

# The Right to Food in Market Economies

*What governments ought to do for food security*



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Utrecht University  
Faculty of Humanities  
MA Applied Ethics 2014-2015  
Rick van der Kleij (F132114/5488559)  
First assessor: dr. Franck Meijboom  
Second assessor: dr. Rutger Claassen  
Word count: 13.699

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1 Photograph by Carlos Becerra (Anadolu Agency/Getty Images) in Venezuela. "Empty Shelves and Rhetoric," *The Economist*, January 24, 2015, <http://www.economist.com/news/americas/21640395-government-offers-no-solutions-mounting-economic-crisis-empty-shelves-and-rhetoric>.

*“I care for riches, to make gifts  
To friends, or lead a sick man back to health  
With ease and plenty. Else small aid is wealth  
For daily gladness; once a man be done  
With hunger, rich and poor are all as one.”*

Euripides (484 BC – 406 BC), *Electra*, 413 B.C.

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## **The Right to Food in Market Economies**

*What governments should do for food security*

### **Abstract:**

*To operationalize the basic right to food means to impose duties on the government to its citizens. At least the government has a negative duty not to hinder food security and arguably a positive duty to help the hungry enjoy their right to food. An analysis of governmental duties vis-à-vis market actors shows that there are conflicting rights and interests at stake. Poor consumers need aid to have their claim-right to food fulfilled, but that comes at the cost of affluent consumers paying higher prices for their food. Moreover, producers have a liberty-right to use their property the way they deem most efficient. Ultimately, governments have to weigh these rights and interests, that is, to choose from specific kinds of freedom and equity. This balancing act of public policymaking should be guided by the notion that basic rights trump other rights, and other rights trump other interests.*

### **Keywords:**

*Economic rights, food security, global justice, governmental duties, international trade.*

## 1 Food security

Every human being needs food to survive, but over 800 million people worldwide are severely undernourished as of 2015.<sup>2</sup> There is plenty of adequate food available, but it is not accessible to everyone worldwide. This makes food security a political topic: hunger is due to the distribution rather than the production of food. The United Nations (UN) even states in its Universal Declaration of Human Rights (UDHR)<sup>3</sup> that every human being has a right to food.<sup>4</sup> Yet the fulfillment of such an economic right begs questions that require ethical analysis.

### 1.1 Moral significance of food security

The three main food policy challenges are food safety, nutritional value and food security. One's right to food is only adequately fulfilled if that food is safe and nutritious. Food safety and nutritional value are issues that need technical and biological solutions, respectively. In this thesis I will discuss some distinctively moral questions that food security poses. Admittedly, agricultural technology is crucial to feed the ever-growing global human population. Still, the operationalization of the concept of food security immediately triggers debates on the powers, rights and duties of several stakeholders, such as (inter)governmental agencies, food producers and consumers. The same goes for political choices to invest in the development and deployment of certain technologies and not in others, thereby yielding different results for different stakeholders. For instance, since the 1970s agricultural subsidies based on production rates have driven smallholder farmers out of the United States of America (USA), where 50 of 300 million

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2 Estimation by the FAO: "The State of Food Insecurity in the World (SOFI) 2015," *Food and Agriculture Organization of the United Nations*, <http://www.fao.org/publications/card/en/c/c2cda20d-ebcb-4467-8a94-038087fe0f6e>.

3 In 1948, the UN ratified the UDHR as the first part of the International Bill of Human Rights by General Assembly resolution 217: <http://daccess-ods.un.org/TMP/7251907.58705139.html>.

4 United Nations. "The Universal Declaration of Human Rights". <http://www.un.org/en/documents/udhr/>. UDHR, art. 25(1) reads: "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

citizens still experience food insecurity.<sup>5</sup> Poor people require special attention in this thesis, because it is their right to food that is continuously in jeopardy. For this purpose, I will use the UN understanding of global poverty. The extreme poor typically live from a daily budget with which they can purchase locally what \$1,25 would buy in the USA.<sup>6</sup> Morally significant are not only famine victims from incidents such as natural disasters, but also those who experience continuous crisis. Food insecurity can be *transitory*: having too little food due to natural or man-made disasters, or *chronic*: harvesting too little food for daily survival.<sup>7</sup> So someone who suffers from chronic food insecurity is structurally on the brink of starvation. The Food and Agriculture Organization (FAO) of the UN currently follows the definition as expressed in *The State of Food Security 2001*: “*food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life*”.<sup>8</sup> In 2004 the FAO initiated the Integrated Food Security Phase Classification (IPC) in Somalia, in order to standardize the assessment of food insecurity throughout the world. The IPC distinguishes 5 phases of food insecurity: (1) none or minimal; (2) stressed; (3) crisis; (4) emergency and (5) humanitarian catastrophe or famine.<sup>9</sup> The concept of food (in)security concerns both the status quo and the future, as does the IPC framework. This information implies a call for action: if the food insecurity in a region is severe (phase 3 or higher), that gives humanitarian organizations such as the World Food Programme (WFP) reason to provide assistance. As long as natural or man-made disasters will occur, complete

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5 Lily Hu, “National Food Divide,” *Harvard Political Review*, April 1, 2012, <http://harvardpolitics.com/covers/national-food-divide/>.

6 This is the international poverty line according to the World Bank. For more nuanced information see for example: Shaohua Chen and Martin Ravallion, “The Developing World Is Poorer Than We Thought, but No Less Successful in the Fight Against Poverty,” *The Quarterly Journal of Economics* 125 (2010): 1577–1625.

7 Food and Agriculture Organization of the United Nations, “*Trade Reforms and Food Security*,” <http://www.fao.org/docrep/005/y4671e/y4671e06.htm>, chapter 2.2.

8 Ibid.

9 FAO & IPC Global Partners, “Integrated Food Security Phase Classification: Technical Manual 1.1,” (FAO, 2008), <http://www.ipcinfo.org/ipcinfo-technical-development/en/>, 4.

global food security is a utopian idea. Still it is worth discussing the morality of human decisions that influence levels of avoidable food insecurity.<sup>10</sup>

## **1.2 Research question**

In this thesis I discuss food security from a human rights perspective, or more specifically: the normative basis of a human right to food and its implications for the desired role of national governments in market economies. Contemporary policymakers frequently employ the concept of food security, while moral philosophers have widely criticized its status as a human right. Governments have multiple moral duties that might conflict, such as its duties towards consumers and producers on food markets. This poses moral dilemmas: the fulfillment of one duty can obstruct fulfillment of other duties. That does not necessarily imply a zero sum game of duties, but it does require from governments to weigh such duties carefully. Therefore, my main question is: *what does a human right to food morally require governments to do in a market economy?* For this purpose we first need answers to three subquestions:

- (1) *Can citizens legitimately claim a right to food?* (This question concerns the appropriate rights discourse for food security).
- (2) *Which moral duties do governments bear regarding the right to food?* (This question concerns the duties of national governments towards citizens).
- (3) *Which moral duties do governments bear regarding food markets?* (This question concerns the competing duties of governments in a market setting).

