

Social Security and the Right to Laziness

Beyond just Basic Income

Alexander De Becker and Flore Claus

I. Introduction

The idea of a basic income dates back centuries; the first to mention the idea was Thomas More in his book *Utopia*.¹ The concept of a basic income was further explicitly discussed in the work of Juan Luis Vives, *De Subventionem Pauperum* (*On the Assistance to the Poor*), where he proposed the notion of a subsistence minimum for the poorest inhabitants of a municipality.²

Although the idea was often discussed in the eighteenth and nineteenth centuries, it fell out of sight in most European countries in the second half of the twentieth century. The reason for this was because of the development of social security and social welfare systems.³ It resurfaced in the 1980s and is now founded in a larger quest for discussions in the post-growth debate.⁴ The idea of a basic income within a post-growth debate includes a transition towards a more sustainable and ecological model of social welfare and social security systems.

The number of real initiatives concerning the introduction of the right to a basic income remained very limited. In Finland, an initiative to introduce a basic income was organized. Nevertheless, the Finnish authorities installed a very limited regulation that provided for a small number of unemployed persons to receive a basic income of 560 euros without any associated control mechanism. The experiment included minor and temporary modifications of Finnish regulations regarding a basic income for jobless persons looking for a

¹ Thomas More, *De optimo statu reipublicae deque nova insula Utopia* (Dirk Martens 1516).

² Juan Luis Vives, *De subventionem pauperum* (De Crook 1526).

³ Jef Van Langendonck and others, *Handboek Socialezekerheidsrecht* (10th edn, Intersentia 2020) 20–32.

⁴ Kate Raworth, *Doughnut Economics: Seven Ways to Think like a 21st-Century Economist* (Random House 2018) 200, in particular. See also Chapter 5 by Carelli in this book.

job. Without going into further detail on the conditions of the Finnish right to a basic income,⁵ the modification did not include an adaptation of the general social security system. No fundamental legal basis was established concerning basic income in Finland.⁶ In Switzerland, a referendum rejected the introduction of a basic income.⁷

The main weakness in the scholarship defending the right to a basic income remains the legal foundations of positive law. However, those foundations are very important in underpinning the development of the idea of a basic income. This element will be addressed in this contribution.

First, we will discuss the role of social rights in the current framework. How have social rights (particularly the right to work and the right to social security) developed since their foundations? What are the current problems regarding the right to work and the right to social security? The focus will then be on the missing link in the current legal framework: the absence of the possibility not to work. In Western Europe, the right to work has evolved from a right to a duty for most citizens who can work. Alongside the development of the right to laziness, the right to work should also become freedom to work. The freedom to work includes the provision that, where somebody does not work, they are not to be penalized by being excluded from social security schemes. One may work as a form of personal development, but no one is obliged to do so. The shift from the obligation to work to the freedom to work offers new opportunities. However, the establishment of such a fundamental freedom, which may or may not be exercised, raises a new fundamental issue: how to ensure that the fundamental right to social security gets funded. The right to work, without an actual duty to work, weakens the link between labour and social security. In the current framework, the existing fundamental right to social security puts pressure on the existing fundamental right to work. Albeit, one must work to contribute to the realization of the right to social security.

This chapter attempts to overcome this connection. The shift from a right to work to a freedom to work, coupled with a right to laziness, introduces a real right not to work.⁸ These innovations include an opportunity to change

⁵ The right to basic income was limited to jobless persons between 29 and 58 years of age. The main reason was to lower the unemployment rate in Finland (which was historically high: Simon Birnbaum, Jurgen de Wispelaere, and Robert van der Veen, *Basinkomstens nya vaag* (IFF 2020) 32).

⁶ Act on the Basic Income (Lag om försök med basinkomst fra 13 December 2016) – unemployed persons between 29 and 58 years could opt for a basic income of 580 euros which was a very limited amount for a limited group within the larger scope of the safeguard of social security as a right.

⁷ Swiss Federal Council, ‘Unconditional Basic Income’ Popular Initiative <<https://www.admin.ch/gov/en/start/documentation/votes/20160605/unconditional-basic-income.html>> accessed 5 July 2023.

⁸ Some may indicate this a freedom from work but this is a too negative approach to positive rights, according to us.

existing balances. The idea will therefore be further developed within the context of post-growth strategies and indicate which new fundamental right should be created and how this right should be legally embedded.

II. The Current Right to Social Protection

A. The Right to Social Security at the International Level

Social security became an important issue in the nineteenth century with the development of industrialization. The concentration of large groups of workers in towns and cities with high poverty rates was accompanied by a growing social backlash for a category of people (mainly family members) depending on the limited income of factory workers.⁹

After the Second World War, the right to social security was incorporated into several international conventions. The right to social security was actually considered to be the foundation for a right to a basic income. Articles 22 and 25 of the Universal Declaration of Human Rights (UDHR) recognize the right to social security and social welfare. The inclusion of the right to social security within the UDHR was seen as a significant milestone towards establishing the right to a basic income. The preparatory documents include the following:

‘The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care’, as well as ‘provision for child welfare and maternity protection’¹⁰

The International Labour Organization (ILO) has taken significant steps in the development of the right to social security. Through Convention No 102 Social Security (Minimum Standards) of 1952, the ILO has had a major influence on defining the substance of the fundamental right to social security. Convention No 102 outlines the nine parts of social security: medical care, sickness benefits, unemployment benefits, old-age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits, and survivor benefits. According to article 3, the duty of the state is nevertheless limited as it

⁹ Andreas Gestrich, Elisabeth Grüner, and Susanne Hahn (eds), *Poverty in Modern Europe* (OUP 1986).

