to me that prudence requires addressing this question through controlling GHG emissions. More generally, those who suffer from the floods and droughts and storms that accompany a rising global temperature will be disproportionately among the world's poor. It is hard to believe that the harms to them will not be greater than the harms to the poor from moving away from the use of coal.

6. Sharing the burden

How should the burden of sharing the reduction in GHG emissions, which is necessary to remain within an acceptable bound on carbon concentration, be shared among the world's nations? The *growth factor* of an economy is one plus its growth rate. My view is that emissions-constraints should be implemented so as to reduce the growth factors of all sufficiently developed countries by the same fraction.

Let me explain why. Suppose the GDPs of countries A and B are y^A and y^B , and their growth rates, under business-as-usual, are g^A and g^B , assumed to be constant. Then after T years, the ratio of their GDPs will be:

$$\frac{(1 + g^A)^T y^A}{(1 + g^B)^T y^B}.$$

Now suppose each country reduces its growth factor by a fraction r ; then the new growth factor will be $(1 - r)(1 + g)$. Therefore, after T years, the ratio of their GDPs will be:

$$\frac{((1 - r)(1 + g^A))^T y^A}{((1 - r)(1 + g^B))^T y^B} = \frac{(1 + g^A)^T y^A}{(1 + g^B)^T y^B}.$$

In other words, the ratio of their GDPs will be the same as under business-as-usual. I think this is a reasonable solution.

What about China? Suppose the US and China are bargaining about how much to reduce their emissions – indeed, such negotiations are going on in private as we meet. Suppose that a focal point of these negotiations becomes the date at which the Chinese will catch up to the US in GDP per capita. It is not unreasonable to suppose this will occur in three generations, about 75 years. If a proposal were made in which the Chinese would instead converge with the US GDP per capita in 100 years, the Chinese would cry foul: Why should you, the rich country, benefit, vis-à-vis us because of the climate-change problem? And similarly, the US would cry foul if the Chinese proposed emissions constraints that entailed US-Chinese convergence in 50 years. I suggest that a focal point of these negotiations will be to *maintain the date of convergence of US and China's GDPs per capita*. If so, the same reasoning applies as above: the two countries should agree to constraints which will reduce the growth factors of their GDPs per capita by the same fraction.

What of poorer countries? I suggest that there be transfers from the rich countries to keep countries with tropical forests from cutting them down, and that poor countries be unrestricted in their activities until they reach a certain level of GDP per capita. At that point, they should enter the same regime: of reducing their growth factors by the same fraction as the rich world reduces theirs. I believe this is politically reasonable. It is perhaps not the most desirable formula from an ethical viewpoint, but it may win the assent of the rich countries, and in particular, of the United States.

7. Chinese-American convergence in three generations

A back-of-the-envelope calculation suggests, as I said, that the GDPs per capita of China and the US will converge in approximately three generations, or 75 years. To be precise, if US GDP per capita grows an average of 2% per annum and Chinese GDP per capita grows at an average of 5% per annum over the next 75 years, then convergence will occur in 71.5 years.

Our research team has modified the model I described earlier, so that it contains both the North and the South: at each date there are “representative households” from the North and South. We approximate the North with the economic parameters of the US, and the South with the economic parameters of China, except we represent the populations of the two regions by their actual populations, and we project population increases over the next 75 years for the North and South using UN projections. We ask: What is the most attractive path of resource use by the South and North with the following properties:

- (1) that the South and North will converge in welfare per capita in three generations;
- (2) that global GHG emissions along the path are constrained by the IPCC IV path of emissions which converges atmospheric carbon concentrations at 450 ppm;
- (3) and that both the South and the North grow (in welfare per capita) along this path.

In the next figure (figure 3), I present the growth in welfare per capita of the South and North along the optimal path that we computed.