Economic justice highlights issues that are widely discussed in the intertwined fields of moral philosophy, international economics and public policy.<sup>11</sup> Economic theories will serve this ethical research by analyzing the consequences of the policy choices under consideration. Policymakers tend to take ad-hoc decisions under pressure of food crises and concerned stakeholders. This thesis could yield an ethical framework of how to take

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<sup>10</sup> Nigel Dower, "Global Hunger: Moral Dilemmas," in *Food Ethics*, ed. Ben Mepham (Routledge, 1996): 1

<sup>11</sup> Marc Fleurbaey, "Economics and Economic Justice," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Winter 2014, <http://plato.stanford.edu/archives/win2014/entries/economic-justice/>.

food rights into account in food policies worldwide, and it contains suggestions for better structured debates on the systemic issues of hunger and poverty.<sup>12</sup> One should take great care to avoid the vice of *hubris* while tackling such a broad question. Therefore, this thesis comes with a disclaimer: I do not discuss any of these big questions exhaustively. Interestingly, international networks such as Academics Stand Against Poverty (ASAP)<sup>13</sup> aim to turn research on poverty into action. In this thesis, I aim for conceptual clarity first, and for operational imperatives later.

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12 See Keith Horton, “How Academics Can Help People Make Better Decisions Concerning Global Poverty,” *Ethics and International Affairs* 26 (2012): 265–78.

13 ASAP has been co-founded by Thomas Pogge, whose work features extensively in this thesis.



## 2 What right to food can citizens claim?

Economic rights such as the right to food are also called 'second generation rights'. This refers to a historical development: the discourse on civil and political rights is older and in that sense 'first generation'.<sup>14</sup> Ever since the United Nations (UN) was founded, it has been working to turn the moral right to food into a legal right. For instance, its Universal Declaration of Human Rights (UDHR) has inspired treaties such as its International Covenant on Economic, Cultural and Social Rights (ICESCR), that is equivalent to the International Covenant on Civil and Political Rights (ICCPR).<sup>15</sup>

In this chapter I will discuss the justification and the moral content of this alleged right to food. A human right with an adequate justification (J) can be claimed by a subject, i.e., the right holder (S), which is a moral equivalent to the legal term claimant. A human right always is a right to something, i.e., the object (X) of that right, that is claimed against one or more other moral agents (O). To put it more briefly, “*S has a right to X against O in virtue of J*”.<sup>16</sup>

### 2.1 Justification of the right to food

According to natural rights theorists, a human right is a right that every human being has by virtue of being human<sup>17</sup> — rather than for example the legal rights we have qua citizens.<sup>18</sup> Yet this definition clarifies little: it even remains circular until arguments are given for why being human is worthy of protection. In order to avoid the objective, top-down justification that natural rights aim for, I follow a bottom-up scheme of natural

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14 Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2011), 55-56.

15 United Nations. “The Universal Declaration of Human Rights”. <http://www.un.org/en/documents/udhr/>. The UDHR (1948), the ICESCR (1966) and the ICCPR (1966) jointly constitute the International Bill of Human Rights that I already mentioned in footnote 3.

16 Capitals added. David Boersema, *Philosophy of Human Rights: Theory and Practice* (Westview Press, 2011), 7.

17 James Griffin, *On Human Rights* (Oxford University Press, 2008), 38; Jack Donnelly, “Human Rights as Natural Rights,” *Human Rights Quarterly* 4 (1982): 391. Their human rights conceptions correspond with how the UN defines human rights in the preamble to the UDHR. See United Nations. “*The Universal Declaration of Human Rights*”. <http://www.un.org/en/documents/udhr/>.

18 Boersema, 2011: 5.

rights that we continue to create in response to wrongs, as “*means of trying to make sure that recognized injustices are prevented or at least lessened in the future*”.<sup>19</sup> Then, rights are not justified by some abstract natural law, but by the actual experience of people (S) whose well-being is reduced by other people (O).<sup>20</sup> Contemporary philosophers of law continue to discuss the justification of human rights in general, but this pragmatic scheme of human rights is sufficiently clear to try to justify the right to food. To find out whether food could qualify as a prima facie rights object (X), I will analyze several justifications (J) for a human right to food.

### **The basic right to subsistence**

Henry Shue frames the right to adequate food as part of the basic right to subsistence, which also includes, inter alia, clean air, edible water and basic health care and shelter.<sup>21</sup> Similarly, Thomas Pogge argues for a 'human right to basic necessities'.<sup>22</sup> This makes my burden of proof even heavier: I not only have to justify the human right to food, but also that this right is basic. According to Shue, “*basic rights are the morality of the depths. They specify the line beneath which no one is to be allowed to sink*”.<sup>23</sup> Basic rights are not constituted by explicit agreements between specific individuals, such as the (non-basic) positive right of a creditor against his debtor.<sup>24</sup> If there are any human rights, then at least the basic rights must exist — even if the existence of other human rights were controversial. Basic rights thus bring hierarchy into human rights discourse. The identification of basic rights can still be controversial: it remains debatable which goods qualify as objects of basic rights. Shue justifies the basic right to subsistence by the priority principle. We ought to give priority to basic rights over other rights, in order

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19 Boersema, 2011: 65.

20 Alan M. Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (Basic Books, 2004), 81-96.

21 Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton University Press, 1996), 23.

22 Thomas Pogge, “Severe Poverty as a Human Rights Violation,” in *Freedom From Poverty as a Human Right: Who Owes What to the Very Poor?*, ed. Thomas Pogge (Oxford University Press, 2007): 14.