¹⁰ ILO: Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia), adopted by the International Labour Conference at its 26th Session, held in Philadelphia, on 10 May 1944, arts III(f) and (h).

stipulates that only three branches of the nine mentioned in the Convention must be included. These branches are medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity, and survivors' benefits. Consequently, the legal impact of ILO Convention No 102 remains limited.

The right to social security is further guaranteed at the international level in article 9 of the International Convention on Economic, Social and Cultural Rights (ICESCR) and within the European context, by the European Code of Social Security, which has been established under the framework of the Council of Europe. Additionally, the recently introduced Pillar of Social Rights of the European Union (EU) also includes the right to social protection (Principle No 12).

Within this framework, two distinct models of social security systems were developed. The Bismarck model (launched in 1889)¹¹ was based on an existing professional bond. Social security in the Bismarck model is commutative, meaning that the contribution of individuals through labour leads to the opening of social security and/or social welfare rights for the same persons. In contrast, the Beveridge model (originating from a report on social insurance submitted by the English economist William Beveridge to the UK government in 1942) adopts a universal health care approach for citizens, with a National Health Service (NHS) paid for by taxpayers.¹² The idea of healthcare for all citizens is a universal and distributive concept. Everyone in need is entitled to free healthcare, whether the citizen concerned is working or not.¹³

The Bismarck model primarily encompassed countries in Central Europe (Austria, Belgium, Bulgaria, France, and Germany). In contrast, the Beveridge model was mainly developed in Northern European countries (the UK, Denmark, and Sweden).

However, harmonization of social security models at international and EU levels remains limited.¹⁴ The EU has taken one significant step towards harmonizing social security systems through Council Recommendation 92/442/

¹¹ Timothy W Guinane, Tobias A Job, and Jochen Strep, 'Bismarcks Sozialversicherung und ihr Einfluss auf Deutschlands demografischen Wandel' (2021) 101(4) *Zeitschrift für Wirtschaftspolitik* 246.

¹² The Beveridge report of 1 December 1942, often discussed but very well described, in Gwyn Bevan, Jan-Kees Helderman, and David Wilsford, 'Changing Choices in Health Care: Implications for Equity, Efficiency and Cost' (2010) 5(3) *Health Economics, Policy and Law* 251.

¹³ The right to social security is recognized in art 22 UDHR and in arts 9 and 10 ICESCR. Furthermore, art 11 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) recognizes the right to social security for women. Article 26 of the Convention on the Rights of the Child (CRC) also specifically guarantees the right of the child to social security and social insurance.

¹⁴ We should point out the importance of Council Regulation (EC) 1408/71 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L149/7 as this Regulation granted an important content to free movement of persons in the EU while keeping social protection.

EEC of 27 July 1992 on the convergence of social protection objectives and policies, which provides five criteria that combine the Bismarck and Beveridge models: (1) to guarantee a level of resources in keeping with human dignity; (2) the chance to benefit from the system for the protection of human health existing in the Member State; (3) to help to further the social integration of all persons legally residing within the territory of the Member State and the integration into the labour market of those who are in a position to exercise a lucrative activity; (4) to provide a replacement income for employed workers who cease work at the end of their working lives or are forced to interrupt their careers owing to sickness, accident, maternity, invalidity, or unemployment; and (5) to examine the possibility of introducing and/or developing appropriate social protection for self-employed persons.

Within the framework of the Council of Europe, the European Court of Human Rights (ECtHR) has ruled in a few cases that certain elements of social security can be linked to a fundamental right with direct effect.

This direct effect has the potential to harmonize the two social security models. Despite the significance of these judgments, the harmonizing effect of the judgments remains rather limited as they primarily focus on procedural guarantees and the right to property. Furthermore, the case law only focuses on pensions.¹⁵

That leads to the conclusion that social security law is primarily developed within national frameworks, which means that the recognition of a fundamental right is only the starting point. Further development lies in the hands of the Member States which have signed the conventions.

As a result of the EU initiatives, countries following the Bismarck model are no longer exclusively financed by social contributions paid by employers and workers.¹⁶ Contributions paid by taxes grew in countries that initially followed the Bismarck model.¹⁷ Conversely, some countries that initially adopted the Beveridge model have also introduced other forms of funding, such as contributions by employers and employees.¹⁸

¹⁵ Ana Gómez Heredero, *Social Security as a Human Right* (Council of Europe Publishing 2007).

¹⁶ Anja Rohwer, 'Bismarck versus Beveridge: ein Vergleich von Sozialversicherungssystemen in Europa' (2008) 61(21) *ifo Schnelldienst* 26, 28.

¹⁷ Laurence J Kotlikoff, 'Fixing Social Security: What Would Bismarck Do?' (2011) 64(2.1) *National Tax Journal* 415.

¹⁸ Twenty per cent of the UK budget for health service is paid by employers and employees, to be found on 'The Right to Social Security in National Law' <<https://www.commonwealthfund.org/international-health-policy-center/countries/england>> accessed 11 April 2023.

B. The Right to Social Security in National Law

Besides a limited harmonizing effect on national social security systems, none of the international and European human rights instruments grant individuals a direct right to social security. Therefore, social security remains a predominantly national subject.¹⁹ No direct right to social security exists in any EU Member State. In fact, the wording of the articles of all the EU Member State constitutions confirms the non-direct effect of the right to social security (Table 11.1).