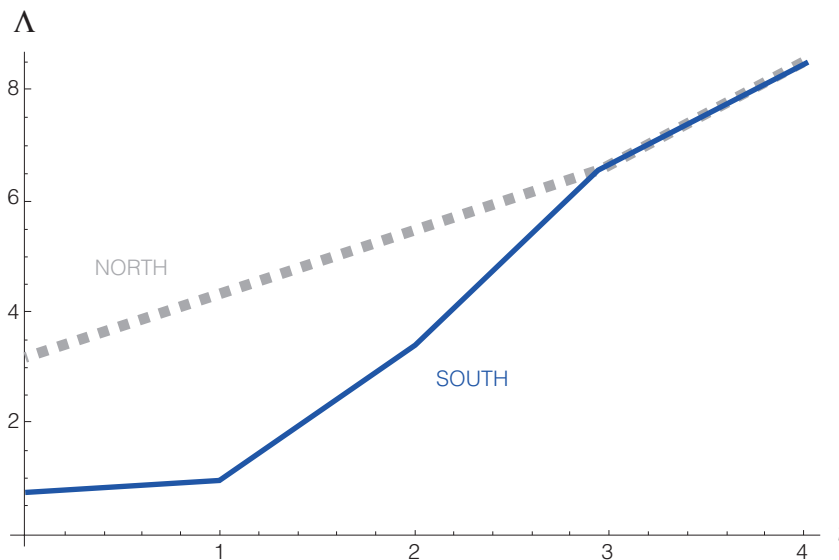


Figure 3

Growth paths of welfare of South and North in our model

All stocks and flows of labor, consumption, education, knowledge *and GHG emissions* are computed in order to produce this optimal path. I emphasize that the emissions of each region are computed as part of the optimization to produce these paths. The emissions, that is to say, are endogenous to the desired goal of convergence in three generations. The constraint, of course, is that global emissions at each date cannot exceed the pre-specified levels that are set by the requirement to converge to carbon concentration of 450 ppm. In the next figure (figure 4), I illustrate the emissions that are allocated to the South and to the North along this path.

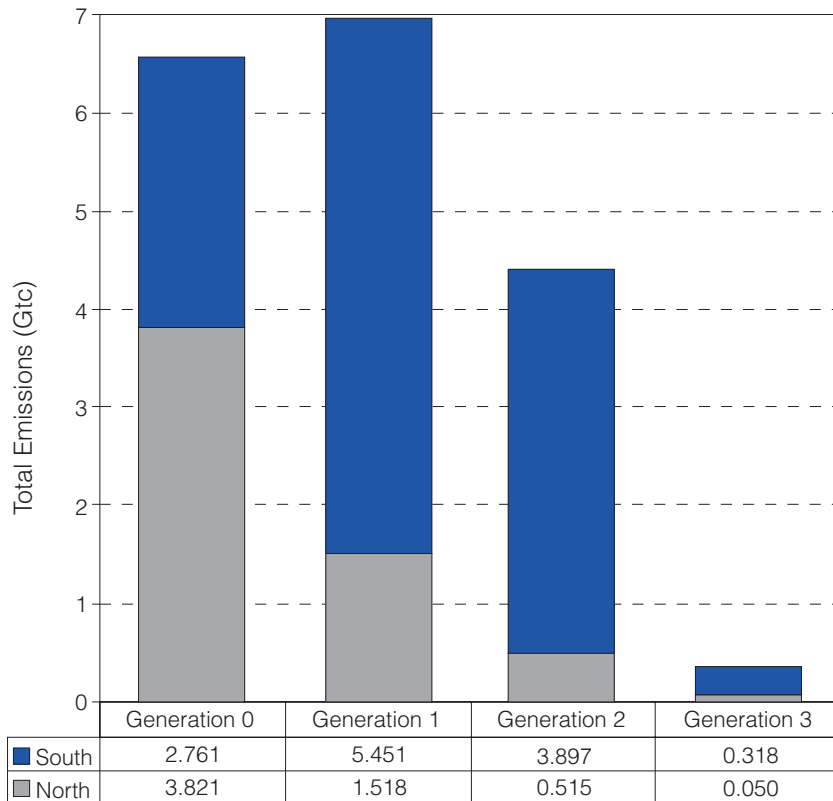


Figure 4

Total emissions: North, South and World in our model

Generation 0 is the year 2000; Generation 1 refers to the period 2000-2025, Generation 2 to the period 2025-2050, and so on. We see that, along the optimal path, the South emits the majority of global emissions at Generation 1, and the vast majority of emissions at the next two dates. The next figure (figure 5) shows the pattern of *per capita emissions* along this path.

We see that the North continues to emit more GHG per capita until Generation 2: at that point, the South emits more per capita than the North. From Generation 3 on, both North and South emit the same low level per capita.

Now I ask you step back a moment and think about our approach. There is a sharp debate taking place about how global emissions should be constrained, and what “rights” various countries or regions have to use the public good of the biosphere by polluting it with carbon. The approach I have described *does not proceed* from solving the problem of what these rights should be. Rather, it is a *political* approach, because it starts from the premise that an equilibrium in the bargaining between China and the US over emissions must maintain the date of convergence of Chinese and US GDP per capita. More generally, we maintain that an equilibrium in negotiations among various countries will *preserve the relative growth factors* of these countries. At least, I would say this is what will characterize the negotiations among the US, the EU, China, and the BRIC nations.