23 Shue, 1996: 18.

24 Andrew I. Cohen, “Must Rights Impose Enforceable Positive Duties?,” *Journal of Social Philosophy* 35 (2004): 264.

to prohibit degrading inequalities. This degradation prohibition, then, is so basic that it is an axiomatic premise in Shue's line of reasoning.<sup>25</sup> Indeed, the right to food is basic, because food (as part of a minimal economic security) is necessary to exercise any other rights.<sup>26</sup>

### **Freedom from coercion**

Shue grounds the basic right to subsistence in the same way as the basic right to physical security. Both are demands for social guarantees of necessary goods, in order to prevent both avoidable deaths and vulnerability to coercion.<sup>27</sup> Indeed, food security sets people free from a potential source of coercion. Otherwise, a potential coercer could make other rights conditional upon one's subsistence. An example is the right to freedom of expression. The coerced person (victim) knows: if I express my opinion, then the coercer will withhold me from food access. This resembles torture in the sense that the victim is made complicit to the coercion.<sup>28</sup> If you want to avoid the looming harm, and every non-suicidal person has reason to avoid food insecurity, then you know that you can just surrender to the coercer's condition, that is, you do not express your opinion. You thus cannot exercise your agency autonomously because you must secure your life first. Food insecurity is morally different from torture, in the sense that the former is not necessarily directly imposed by an individual agent (like the torturer) upon a victim. Even the global economic institutions that Pogge blames for maintaining poverty are not yet a direct act of an individual agent vis-à-vis an individual victim. In any case, survival and freedom from coercion are independent reasons to secure means of subsistence such as food. Shue is right that any person needs adequate food for survival and we can only exercise any other human rights if our right to life is fulfilled. Yet Shue's line of reasoning has severe limitations:

(1) There are many degrees of subsistence deficiency. In this respect, food is similar

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25 Johan J. Graafland and Minne E. Bosma, "World Poverty and the Duty to Aid", in *Spheres of Global Justice. Volume 2 Fair Distribution – Global Economic, Social and Intergenerational Justice*, ed. J.C. Merle, (Springer Verlag, 2013), 618-619.

26 Shue, 1996: 31; Cohen, 2004: 265.

27 Boersema, 2011: 77.

28 David Sussman, "What's Wrong with Torture?," *Philosophy & Public Affairs* 33 (2005): 1–33.

to other objects of human rights. For instance, the distinction between violation and fulfillment at first glance seems clearest for the human right to life (and its corresponding duty not to kill). If there even is a grey area between (black) violation and (white) fulfillment of human rights for issues of immediate life and death, then that must certainly be the case for the right to food.<sup>29</sup> It seems that one's right to life can either be fulfilled or violated. If a victim of violent assault is not dead, (s)he is by definition not murdered. However, the assaulter can be (legally and morally) convicted to an attempt of murder, even if it is not a complete violation of the right to life. By analogy, even if someone is not entirely deprived from but has deficient access to adequate food, one's right to food is not fulfilled — while one may still enjoy one's right not to be killed. So the enjoyment of other rights does not necessitate the prior fulfillment of the right to subsistence. So the violation-fulfillment distinction appears to be weaker than Shue assumed.<sup>30</sup>

- (2) Shue claims that the right to subsistence necessarily follows from the concept of basic rights. Michael Payne refutes this claim and shows that both enjoyment and social guarantees are moral arguments, rather than conceptual necessities, for subsistence rights: *"millions of humans suffer and die where social guarantees do not exist, but one reason why there should be social guarantees is to protect the rights that those humans have as human beings"*.<sup>31</sup> So the social guarantees that enable rights holders to enjoy their rights are not 'features' that are automatically part of basic rights, but they require a separate, morally substantive justification. Payne is right here, but Shue himself already provides such a moral argument by his analogy to physical security. Food is a basic right because it is a basic need, as Thomas Nagel explained: *"food is basic. It is the last thing an individual can afford to give up, if he can afford nothing else"*.<sup>32</sup> So

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29 'Certainly', because the causal link between (1) the violation of the right to food and (2) its total impact is longer than in the case of the right to life and murder.

30 Cohen, 2004: 268.

31 Michael Payne, "Henry Shue on Basic Rights," *Essays in Philosophy* 9 (2008), 6.

32 Nagel, 2008: 50.

the argumentative similarity between basic rights and basic needs is that their fulfillment is needed for non-basic rights and needs, respectively.

There is something peculiar about Shue's rights conception that makes it easier to justify than, for instance, an Aristotelian rights conception. Aristotle would demand a picture of the good life first, about which we must all agree before we can derive any rights from it.<sup>33</sup> The basic right to food does not run into such problems: it relies on a minimal rather than a maximal conception of the good. The right to food does not presuppose any specific conception of the good life. Even though it is practically difficult to set a threshold for adequate food, the moral force of the right to food itself does not rely on a certain controversial value theory. In fact, food is a necessary condition for life itself, so it directly follows from the right to life. In other words, food secures an abstract human life, regardless of the content of specific lives. A right to food thus conceived leaves room for all kinds of conceptions of the good life. Its aim of a 'minimally decent' life is less controversial than the good life, which strengthens its status as a human right.<sup>34</sup> So the basic human right to subsistence still stands, even though it requires moral argumentation rather than what Shue claims are just conceptual necessities. In order to operationalize this right, I would add the explicit disclaimer that subsistence and adequate food are threshold concepts. As Shue already hinted at by his phrase 'morality of the depths',<sup>35</sup> this right ought to be fulfilled below a certain threshold. Both Pogge and Shue already defend such a threshold implicitly and invite us to define it further.<sup>36</sup>

## **2.2 Content of the right to food**

The conceptual discussions so far give reason to recognize the right to food as a basic right. This section explores the content of the right to food. Different rights conceptions differ in terms of the features that this right would have.

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33 Mark Timmons, *Moral Theory: An Introduction* (Rowman & Littlefield, 2012), 272-273.

34 James W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (University of California Press, 1987): 51.

35 Shue, 1996: 18.

36 Shue, 1996: 23. Pogge, 2007: 14.

### **Privilege (liberty) or claim right**

The right to food needs to be specified, before we can prescribe the relationship between right holders and right observers (or 'duty bearers'). For this purpose I will draw upon the ontology of rights by Wesley Hohfeld, who distinguishes *privileges* from *claim rights*.<sup>37</sup> This distinction defines the relationship between right holders and duty bearers. Firstly, if someone has a privilege to do something, this means (s)he has no duty not to do that. So (s)he is free to perform that action.<sup>38</sup> Secondly, a claim right implies that its holder can demand the object of that right from another agent. So the duty bearer ought to do (or negatively, to refrain from doing) something.<sup>39</sup> Indeed, a privilege is an active right concerning the right holder's own actions, while a claim right is his/her passive right concerning the duty bearer's actions. If a right holder can claim a right to food, then this agent should not just hope to get food from someone who acts upon some principle of charity. Acts of charity are supererogatory, that is, beyond what justice requires.<sup>40</sup> Food security is a matter of desert rather than of sheer luck.<sup>41</sup> So the right holder can legitimately demand food security.<sup>42</sup> Before discussing specific duties, it should be clarified what kind of claim right food could constitute in the first place.