In conclusion, it is evident that the recognition of the right to social security as a fundamental constitutional right in all EU constitutions necessitates an active role of the state in establishing an adequate system.

C. The Impact of National Regulation on the Existing Models in the EU

Several countries in Middle Europe, for example Austria, Belgium, the Czech Republic, Estonia, France, Germany, and Slovakia, adhere to the Bismarck model, meaning that they have opted for a system where social security is funded by the contributions of employers and employees.²⁰ This funding accounts for over 65 per cent of the financing of the social security system. However, there is a growing trend among EU Member States to fund their social security schemes through increased governmental intervention on top of contributions from workers, employers, and employees. This shift indicates a convergence of funding methods.²¹

One of the major drawbacks of the Bismarck model is its reliance on a societal structure where the number of workers must be larger than the number of individuals requiring support.²² This makes the model sensitive to demographical

¹⁹ Article 1 First Protocol ECvHR: 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in the general interest or to secure the payment of taxes or other contributions or penalties.' This article is often invoked in litigation on pensions: Heredero, *Social Security as a Human Right* (n 15) 23–30.

²⁰ Rohwer, 'Bismarck versus Beveridge' (n 16) 26–29.

²¹ France, Italy, Spain, and Portugal have increasingly used taxes to fund their social security schemes. See *ibid* for more on this.

²² José Ignacio Condé-Ruiz and Clara I Gonzalez, 'From Bismarck to Beveridge: The Other Pension Reform in Spain' (2016) 7 *SERIEs* 461, 482–83.

Table 11.1 Right to social security in constitutions in Europe

Constitution	Article	Content
Austria	-	-
Belgium	23	The right to social security shall be established by the state: to this end, the laws, federate laws, and rules referred to in article 134 guarantee economic, social, and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.
Bulgaria	51	The right to social security to be established by the state: (1) Citizens shall have the right to social security and social assistance. (2) The state shall provide social security for the temporarily unemployed in accordance with conditions and procedures established by law. (3) The aged without relatives and unable to support themselves, as well as persons with physical and mental disabilities shall receive special protection from the state and society.
Croatia	57	The right of employees and their family members to social security and social insurance shall be regulated by law and collective agreements.
Cyprus	9	Every person has the right to a decent existence and to social security. A law shall provide for the protection of the workers, assistance to the poor, and for a system of social insurance.
Czech Republic	30	Act of Parliament deals with how the right is provided.
Denmark	75	The right to social assistance to the extent that someone fulfills the legal conditions to receive them.
Estonia	28	Every citizen of Estonia is entitled to government assistance in the case of old age, incapacity for work, loss of provider, or need. The categories and extent of the assistance, and the conditions and procedure for its allocation are provided by law.
Finland	19	Everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider. The public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health, and medical services and promote the health of the population.
France	11 and 22(5)	The French Republic shall guarantee to all people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working shall have the right to receive suitable means of existence from society. Article 22(5) provides a right to social security taken care of by the state.

(continued)

Table 11.1 Continued

Constitution	Article	Content
Hungary	70	A right to social security which will be implemented by the Hungarian Republic.
Ireland	45	A right to distribution of common goods to protect the weaker better.
Italy	38	The right to social security but without direct effect before the judiciary.
Latvia	109	The right to social security for citizens of Latvia.
Lithuania	52	The state shall guarantee social security rights.
Luxemburg	11.5	A right to social security regulated by law.
Malta	17	A right to social protection but without any direct effect.
The Netherlands	20	<ol style="list-style-type: none"> 1. It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth. 2. Rules concerning entitlement to social security shall be laid down by Act of Parliament. 3. Dutch nationals resident in the Netherlands who are unable to provide for themselves shall have a right, to be regulated by Act of Parliament, to aid from authorities.
Poland	68.1	Public authorities shall ensure equal access to health care services, financed from public funds.
Portugal	63	Public authorities shall ensure equal access to health care services, financed from public funds.
Romania	47	The law stipulates how social security rights shall be secured.
Slovakia	39	Details concerning the rights shall be established by Parliament.
Slovenia	50	Task to provide a social security system on the shoulders of the state.
Spain	41	The right to social security contains a task for the state.
Sweden	2 (Instrument of Government)	The right to social security is an aim of government.

developments.²³ Data show that the number of social security-dependent elderly persons (who are over 65 years of age) is increasing from around 25 per cent of the population in 2000 towards 50 per cent of the population in 2050.²⁴

These demographic changes place a strain on the funding basis of social security systems. Consequently, the social contributions will become insufficient

²³ EUROSTAT indicates that only 20 per cent of the population is younger than 20 years while 21 per cent of people in the EU are older than 65 to be consulted at <europa.eu.int>.

²⁴ Rohwer, 'Bismarck versus Beveridge' (n 16) 28.

to fund the existing social security schemes. In that context, a shift to the Beveridge model based on general tax payments could be considered a solution. Nonetheless, such a shift is not easy, nor will it be fully effective in addressing the issue, as demonstrated by Spain's attempt to make the necessary changes in the pension schemes. The pensions granted under the Bismarck model were significantly higher than the general (minimum) pensions provided under the Beveridge model.²⁵

In addition, employment relations shift in the EU. More and more self-employed persons count only one client or a very dominant client.²⁶ The Netherlands has the biggest problem because 31.3 per cent of self-employed persons confirm that their client controlled their working process.²⁷ This evolution is linked to the rise in the number of self-employed persons without employees.²⁸ Even if not all the EU Member States share the problem in the same manner, it does indicate that shifting work relations imply more uncertainty over contributions to fund the social security systems. This is mainly significant for countries following the Bismarck model. Bogus self-employed persons whose work is dominated by one client are no longer considered employees in countries such as the Netherlands, France, Italy, and Spain.²⁹ The group of contributors decreases, which leads to a problem of funding the Bismarck model.