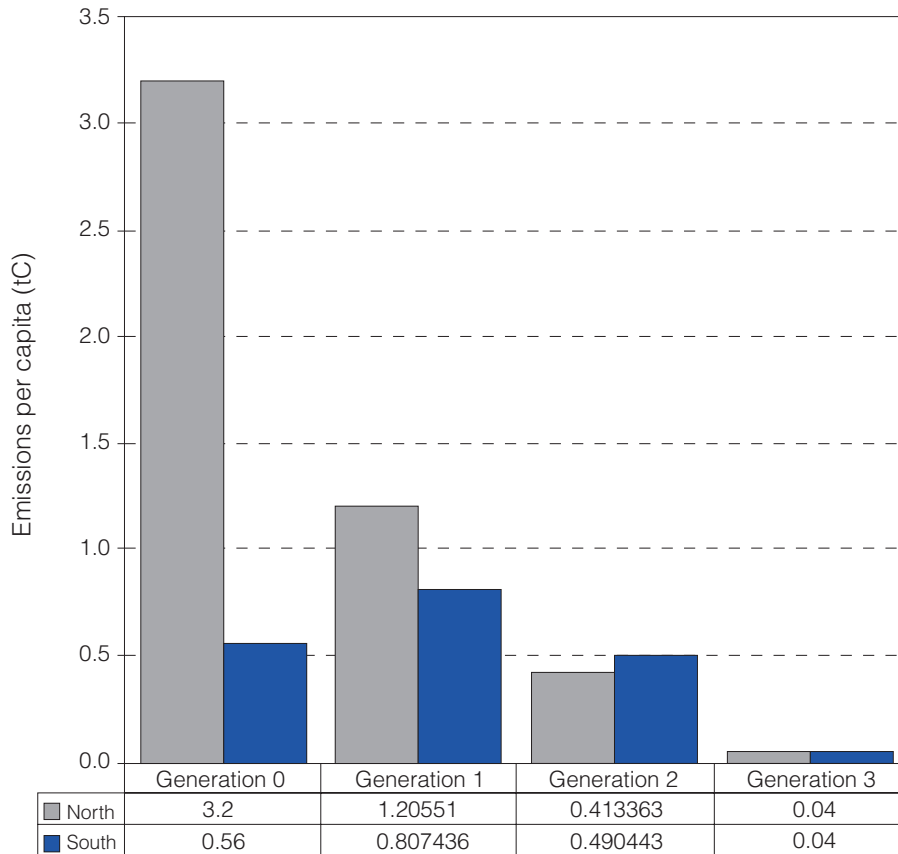


Figure 5

Per capita emissions: North and South, 2000-2075

We have said: Suppose it is the case that, absent the crisis of climate change, the North and South would converge in 75 years. We then asked: What is the optimal path which will preserve that date of convergence *and* respect the constraints on GHG emissions that are necessary? We then found what the optimal allocation of emissions was between the two regions along that path. Rights have never been invoked. The attempt has been to produce a politically feasible proposal.

8. Conclusion

I began with the assumption that future generations have a right to welfare at least as high as ours, and asked whether the restrictions on GHG emissions that are necessary to prevent catastrophic climate change make this feasible. Our research team has computed optimal paths which sustain human welfare at the highest possible level indefinitely, and I presented some results of that computation. Fairly significant re-allocations of labor would be necessary: in particular, more resources should be devoted to research, development, and knowledge creation.

I then argued that each generation may consider human development to be a public good, and desire that future generations be better off than they. I presented results showing how a growth rate of welfare of 28% per generation is feasible within the constraints of converging to 450 ppm atmospheric carbon.

These calculations produce paths that are economically and technologically feasible: implementing them would require overcoming the opposition to the use of fossil fuels that is currently severe in the oil and coal multi-national firms.

Finally, I considered the issue of economic development, and how emissions should be allocated between the North and South. I argued for a politically feasible solution. Focusing upon China and the US, the two largest emitters, I proposed that an equilibrium in the bargaining between them would reasonably entail maintaining the date of convergence of the GDPs per capita of the two nations. I then presented some details of the optimal path our team has computed which would implement convergence in welfare per capita of a South (like China) and a North (like the US) in 75 years. The allocation of emissions to the two countries comes about as part of the solution of the optimization problem. This approach is quite different from one which focuses upon *ex ante* rights that countries have to emit. While it may be attractive to say that each country has a right to emit carbon in proportion to its population, I do not think that approach will lead to a global agreement. In contrast, the goal of maintaining dates of welfare convergence, or, what is equivalent, reducing the growth factors of all sufficiently developed countries in the same proportion, will.

In sum, the realities of global warming do not prevent continued growth in human welfare, or the convergence of countries like China and India, in the course of the next century, to developed-country standards of living. The central problem is political, not economic, and the most recalcitrant actor is the United States. In a nutshell, the oil and gas industry, and their representatives in the Republican Party of the US – and also, I should add, in the conservative wing of the Democratic Party – have undertaken the strategy of attempting to convince voters that global warming is a hoax. Unless other American politicians can successfully counteract this reactionary program, we will fail in our duty to render future generations at least as well off as we are.

References

This lecture is based upon four papers, written by H. Llavador (University of Pompeu Fabra), John Roemer (Yale University), and Joaquim Silvestre (University of California, Davis). I thank my collaborators for permitting me to present some of our work in this form.

1. “A Dynamic Analysis of Human Welfare in a Warming Planet”.
2. “Intergenerational justice when future worlds are uncertain” (in press, *Journal of Mathematical Economics*).
3. “The ethics of intergenerational distribution in a warming planet” (in press, *Environmental and Resource Economics*).
4. “North-South convergence and the allocation of CO₂ emissions”.

The papers may be downloaded at <http://pantheon.yale.edu/~jer39/climatechange.html>