### **A positive or a negative right**

A related subject of controversy is whether the right to food is positive or negative. That is, rights can be positive and negative with regard to their correlative duties. A right is positive if it constitutes a duty for someone else to act, and it is negative if others have a duty not to act. Later in this chapter I will discuss criticisms on the conceptual distinction between positive and negative rights, that are raised by Shue himself among others. For now the positive-negative distinction is useful as a starting point to discuss the object (X) of the right to food, in other words: to what it is a right. What, if anything, could be

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37 Leif Wenar, "Rights," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2011, <http://plato.stanford.edu/archives/fall2011/entries/rights/>, ch. 2.1.

38 Therefore, other theorists refer to 'privileges' as 'liberties'. Wenar, 2011: ch. 2.1.1.

39 Wenar, 2011: ch. 2.1.2.

40 Onora O'Neill, "Rights, Obligations and World Hunger", in *Global Ethics: Seminal Essays*, ed. Thomas Pogge and Keith Horton (Paragon House, 2008): 148.

41 Shue, 1996: 14.

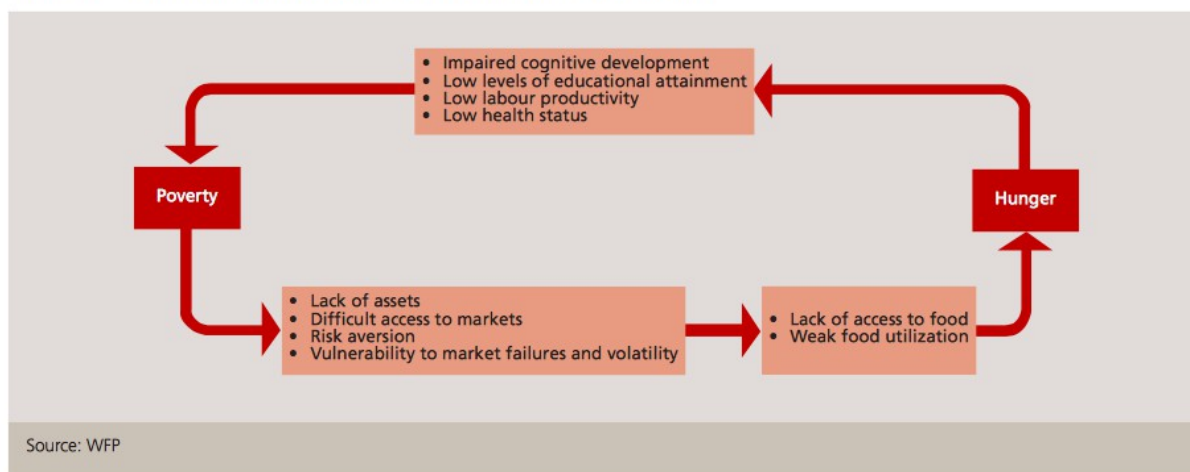
42 Whether food security entails forms of food provision is a topic of chapter 3 on governmental duties.

the claim in a claim right to food?

### Negative right to food

The least demanding option is that the right to food is a mere negative right, that is, a right that requires from others that they refrain from acting. Hence Onora O'Neill calls these rights 'liberty rights'.<sup>43</sup> Firstly, national governments ought not hinder their citizens to produce or buy food. Secondly, hunger could limit people's freedoms so severely that it violates their negative rights. The human right to be free from poverty seems to be a liberty right in the sense that it is a freedom *from* something (i.e., poverty), rather than a positive freedom *to* something (e.g., to pursue the good life).<sup>44</sup> Yet we cannot yet claim that this is a purely negative right, as that depends on whether freedom from poverty demands any actions from other agents (duty bearers). Unfortunately, hunger and poverty are causally intertwined. This is the vicious cycle that development economists call a 'poverty trap':<sup>45</sup>

Figure 1.1 – The hunger–poverty trap: a vicious cycle of poverty and hunger



So it is extremely difficult to work yourself out of poverty if you are hungry, which makes it extremely difficult to get rid of hunger, and so forth. Therefore, the negative right to

43 O'Neill, 2008: 146.

44 John Tasioulas, "The Moral Reality of Human Rights," in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, ed. Thomas Pogge (Oxford University Press, 2007), 75-101.

45 Figure 1.1 in World Food Programme, *Hunger and Markets* (Earthscan, 2009): 19. This poverty trap is analyzed in more detail by Esther Duflo and Abhijit Banerjee. "More Than 1 Billion People Are Hungry in the World," *Foreign Policy*, 25 April 2011, <https://foreignpolicy.com/2011/04/25/more-than-1-billion-people-are-hungry-in-the-world/>.

food is a relevant concept to those who are burdened (or economically 'trapped') by hunger and poverty. These problems reinforce one another and jointly reduce people's freedom to act at all.

### **Positive right to food**

If one has a positive right to food, one has a valid claim to demand from other people that they act so that the right holder obtains (access to) food. Onora O'Neill calls these rights 'welfare rights', in contrast to the aforementioned liberty rights.<sup>46</sup> According to such a positively framed right to food, other people should allocate resources to citizens who lack access to sufficient food for survival — and thus alleviate unnecessary suffering for all human beings.<sup>47</sup> Both positive and negative human rights are social guarantees to something that people value.<sup>48</sup> In Shue's case for basic rights, subsistence turns out to be a positive right. Even physical security might be a positive right in this sense.<sup>49</sup> However, physical security is too indeterminate a concept without specification: people ought to be physically secure in doing what, precisely? If someone has the basic right to physical security, (s)he has to be physically secure in enjoying the goods of his/her other rights. Only in that sense physical security is basic to other rights.<sup>50</sup> Certain positive rights can be derived from (the violations of) negative rights, too. For instance, Per Pinstrup-Andersen claims that rich countries ought to eradicate global poverty because they have violated the negative rights of poor countries by means of international economic institutions.<sup>51</sup>

At the same time, Shue obscures the distinction between positive and negative rights. He even goes as far as claiming that there are only mixed rights.<sup>52</sup> That is, every

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46 O'Neill, 2008: 146.

47 Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1 (1972): 229–243.

48 Charles Taylor, "Atomism," in *Philosophy and the Human Sciences*, Vol. 2. (Cambridge University Press, 1985).

49 Boersema, 2011: 80.

50 Determinacy is a quality criterion for ethical frameworks. Timmons, 2012: 13.

51 Per Pinstrup-Andersen, "Food system policies in rich countries and consequences in poor ones: ethical considerations," in *Ethics and the Politics of Food*, eds. Matthias Kaiser and Marianne Lien, (Wageningen Academic Publishers, 2006, 382-385).