Some authors, therefore, prefer the Beveridge model.³⁰ That model is also under pressure because a similar problem arises due to demographic evolutions. If the group relying on the taxes of others for their income is at least as large as the group responsible for providing the funding through taxes, it becomes evident that the existing regime is no longer sustainable. This observation applies particularly to the Beveridge model, where the majority of the taxes are income taxes. When considering the division of taxes, it becomes clear that, in the long run, the Beveridge model is also not sustainable.³¹ Therefore, a shift towards another model to fund the right to social security is necessary.

²⁵ Condé-Ruiz and Gonzalez, 'From Bismarck to Beveridge' (n 22) 482–83.

²⁶ This statement is confirmed by 18 per cent of the self-employed persons in the EU, to be found at Eurostat statistics explained at Self-employment statistics – Statistics Explained (europa.eu).

²⁷ To be found at Eurostat statistics explained at Self-employment statistics – Statistics Explained (europa.eu).

²⁸ Eurofound, 'Exploring self-employment in the European Union' (Publications Office of the European Union, Luxembourg 2017) 7, to be found at Exploring self-employment in the European Union (european-microfinance.org).

²⁹ *ibid* 45.

³⁰ Condé-Ruiz and Gonzalez, 'From Bismarck to Beveridge' (n 22) 482–83.

³¹ Sweden and Denmark figure among the countries with the highest income taxes <https://stats.oecd.org/index.aspx?DataSetCode=TABLE_I7> (accessed on 11 May 2024) while the UK did not provide a full possibility for a pension for many citizens. See Traute Meyer and Paul Bridgen, 'Towards German Liberalism and British Social Democracy: The Evolution of Two Public Occupational Pension

Analysis of the tax reform required in different countries is a matter that requires the expertise of economists and public administration specialists.³² When it comes to the fundamental right to social security though (in case it is retained as it was established in ILO Convention No102 but also in art 34 of the EU Charter of Fundamental Rights), a different approach is needed. The fundamental right cannot be granted under the same conditions as in the past. Neither the Bismarck model nor the Beveridge model is sustainable through the demographic evolution. Specifically for the Bismarck model, the shift in employment relations will further affect the funding of the model. That applies particularly to countries such as the Netherlands, Spain, Italy, and Greece.³³

Consequently, the financing model of most social security systems, which has relied on economic growth and contributions from employed individuals, is facing significant pressure.

III. The Right to Social Security in a Novel Framework

The right to social security is mentioned in major international treaties. Nevertheless, this fundamental right is not sufficiently enforced in practice. Many EU constitutions explicitly recognize the fundamental right to social security or, at the very least, impose a duty on the state to provide social security.³⁴ This duty entails the development of policies that grant social security, including healthcare, in most cases.

Therefore, maintaining this right requires an important reform of the existing systems. The concept of a basic income, in conjunction with the idea of a post-growth societal model, provides a new foundation for such reforms.

Regimes from 1945 to 2009' in Jochen Clasen (ed), *Converging Worlds of Welfare? British and German Social Policy in the 21st Century* (OUP 2011) 157.

³² Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (Chelsea Green Publishing 2017) 140–70 where she pleads for a distributive economy and Thomas Piketty, *Le Capital au XXI siècle* (Editions du Seuil 2013), where he pleads for taxation based on wealth and not on income.

³³ Eurofound (2017) (n 28) 45.

³⁴ Article 38 of the Austrian Constitution; art 23 of the Belgian Constitution; art 57 of the Croatian Constitution; art 9 of the Cypriot Constitution; art 75, para 2 of the Danish Constitution; art 19 of the Finnish Constitution; art 22 of the Greek Constitution; art XIX of the Hungarian Constitution; art 109 of the Latvian Constitution; art 48 of the Lithuanian Constitution; art 11 of the Luxembourgian Constitution; art 20 of the Dutch Constitution; art 67 of the Polish Constitution; art 63 of the Portuguese Constitution; art 34 of the Romanian Constitution; art 50 of the Slovenian Constitution; art 41 of the Spanish Constitution; art 2(2) of the Swedish Instrument of Government.

To reaffirm the right to social security, it must be separated from the right to work. As Bueno correctly pointed out, labour law aims to protect the weaker against the risks linked to the execution of labour.³⁵

The problem is that in most EU countries that adopt a primarily Bismarck model, the right to work has evolved almost towards a duty to work in order to ensure enough contributions to afford social security. This approach can lead to potential income losses for unemployed individuals who are unable to find employment.³⁶ It is unrealistic to place this burden solely on a shrinking group of workers and employers. The right to work, as currently conceived, does not adequately support the idea of individual growth, and it does not ensure, in practice, a reasonable income in order to afford a reasonable life to provide you and your family with.³⁷ Moreover, work serves as an important means to generate social security for others.

The predictable outcome of the current model is that as the numbers of elderly persons grow in comparison to the working-age population, there will be a need for cost-saving measures in social security. That is exactly what is happening in those EU Member States. Several EU Member States, such as Belgium, France, Italy, and Portugal, are already undergoing significant reforms to their social security systems. The reasons behind those reforms are always similar: governments and parliaments decide to cut into the funding of social security schemes. Still, at the same time, they decide to keep the social security model as they are obliged to do so within the international legal framework.