52 Payne coins the term 'mixed rights' to describe Shue's idea: Payne, 2008: 6.



allegedly negative right demands positive actions from the government to guarantee that no one infringes upon these rights. For the sake of clarity I will keep referring to the outlined scheme of positive and negative rights, but now I will briefly address some nuances to this distinction that the right to food begs.

### **Nuance: killing or letting die**

Despite the contrast that O'Neill makes between welfare and liberty rights, the allegedly positive 'welfare' right to food is part of the allegedly negative 'liberty' right not to die.<sup>53</sup> Ethicist Peter Singer uses the analogy of a drowning child in a pond to show that affluent bystanders to poverty are morally obliged to provide aid.<sup>54</sup> As a preference utilitarian, Singer is more committed to the foreseeable outcomes than to the rights that are at stake in a moral dilemma. Still, his analogy is useful to show that the right to life entails more than a right not to be killed. A disclaimer is needed here: for present purposes this analogy does not need to prove the utilitarian case for food aid, but only to show that one's moral right to life is still insufficiently secured if one does not get killed.

Imagine you are walking in a park where you see a child who cannot swim in a pond, so (s)he is in jeopardy of drowning. By means of this analogy, Singer defends an imperative: one ought to help others as long as it is not too demanding. Demandingness is also defined by utilitarian calculus: an imperative to help is not too demanding, as long as one can help a needy person more than one sacrifices to do so.<sup>55</sup> So saving the child's life is worth ruining your shoes and suit. Likewise, affluent bear a "duty of charity" towards the global poor.<sup>56</sup> This further obscures the distinction between negative and positive rights, even though Singer himself does not employ the rights discourse. As both killing people and letting people die (i.e., from starvation) are moral wrongs, every

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53 An example is the UN Sustainable Development Goal (SDG) to eradicate global hunger by 2030. Moreover, the right to food from the UDHR is legally recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR). For instance, see its General Comment #12.

54 Singer, 1972: 229–243.

55 Singer, 1972: 231–232.

56 Thomas Nagel, "Poverty and Food: Why charity is not enough," in *Global Justice: Seminal Essays*, eds. Thomas Pogge and Darrel Moellendorf (Paragon House, 2008), 52.

person has the right not to die if other people can avoid this. The alleviation of suffering drives Singer's moral imperative, while others are motivated by the protection of human agency or — central to my thesis — by human rights.<sup>57</sup>

### **2.3 A mere manifesto right?**

The right to food outlined so far is still vulnerable to attempts to dismiss it as a mere manifesto right. According to Pogge, 'manifesto right' is a derogatory term for a moral right that is insufficiently fulfilled, due to either unspecified or utopian duties.<sup>58</sup> Joel Feinberg elaborates upon the latter two conditions: "*the manifesto writers on the other side who seem to identify needs, or at least basic needs, with what they call "human rights," are more properly described, I think, as urging upon the world community the moral principle that all basic human needs ought to be recognized as claims (in the customary prima facie sense) worthy of sympathy and serious consideration right now, even though, in many cases, they cannot yet plausibly be treated as valid claims, that is, as grounds of any other people's duties*".<sup>59</sup> What would be the moral significance of human rights if they did not entail valid claims? One might believe that rights without claims still have some rhetorical force in political debates. However, the claim 'I have a right to food' cannot be a merely propositional claim. For this proposition to be consequential it must be performative.<sup>60</sup> It is not just a piece of amoral information, but we expect an interlocutor to *do* something with that information.<sup>61</sup> Saying that someone has a right is a moral claim itself. That entails the reasonable expectation that some other agent will act in some way because of that right. So my account of human rights is interactional, between right holders and duty bearers. This proves that no rhetorical force would be left of a claimless right.

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57 Dower, 1996: 10-13.

58 Pogge, 2008: 73-74.

59 Joel Feinberg, *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy* (Princeton University Press, 2014), 153.

60 Feinberg, 2014: 150.

61 Different interlocutors bear different duties, but the effect of this proposition is that the speaker demands that at least one interlocutor changes his/her attitude and, ultimately, his/her intentional behavior. See Icek Ajzen, "The Theory of Planned Behavior," *Organizational Behavior and Human Decision Processes* 50 (1991): 179–211.

In fact, the right to food is currently insufficiently fulfilled, as over 800 million undernourished people show. In the spirit of UDHR article 25, Pogge claims that *“this unspecific demand may have quite specific implications in a given social context, such as a society whose poorest members lack secure access to minimally adequate nutrition”*, and it is therefore not a mere manifesto right.<sup>62</sup> However, more specification is needed to make the right to food claimable. To save it from being a manifesto right, the duties must be specified in a non-utopian way. So there is still ample work to be done in order to operationalize the right to food.

## **2.4 Sub-conclusion**

Indeed, citizens can claim a right to food as a means of subsistence. Shue rightly reckons the right to subsistence to be a basic right, as its fulfillment to some degree is necessary to survive and therefore to enjoy any other rights.<sup>63</sup> Another function of subsistence rights is to relieve people from this source of vulnerability to coercion. The universal human need for food as a crucial means for survival sufficiently justifies a right to food. So far the right to food is not yet operational though. For this purpose, we need to know more about the duties of the party against whom the right is claimed. To further explore the meaning of the claim in a claim-right to food, the next chapter will focus on the duties of the government that also codifies moral rights legally.

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62 Pogge, 2008: 75.

63 Shue, 1996: 16.

### 3 Governmental duties regarding the right to food

Now that hungry people can claim a right to food, which concrete duties do follow from that? Unlike the first-generation political rights which typically govern what the state is permitted to do (and thus limit the scope of public action), the second-generation economic rights govern what the state ought to do (and thus expand public action).<sup>64</sup> An answer to the question what governments should do regarding the right to food would be an important step in operationalizing this right. Shue claims that it is inherent to the concept of a right that it has enforceable positive duties. However, Cohen shows that this relation is not inherent: any duties (not) to do something require a separate, morally substantive justification, which is what this chapter aims to find.<sup>65</sup>

#### 3.1 The concept of duties

Rights and duties refer to the same concept of ‘morally correct actions’, only considered from two different perspectives: the receiver has rights, while the actor has duties.<sup>66</sup> Of course receivers also are actors in other respects, but here the ‘actor’ refers to the person who acts in relation to the duty (s)he bears. At first glance the right to food seems to fit one specific form of rights in the scheme of W.D. Ross, namely “*a right of A against B implies a duty of B to A*”, where A is the receiver and B is the actor.<sup>67</sup> Joel Feinberg discusses this “*doctrine of the logical correlativity of rights and duties*” in more depth in a thought experiment.<sup>68</sup> In his imaginary town Nowheresville there are no rights. Feinberg introduces related concepts into Nowheresville one by one, from Kantian duties and personal desert to economic practices (including deals, contracts and promises). In the end, Nowheresvillians have everything (and more benevolence than)

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64 Tasioulas, 2007: 89.