In the long run, these reforms will not stand the heat. The major concern remains the funding of the model. An economy not based on growth still needs sufficient resources to ensure this fundamental right. Alongside the idea of a post-growth economy which may lead to a reversal of priorities, where leisure and free development become more important than the right to work. The right to work remains of the utmost interest given its role in productivity.

Productivity is no longer the sole aim of the economic model. The non-domination approach, which has received significant attention in recent years, allows workers to make employment choices that are not driven by economic necessity or the fear of income loss.³⁸ This approach emphasizes that work

³⁵ Nicolas Bueno, 'Freedom at, through and from Work: Rethinking Labour Rights' (2021) 160(2) *International Labour Review* 311, 325.

³⁶ Belgium, Acts of 28 December 2011; France, the Act is pending before the Constitutional Council which will decide on 14 April; Italy, Act of 28 January 2019; Portugal, Act of 9 December 2022.

³⁷ Paul Schoukens, Alberto Barrio, and Eleni De Becker, 'Platform Economy and the Risk of in-Work Poverty: A Research Agenda for Social Security Lawyers' in Valerio Di Stefano and others (eds), *A Research Agenda for the Gig Economy and Society* (Edward Elgar 2022) 93, 93–95.

³⁸ Bueno, 'Freedom at, through and from Work' (n 35) 317–19.

decisions should be based on the capacity of individuals to find fulfilment in their lives rather than being driven by anxiety.³⁹

Within this framework, two major shifts need to take place regarding fundamental labour rights:

- (1) To develop a crucial right to laziness: the right to receive social security should no longer be based on the duty to work but on human existence without conditions;
- (2) To establish true freedom to work that truly ensures free human development rather than the duty to work as it is currently shaped.⁴⁰

A. The Right to Laziness: Not Enough as a Legal Basis

The right to leisure, as outlined in article 24 UDHR, does not suffice as the legal basis for a fundamental right as it is still linked to work and the right to work (including reasonable working time, holiday, and resting time). 'Reasonable limitation of working hours' and 'periodic holidays with pay' are the constitutive elements. What is required here is a right not to engage in work rather than simply a right to recover from work.

The concept of a right to laziness becomes crucial when the aim is to adapt to a new societal conception or utopia. The fear traditionally associated with the idea of creating a right to laziness needs to be dispelled. Self-development becomes essential for shaping a new vision of society and reimagining social security and the freedom to live one's life.

The right to laziness has to be recognized besides the freedom to work. Working should no longer be the basis for financial resources. Labour rights currently focus on the creation of a financial income. Many authors actually support this idea. Bueno highlights a significant challenge in developing the idea that a basic income would liberate people when their income needs to be provided by adequate funding.⁴¹ Dumont and Dermine state

³⁹ Virginia Mantouvalou, 'Legal Construction of Structures of Exploitation' in Hugh Collins, Gillian Lester, and Virginia Mantouvalou (eds), *Philosophical Foundations of Labour Law* (OUP 2012) 188, 188–92.

⁴⁰ Elise Dermine, 'Activation Policies for the Unemployed and the International Human Rights Case Law on the Right to a Freely Chosen Work' in Elise Dermine and Daniel Dumont (eds), *Activation Policies for the Unemployed, the Right to Work and the Duty to Work* (Peter Lang 2014) 139.

⁴¹ Bueno, 'Freedom at, through and from Work' (n 35) 322.

that, currently, fundamental labour rights do not address the social utility of work.⁴²

From a legal standpoint, the term 'duty to work' provides a better description than the right to work. It is legally recognized that the right to work exists in order to allow people to develop a decent life. This necessitates a reasonable and fair wage. Therefore, the right to work should encompass the ability to live a decent life. Nonetheless, recent research reveals that the possibility of ending up in poverty significantly increases when a (single) individual relies on social security revenue.⁴³ Living for an income which is based on the incapacity to work or living for a pension seems inadequate for the development of a decent life.⁴⁴

In fact, the basic right to social security also includes an implicit duty to work.⁴⁵ The activation policies in different EU countries involve the state actively intervening to promote forms of employment. Jobless individuals are encouraged to respond to job vacancies, participate in unpaid training periods, or consider internship opportunities, as highlighted by Dermine, Dumont, and Adkins.⁴⁶ As mentioned earlier, the current understanding of the right to work is closely tied to productivity. Dermine and Dumont have already pointed out that most international standards also include (alongside supporting some aspects of decommodification) the support of a productivity model.⁴⁷ Productivity is crucial for financing existing social security models. Given that most EU countries combine features of both the Bismarck and Beveridge models, it is, at this stage, inconvenient to combine both.

Social security law and basic social security rights are not solely based on work itself, but accessibility becomes linked to the execution of work. However, authors such as Cholbi underestimate this necessary link by claiming that there

⁴² Elise Dermine and Daniel Dumont, 'A Renewed Critical Perspective on Social Law: Disentangling Its Ambivalent Relationship with Productivism' (2022) 38(3) *International Journal of Comparative Labour Law and Industrial Relations* 237, 254.

⁴³ <[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_statistics_on_income_and_living_conditions_\(EU-SILC\)_methodology_-_people_at_risk_of_poverty_or_social_exclusion#Description](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_statistics_on_income_and_living_conditions_(EU-SILC)_methodology_-_people_at_risk_of_poverty_or_social_exclusion#Description)> consulted on 11 May 2024. Even for people in employment the risk is rising, see Christina Hiessl, 'Working, Yet Poor: A Comparative Appraisal' in Luca Ratti (ed), *In Work Poverty in Europe: Vulnerable and Under-Represented Persons in a Comparative Perspective* (Kluwer 2022) 313.

⁴⁴ <[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_statistics_on_income_and_living_conditions_\(EU-SILC\)_methodology_-_people_at_risk_of_poverty_or_social_exclusion#Description](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_statistics_on_income_and_living_conditions_(EU-SILC)_methodology_-_people_at_risk_of_poverty_or_social_exclusion#Description)> accessed on 11 May 2024.

⁴⁵ Amir Paz-Fuchs, 'The Right to Work and the Duty to Work' in Virginia Mantouvalou (ed), *The Right to Work. Legal and Philosophical Perspectives* (Hart Publishing 2015) 177. See also Dermine and Dumont, 'A Renewed Critical Perspective' (n 42) 253.

⁴⁶ Lisa Adkins, 'Out of Work or Out of Time? Rethinking Labor After the Financial Crisis' (2012) 111(4) *South Atlantic Quarterly* 621; Dermine and Dumont, 'A Renewed Critical Perspective' (n 42) 253.

⁴⁷ Dermine and Dumont, 'A Renewed Critical Perspective' (n 42) 262.

is no duty to work because there exists only limited reciprocity.⁴⁸ The duty to work is, to a certain extent, linked to the possibility of enjoying some social security benefits (benefits for the unemployed or entitlement to a pension). Despite this existing link, the duty to work may not be counterbalanced on an individual level with regard to the productivity of the function executed. Therefore, in our approach, it needs to be considered within a broader context, focusing on the duty to work to ensure the solvability of the existing system.⁴⁹

Reforms of current social security systems increasingly emphasize the importance of work. The expectation is that every adult should work, and continue working longer, to ensure the affordability of the social security system. However, without major modifications in the demography of European countries, these reforms may not be enough to overcome the crisis.

Given the financial unsustainability of the current system, this chapter seeks to explore a utopian solution. This utopian solution involves shifting the focus away from the productivity of work as a means to contribute to the social security systems. Instead, the focus should revolve around how society can afford a reasonable quality of life for everyone without placing excessive pressure on all participating citizens. The focus should no longer be on the productivity of work to contribute to social security systems but on how society can afford a reasonable life for everyone without putting too much pressure on all citizens participating in that society.

In our opinion, the most fundamental shift in thinking lies in developing a comprehensive and individual right to laziness. The right to laziness encompasses the choice not to work (the negative freedom to work)⁵⁰ but goes beyond that because the right to a decent life as a fundamental right needs to be combined with the right to laziness. That implies a fundamental shift in the existing recognition of human rights (including socioeconomic rights).

Based on this right to laziness, a new model can be developed to guarantee a fundamental right to social security.

B. Right to Work Interpreted as a Freedom

Article 6 ICESCR defines the right to work as ‘the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will

⁴⁸ Michael Cholbi, ‘The Duty to Work’ (2018) 21(5) *Ethical Theory and Moral Practice* 1119, 1131–33.

⁴⁹ Rohwer, ‘Bismarck versus Beveridge’ (n 16) 28.

⁵⁰ Nicolas Bueno, ‘From the Right to Work to Freedom from Work’ (2017) 33(4) *International Journal of Comparative Labour Law and Industrial Relations* 463.

take appropriate steps to safeguard this right'.⁵¹ It has a more profound interpretation than the European Convention on Human Rights (ECHR), which prohibits forced labour and establishes a positive right to be employed, but not a factual duty to work to fund the right to social security.⁵²

Previously, the right to work sparked a similar discussion during the drafting of article 23 UDHR. René Cassin, a French lawyer, professor, and former French representative for the League of Nations, introduced an important element by stating that 'everyone has the right and duty to perform socially useful work to the full development of his personality'. He derived this from the French Constitution of 1946.⁵³ Despite his efforts, the US vetoed his proposal because the phrase 'duty of work' could be interpreted as 'forced labour in some countries'.⁵⁴ Additionally, the reference to the 'development of his personality' never made it to the final version of the right to work because some parties, such as the UK and Chile, felt that one could already read this into article 29 UDHR. Consequently, to distinguish the core principles from the further interpretation or details, that part of the article was removed.⁵⁵

In the current framework, work is considered a safeguard against poverty. That is also the approach taken by the ECtHR. However, the approach of imposing a duty to accept work in case of unemployment needs to be revisited.

Nevertheless, this approach is prevalent in many Treaties. Article 1 of the European Social Charter, for example, emphasizes states' ability to provide employment opportunities to address social security issues.

The right to work has never been fully established as a positive right for citizens of the signatory parties. Furthermore, many Member States consider it a duty to develop policies aimed at providing employment for their citizens.⁵⁶ This obligation extends to achieving the highest possible employment rate, to the extent that the EU publishes figures on the employment rates in each

⁵¹ International Covenant on Economic, Social and Cultural Rights (Adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁵² Philip Harvey, 'Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously' (2002) 33(2) *Columbia Human Rights Law Review* 363, 380.

⁵³ United Nations Secretariat, Plan of the draft outline of an International Bill of Rights (1947) UN Doc E/CN.4/AC.1/3/Add.2.

⁵⁴ UNCHR, Summary record of the 9th meeting (1947) UN Doc E/CN.4/AC.1/SR.9, 11. Mary Ann Geldon, 'John P. Humphrey and the Drafting of the Universal Declaration of Human Rights' (2000) 2 *Journal of the History of International Law* 250, 257. A possible explanation could be the economic crisis after the Second World War, where the US and several other states were confronted with high unemployment rates. See also Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Pennsylvania Press 1999) 162.