65 Cohen, 2004: 269.

66 Onora O’Neill, “Rights, Obligations and Needs,” in *Necessary Goods: Our Responsibility to Meet Others’ Needs*, ed. Gillian Brock (Rowman & Littlefield, 1998), 96.

67 William D. Ross & Philip Stratton-Lake, *The Right and the Good* (Clarendon Press, 2002 [1930]), 48.

68 Joel Feinberg & Jan Narveson, “The Nature and Value of Rights,” *The Journal of Value Inquiry* 4 (1970): 243-260.

we have, except for rights. This society differs relevantly from ours in the sense that people cannot claim anything from one another. Then, that is the value and, arguably, a functional justification of rights which requires corresponding duties.

Common definitions of rights and claims are utterly confusing: *“a right is a type of claim, and a claim is an assertion of right”*.<sup>69</sup> To avoid categorical mistakes it is useful to add that every right is a claim but not every claim is a right. This makes sense as Feinberg defines a right as *“a claim against someone whose recognition as valid is called for by some set of governing rules or moral principles”*.<sup>70</sup> Positive and negative rights correspond to positive and negative duties, respectively. Or do they? The actual enjoyment of rather than merely 'having' a right always requires from other people that they provide that good. A positive right thus limits the exercise of other people's negative rights.<sup>71</sup> This causal relationship between my positive and your negative rights seems inherent. Our non-ideal world often necessitates that choices between conflicting rights must be made. Often the government cannot fulfill all rights at the same time, but needs to weigh the rights at stake. In order to fulfill one right, the government must sacrifice another.

### **3.2 Potential duty bearers**

Before discussing the duties that could correspond to the right to food, I will defend my focus on the government as the party that should carry such duties out. While this human right is universal in the sense that every human being ought to be able to enjoy it, the corresponding duties are not universal.<sup>72</sup> Not every human being has the duty to fulfill the right to food of every other human being, so the relevant duty bearers have to be specified. As foods are traded on markets, it is morally significant how governments govern these markets. Indeed, a wide array of governmental policies in the agricultural and food sectors influences the fulfillment of the right to food. In most ethical reflections

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69 Feinberg, 2014: 153.

70 Ibid.

71 Views of Tibor Machan, as found in Boersema, 2011: 81-85.

72 O'Neill, 2008: 152.

on hunger and poverty, some of those policies are criticized. To have a clearer understanding of the actual workings of such policies, I will outline some examples. Due to economic globalization, countries have become increasingly interdependent. As a result, national governments cannot intervene in its domestic food market anymore without affecting foreign markets. Significant in this respect is the coordinating role of intergovernmental organizations (IGOs). The World Trade Organization (WTO), the Organization for Economic and Cultural Development (OECD) and the European Union (EU) are three prime examples of IGOs with agricultural policies that influence food security worldwide:

#### **(1) World Trade Organization (WTO)**

The WTO itself recognizes that agricultural trade liberalization can reduce food security *“in least-developed and net food-importing developing countries”* in the short run.<sup>73</sup> In 2013, the then UN special rapporteur on the right to food Olivier de Schutter openly criticized the WTO that its trading rules neglect the interests of the global hungry.<sup>74</sup> In response, the then WTO director-general Pascal Lamy stated that the WTO leaves enough room for developing countries to secure food to their citizens.<sup>75</sup> The fulfillment of any right requires a social guarantee that is not yet met by mere noninterference.<sup>76</sup> Yet the WTO already interferes with food markets, so in theory its desired intergovernmental interference could be only to nullify its past and current interferences. Ethical complaints on the 'global economic regime' or 'institutional order' can mainly be interpreted as criticisms against WTO policies, because this IGO currently comes closest to a system for public governance of global trading rules.

#### **(2) Organization for Economic and Cultural Development (OECD)**

The OECD represents 34 high-income countries. Pinstруп-Andersen claims that they harm poor countries by both their (import) tariff- and non-tariff policies that distort food

<sup>73</sup> WTO, *Uruguay Round Agreement: Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries*, [https://www.wto.org/english/docs\\_e/legal\\_e/35-dag\\_e.htm](https://www.wto.org/english/docs_e/legal_e/35-dag_e.htm).

<sup>74</sup> WTO, *Lamy rebuts UN food rapporteur's claim that WTO talks hold food rights 'hostage'*, 2011, [https://www.wto.org/english/news\\_e/news11\\_e/agcom\\_14dec11\\_e.htm](https://www.wto.org/english/news_e/news11_e/agcom_14dec11_e.htm).

<sup>75</sup> Ibid.

<sup>76</sup> Cohen, 2004: 265.

trade.<sup>77</sup> Most relevant to the right to food is the fact that all OECD member states are affluent and thus better able to affect poor(er) countries than vice versa. The OECD features in ethical debates on economic rights also because of collective policies of the OECD itself. For instance, the OECD tries to contribute to alleviating hunger and poverty by coordinating official development assistance (ODA) donations by its member states.<sup>78</sup>

### (3) **European Union (EU)**

As part of its Common Agricultural Policy (CAP), the EU has imposed both tariff and non-tariff barriers to imports from non-EU countries. The EU also finances export subsidies. Both policies support the market position of domestic producers (farmers who produce food in EU member states) at the cost of foreign producers (including farmers in developing countries). The total CAP costs over 40% of the annual EU budget, and its resulting inefficiencies amount to a net welfare loss of “*about 1% of the EU's gross domestic product*”.<sup>79</sup> So with governmental support EU producers compete against non-EU producers. At the same time, the EU institutions are the largest donor of ODA money worldwide.<sup>80</sup> That makes European development aid an example of a drug that aims to cure the disease of poverty that the EU also spreads itself.

#### **Food as a geopolitical tool**

Geopolitical tensions can directly jeopardize the right to food as well. That is, we live in a non-ideal world with genuine conflicts of interest among countries. Food is a critical resource for any domestic population. Precisely the fact that food is crucial for human survival provides governments with an incentive to use food as a means to exercise geopolitical pressure. If an international conflict escalates, a food-producing country can increase pressure on its food-importing antagonist by imposing trade boycotts. That could cut off food supplies and thus violate the right to food of the citizens of the

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77 Pinstруп-Andersen, 2013: 383.