⁵⁵ UNCHR, Summary record of the 9th meeting (n 54). UNCHR, Summary record of the 14th meeting UN Doc E/CN.4/AC.1/SR.14, 6.

⁵⁶ Article 23 of the Belgian Constitution or art 30 of the Dutch Constitution, eg.

Member State.⁵⁷ In reality, that means that the state has to make as much effort as possible to provide a job for each citizen in the country.⁵⁸ The natural consequence is that the states do not really develop a right to work but a duty to work to finance their Bismarck or Beveridge model.

Currently, the right to work is often exploited to ensure the fulfilment of another right, namely the right to social security. Each state requires a workforce which is large enough to provide social security for all of its citizens.

Bueno, Dermine, and Dumont propose an alternative idea where work should not be solely linked to increased productivity but also personal development.⁵⁹ These theories promise an interesting different approach towards the right to work. The realization of the right to work depends on the individual. One may choose to work for personal development, but it remains a free choice. There is no obligation to work. You can choose to work or not to work.

C. End of the Current Duty to Work

The right to work has evolved towards a duty to work due to the development of the right to social security.⁶⁰ The legal obligation to provide a fundamental right to social security also implies that the right to social security needs to be financed. Therefore, the right to work needs to guarantee the payments of social contributions, primarily paid by employers and, to a lesser extent, by employees within the EU. However, demographic changes, such as the ageing population, the declining younger generations, and shifting employment relations, pose challenges to the sustainability of the current social security system. The system places constant pressure on the working population to provide sufficient means for those not in the workforce, creating a self-perpetuating cycle.

To maintain the affordability of social security, many EU Member States are evolving towards a strict regulatory framework on unemployment and sickness. Examples of that behaviour include the higher retirement age in several EU Member States like Belgium, Denmark, Ireland, the Netherlands, Germany, and France. These developments highlight the inconsistency in the evolution of social security policies across different countries.

⁵⁷ This fits the human capital theory as developed by Gary Becker. See A Coppin, *The Human Capital Imperative* (Springer 2017).

⁵⁸ Dermine and Dumont, 'A Renewed Critical Perspective' (n 42) 266.

⁵⁹ Nicolas Bueno, 'From Productive Work to Capability-Enhancing Work: Implications for Labour Law and Policy' (2022) 23(3) *Journal of Human Development and Capabilities* 354, 362; Dermine and Dumont, 'A Renewed Critical Perspective' (n 42) 262.

⁶⁰ Heredero, *Social Security as a Human Right* (n 15) 23–29.

A basic income has the potential to fundamentally change this approach, despite being raised in the recent past.⁶¹ Under a basic income system, the state provides sufficient income to guarantee a decent life for all individuals. That would require a complete rethinking of the legal concept of social protection, as pointed out by Dumont,⁶² but also of the financing models of social protection. In this system, individuals have the freedom to work for personal or financial development, but no one is obliged to do so. Legally, anyone has the freedom not to work or, better yet, the right to stay lazy. One may shift from one's freedom to work towards one's right to laziness.

Obviously, questions will arise regarding how the right to social security should be financed. It is certainly challenging for legal experts to determine the best approach to funding. Many ideas have been proposed. For example, a tax on consumption or wealth rather than income.⁶³ To some extent, this may help to overcome the current dysfunctional approach where working individuals bear the burden of supporting those living off a basic income. On the other hand, some businesses may have doubts about developing their products due to the inclusion of taxes in their pricing. The feasibility and implications of such financing models remain to be seen.

The introduction of consumption taxes has delivered positive economic outcomes in EU Member States with high vaccination rates. Consumption has proven to be a human necessity and a driving force behind economic growth.⁶⁴ Therefore, taxation on consumption rather than on labour is a very important shift to establish freedom to work and a right to laziness.

IV. Conclusion

The current legal framework is not conducive to the sustainable development of social security. Alternative forms of financing our social security models will be necessary to ensure the continuity of our welfare states.

When analysing recent and ongoing reforms in different EU Member States, it becomes apparent that the focus is primarily on increasing efforts of the working population to sustain social security in the future. Nonetheless,

⁶¹ Daniel Dumont, 'Universal Basic Income as a Source of Inspiration for the Future of Social Protection Systems? A Counter-Agenda' (2022) 24(4) *European Journal for Social Security Law* 299.

⁶² *ibid* 301–02.

⁶³ Piketty, *Le Capital au XXI siècle* (n 32), where he argues for taxation based on wealth and not on income.

⁶⁴ Jonathan Cylus and others, 'Consumption and Tax Gains Attributable to Covid-19 Vaccinations in 12 EU Countries with Low Vaccination Rates' (2023) 33(2) *European Journal of Public Health* 228.

demographic studies indicate that this is not a viable long-term solution. In all EU Member States, the population is ageing, and the ratio between the working population and those dependent on social security is shifting from a pyramid shape to one with a narrower base and a larger top. Many EU countries, especially those following the Bismarck model, are transitioning from a right to work towards a duty to work in order to increase the number of workers. Having a significant number of workers is crucial to maintain affordable social security systems. Not working when one is capable of doing so is considered inappropriate and often results in punishment. In reality, the right to work has evolved into a duty to work.

Regardless of whether the Bismarck or Beveridge model is applied, the consequence is that current reforms are inadequate for dealing with the existing challenges and changes. A major shift needs to occur. The right to work should evolve into the freedom to work without any obligations. And to ensure the right to social security, a basic income should be provided to individuals who choose not to work. They should be able to afford a decent life. Legally, this transformation would establish a new fundamental right: the right to laziness. No one would be obligated to work or to accept any job offers. Everyone would have the freedom to choose.