78 For this purpose, the OECD runs the Development Assistance Committee (DAC).

79 Pugel, 2009: 249.

80 The EU itself even is the only non-country member of the DAC. OECD, *Development aid at a glance: statistics by region: 5. Europe*, 2015, <http://www.oecd.org/dac/stats/documentupload/5%20Europe%20-%20Development%20Aid%20at%20a%20Glance%202015.pdf>, paragraph 5.1.

boycotted state. By doing so, the boycotter violates its negative duty not to hinder the food security of the boycotted. This resembles Shue's argument about the threat of coercion, extrapolated from an individual to a geopolitical level.<sup>81</sup> In contrast, an autarkic country can produce its entire domestic food consumption itself. Its food security would be less vulnerable to political conflicts with other countries.<sup>82</sup> The desire to secure their food production incentivizes national governments by protecting domestic farmers from competition, by economic interventions ranging from export subsidies to import tariffs.<sup>83</sup> As duty bearers these governments ought to wonder whether such policies are compatible with their duties regarding the right to food.

### **3.3 Duties to protect, respect and fulfill human rights**

Duties *regarding* the right to food is yet too indeterminate for the purpose of holding duty bearers accountable.<sup>84</sup> How would such duties regard this right, precisely? The UN distinguishes three different duties that human rights can impose upon moral agents: (1) to respect, (2) to protect or (3) to promote or to fulfill the human right in question.<sup>85</sup>

- (1) Respect entails that all moral agents, both individuals and collectives, are morally expected not to violate human rights. In order to meet the respect condition, it is sufficient if the moral agent refrains from acting. For instance, respect for the right to food does not require that anyone acts: everyone just has to leave the right holder untouched. However, in case individuals do not respect a human right, such as by destroying crops of farmers, governmental action is needed to stop the human rights violation.
- (2) Protection of a human right requires more from the agent than to back off. The duty bearer must act him-/herself in order to protect a human right from being

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81 Boersema, 2011: 79.

82 Jon C. Pevehouse and Joshua S. Goldstein, *International Relations* (Pearson Longman, 2007), 176.

83 In chapter 4 I will elaborate upon the ethical controversies on the welfare effects of such policies.

84 The title of this chapter contains 'regarding' anyway, for the purpose of not having to choose among different kinds of duties (yet).

85 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, point 15.



violated by other agents. Governments have an exclusive *prima facie* mandate to protect human rights. That is, governments codify human rights into enforceable legislation. This is not an arbitrary leap from a description of the status quo (empirical: what 'is') to a prescription of the desired situation (normative: what 'ought' to be). On the contrary, part of the moral force of human rights comes from how they are actually constituted. So the government is specially positioned to protect.

- (3) Promotion or fulfillment of a human right demands positive action from the duty bearer, regardless of whether others have violated this right. The UN tends to use the term 'fulfilling' rather than 'promoting' for the right to food.<sup>86</sup> Indeed, food *security* implies a situation in which the right to food is continuously fulfilled, while promotion refers to the process: sufficient promotion leads to fulfillment.<sup>87</sup> According to the UN, the duty to fulfill entails both facilitation and provision of the right object (i.e., food).<sup>88</sup>

Remember that Shue tried to replace the distinction between positive and negative rights by 'mixed' rights, to which three types of duties would correspond.<sup>89</sup> Shue's three duty categories for basic rights run parallel to those defined by the UN "(1) to avoid depriving, (2) to protect from deprivation and (3) to aid the deprived".<sup>90</sup> Contrary to Shue I argue that the first category really is a negative duty: avoiding to deprive means that the duty bearer himself only has to refrain from violating the right. Preventing *others* from disrespecting the right would be a positive duty, indeed, but that is a case of the second duty category: protection.

### **3.4 Possible duty 1: not hinder food security**

At least, governments should not hinder food security. This is a negative duty: a moral

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86 Ibid.

87 Ibid., point 6, 14. The UN calls this process 'progressive realization'.

88 Ibid., point 15.

89 Payne, 2008: 7.

90 Payne, 2008: 8; Shue, 1980: 52; Jordan Kiper, "Henry Shue on Basic Rights: A Defense," *Human Rights Review* 12 (2011): 506.

duty *not* to commit an immoral act. An example is the governmental duty not to maintain an international order that neglects the interests of the global poor. The current global institutional order does not address this human rights deficit effectively, as the slow decline of poverty rates shows.<sup>91</sup> Governments should not hinder food security, but whose food security? The moral duties of a national government stretch beyond the interests of its own citizens. For instance, the International Committee of the Red Cross (ICRC) has advocated the codification of international humanitarian law (IHL), most notably at the Geneva convention in 1949,<sup>92</sup> which limits what governments are allowed to do to foreign citizens, even in times of war.<sup>93</sup> Likewise, governments should not violate the economic rights of foreign citizens.

### **Severe poverty as a human rights violation**

For example, Pogge claims that rich countries systematically violate their negative duty not to harm the rights of the world's poor.<sup>94</sup> More specifically, IGOs that are dominated by affluent countries (such as the WTO) would do so by creating and maintaining a 'global economic order' that lets the interests of overrepresented affluent people prevail rather than the interests of underrepresented people in need. Moreover, Pogge distinguishes two kinds of privileges that affluent countries grant corrupt leaders of developing countries, namely the resource and borrowing privileges. The *resource* privilege entails that dictators of developing countries can win basic resources and sell them to developed countries that refine them in order to resell the end products. The profit margins are higher in the latter stages of the supply chain, that require substantial financial investments in machinery and are thus inaccessible to the global poor. As a result, affluent people profit more than poor people from such a deal.<sup>95</sup> The *borrowing* privilege is the ability to borrow money from banks that operate internationally.<sup>96</sup>

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91 Pogge, 2008: 11-13.

92 Nagel, 2008: 59.

93 See this ICRC publication: Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law* (Cambridge University Press, 2011).

94 Pogge, 2007; Pogge, Thomas. "World Poverty and Human Rights." *Ethics and International Affairs* 19 (2005): 1-7.

95 Pogge, 2007: 48.

96 Ibid., 50.

Furthermore, Pogge mentions many factors that harm the global poor in trading negotiations, but his one-sided case should be nuanced on several points:<sup>97</sup>

(1) Many poor citizens are poorly represented by dictators whose policies they do not necessarily support — not even by majority rule like in democracies. Nozick would even reckon this democratic principle the tyranny of the majority over the minorities who did not consent to the allocation of their unjustly taxed resources. Anyway, the WTO recognizes these tyrants (such as Robert Mugabe in Zimbabwe) as legitimate representatives of their states.