Once everyone is free to decide whether to work or not to work, taxes on labour and income should no longer serve as the primary means of funding social security systems. Instead, social security should be funded through consumption-based taxes.

In an ideal world, we would support each other by purchasing the goods and services we desire without the pressure of having to work solely for them. We could choose to work for them if we wish or opt not to work for them. We would have the freedom to organize our lives and prioritize our desired goals. This concept represents a significant leap towards a utopian society.

Bibliography

- Adkins L, 'Out of Work or Out of Time? Rethinking Labor After the Financial Crisis' (2012) 111(4) *South Atlantic Quarterly* 621
- Bevan G, Helderman J-K, and Wilsford D, 'Changing Choices in Health Care: Implications for Equity, Efficiency and Cost' (2010) 5(3) *Health Economics, Policy and Law* 251
- Birnbaum S, De Wispelaere J, and Van der Veen R, *Basinkomstens nya vaag* (IFF 2020) 32
- Bueno N, 'From the Right to Work to Freedom from Work' (2017) 33(4) *International Journal of Comparative Labour Law and Industrial Relations* 463
- Bueno N, 'Freedom *at, through and from* Work: Rethinking Labour Rights' (2021) 160(2) *International Labour Review* 311

- Bueno N, 'From Productive Work to Capability-Enhancing Work: Implications for Labour Law and Policy' (2022) 23(3) *Journal of Human Development and Capabilities* 354
- Cholbi M, 'The Duty to Work' (2018) 21(5) *Ethical Theory and Moral Practice* 1119
- Condé-Ruiz JI and Gonzalez CI, 'From Bismarck to Beveridge: The Other Pension Reform in Spain' (2016) 7 *SERIEs* 461.
- Cylus J and others, 'Consumption and Tax Gains Attributable to Covid-19 Vaccinations in 12 EU Countries with Low Vaccination Rates' (2023) 33(2) *European Journal of Public Health* 228
- Dermine E, 'Activation Policies for the Unemployed and the International Human Rights Case Law on the Right to a Freely Chosen Work' in Elise Dermine and Daniel Dumont (eds), *Activation Policies for the Unemployed, the Right to Work and the Duty to Work* (Peter Lang 2014)
- Dermine E and Dumont D, 'A Renewed Critical Perspective on Social Law: Disentangling Its Ambivalent Relationship With Productivism' (2022) 38(3) *International Journal of Comparative Labour Law and Industrial Relations* 237
- Dumont D, 'Universal Basic Income as a Source of Inspiration for the Future of Social Protection Systems? A Counter-Agenda' (2022) 24(4) *European Journal for Social Security Law* 299
- Geldon MA, 'John P. Humphrey and the Drafting of the Universal Declaration of Human Rights' (2000) 2 *Journal of the History of International Law* 250
- Gestrich A, Grüner E, and Hahn S (eds), *Poverty in Modern Europe* (OUP 1986)
- Guinanne TW, Job TA, and Strep J, 'Bismarcks Sozialversicherung und ihr Einfluss auf Deutschlands demografischen Wandel' (2021) 101(4) *Zeitschrift für Wirtschaftspolitik* 246
- Harvey P, 'Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously' (2002) 33(2) *Columbia Human Rights Law Review* 363
- Herdero AG, *Social Security as a Human Right* (Council of Europe Publishing 2007)
- Hiessl C, 'Working, Yet Poor: A Comparative Appraisal' in Luca Ratti (ed), *In Work Poverty in Europe: Vulnerable and Under-Represented Persons in a Comparative Perspective* (Kluwer 2022)
- Kotlikoff LJ, 'Fixing Social Security: What Would Bismarck Do?' (2011) 64(2.1) *National Tax Journal* 415
- Mantouvalou V, 'Legal Construction of Structures of Exploitation' in H Collins, G Lester, and V Mantouvalou (eds), *Philosophical Foundations of Labour Law* (OUP 2012)
- Meyer T and Bridgen P, 'Towards German Liberalism and British Social Democracy: The Evolution of Two Public Occupational Pension Regimes from 1945 to 2009' in J Clasen (ed), *Converging Worlds of Welfare? British and German Social Policy in the 21st Century* (OUP 2011)
- More T, *De optimo statu reipublicae deque nova insula Utopia* (Dirk Martens 1516)
- Morsink J, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Pennsylvania Press 1999)
- Paz-Fuchs A, 'The Right to Work and the Duty to Work' in V Mantouvalou (ed), *The Right to Work. Legal and Philosophical Perspectives* (Hart Publishing 2015)
- Piketty T, *Le Capital au XXI siècle* (Editions du Seuil 2013)
- Raworth K, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (Chelsea Green Publishing 2017)
- Rohwer A, 'Bismarck versus Beveridge: ein Vergleich von Sozialversicherungssystemen in Europa' (2008) 61(21) *ifo Schnelldienst* 26

- Schoukens P, Barrio A, and De Becker E, 'Platform Economy and the Risk of in-Work Poverty: A Research Agenda for Social Security Lawyers' in V Di Stefano and others (eds), *A Research Agenda for the Gig Economy and Society* (Edward Elgar 2022)
- Van Langendonck J and others, *Handboek Socialezekerheidsrecht* (10th edn, Intersentia 2020)
- Vives JL, *De subventionem pauperum* (De Crook 1526)