(a). The international community only accepts one representative (delegation) from each country. That is the government who currently holds power, indeed, no matter the (un)democratic means by which it got into power. This approach seems too relativistic, but this is as close as the WTO can currently get to let the interests of these populations heard in negotiation rounds. Some states represent their citizens better than other states do, but blacklisting dictators would leave the interests of their citizens even less represented in the negotiations.

(2) The negotiators who are supposed to represent the global poor have less facilities to fully participate in these negotiations. Pogge complained that 23 member states did not even have permanent WTO delegations in Geneva as of 2005.

(a). As of 2014, 16 out of 161 member states lack a permanent mission to the WTO in Geneva. So over 90% of the member states are permanently represented.

(b). These 16 'non-resident' countries all have small populations.<sup>98</sup> Malawi with 16 million inhabitants is larger than the other 15 countries combined. So the large majority of the global population is permanently represented in Geneva.

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<sup>97</sup> The numbers (1-3) are my representations of Pogge's points and the letters (a-c) are my nuances.

<sup>98</sup> World Trade Organization, "WTO organizes 'Geneva-weeks' for non-resident delegations," [https://www.wto.org/english/tratop\\_e/devel\\_e/genwk\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/genwk_e.htm).

(c). Moreover, the WTO is well aware of the moral importance of having their interests represented: the WTO invites these 16 countries to a negotiation week that it organizes for that purpose twice a year.<sup>99</sup>

(3) Pogge condemns affluent people for being *actively responsible* for global poverty, which he reckons “*the largest crime against humanity ever committed*”.<sup>100</sup>

(a). Global poverty is indeed a tremendous moral problem from utilitarian, deontological and human rights perspectives, but Pogge's terminology is too strong. Who ‘commits’ this ‘crime’, really? Citizens who choose (national) politicians who co-create (global) institutions that contribute to poverty? This moral problem might be one of omission rather than commission: not an actual act, but the mere lack of positive action to eradicate poverty.

### **Evaluation of Pogge's argumentation**

According to the realist theory in international relations, states are the primary actors in international relations, rather than IGOs and corporations. Realists believe that states primarily pursue their own interests in their battle for power. Pogge gives such a *realist* account of negotiation strategies in the WTO, albeit exaggerated rather than *realistic*. Although Pogge is right about the magnitude of the problem of poverty, the causes are more fragmented. Therefore, his discourse on ‘crimes’, ‘commissions’ and ‘active responsibilities’ is too strong. Is it a genuine duty or a mere generosity for affluent people to aid the global poor? The negative rights violations by intergovernmental trade policies constitute a positive right for the global poor to be compensated for these harms.<sup>101</sup> Poor countries hold this secondary right against the affluent countries that have violated their primary right by imposing the trade barriers in the first place. Pogge deliberately only defends negative rights and duties, in order to establish his grand claim that poverty is a human rights violation. As a result, he does not need to argue for

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<sup>99</sup> Ibid. The WTO has already been organizing such weeks since 1999, well before Pogge's complaint.  
<sup>100</sup> Pogge, 2005: 2.

<sup>101</sup> Extrapolated from a thought experiment with two individuals on retributive justice. Cohen, 2004: 268.

any positive rights and duties. This makes his case less vulnerable to libertarian arguments against taxation. As a result, his argumentation should also convince so-called 'bleeding-heart libertarians', who care both about free markets and social justice. Fernando Tesón is an example of a bleeding-heart libertarian. He cares about the harms done by economic protectionism, not out of concern for net welfare effects, but for the specific effects upon domestic consumers and foreign producers. He holds that social justice makes free markets imperative. Tesón is still a libertarian because he sees inherent value in free markets, but he differs from other libertarians in that he also reckons them instrumental to goals of social justice.<sup>102</sup>

### **3.5 Possible duty 2: food provision**

Shue also claims that subsistence rights constitute a positive duty which the government could fulfill by providing hungry people with food. Indeed, some governmental development assistance still consists of literally giving hungry people bags of rice or grains. There is an empirical problem though, namely the adverse effects of food aid on the behavior of market actors. Governmental support induces behavioral incentives to consumers and producers. Without the right incentives, people risk to waste available resources.<sup>103</sup> Since the 1970s the World Food Programme has experimented with more sophisticated methods to feed the poor, such as distributing food vouchers. Still, most aid amounts to capital accumulation on the receiving end, while economic growth cannot only rely on that. Capital inflow to a country is only useful if that country has an excess of labor.<sup>104</sup> For instance, a newly bought plough can only yield additional harvest if the country has people available to work with it.

### **Dumping food on foreign markets**

Moreover, subsidies for domestic producers in a situation of market equilibrium lead to

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<sup>102</sup>Fernando R. Tesón, "Why Free Trade Is Required by Justice," *Social Philosophy and Policy* 29 (2012): 126–153.

<sup>103</sup>William Easterly, *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics* (MIT Press, 2002); Kiper, 2011: 511. I will elaborate upon this issue in more detail in paragraph 4.1 on market efficiencies.

<sup>104</sup>Ibid.

excess food supply on a country-level. Affluent countries easily get rid of redundant foods by selling them to developing countries against prices below cost prices. Dumping subsidized food on developing markets has even been a common strategy in European and American development assistance in the second half of the twentieth century.<sup>105</sup> Tremendous amounts of grains, corn and dairy have thus been shipped to developing countries. This results in bankrupting local farmers. Western companies thus outcompete farmers in developing countries, supported by (EU-CAP) subsidies that makes this competition unfair. So dumping is no systemic solution for food shortages in developing countries. If the goal is not to feed hungry people in the short run but to create a functioning food market (an 'enabling environment' for business), then profitable investments are more effective. That makes for a strong argument against this type of governmental interference with food markets: subsidizing food security within the EU equals subsidizing food insecurity outside of the EU. Admittedly, some food aid is needed to solve the aforementioned *transitory* food insecurity in disaster-struck areas. However, major moral challenges remain against direct food provision that aims to alleviate *chronic* food insecurity.<sup>106</sup> That is, beyond the feasibility problems of development assistance, each national government must take into account: the (1) effects of its trade and agricultural policies upon, (2) the conflicting interests of and (3) its duties towards both producers and consumers.

### **3.6 Sub-conclusion**

Whoever violates the negative rights of the global poor ought to stop doing that, and arguably has to compensate the victims for the harms committed upon them. Whether informal institutions such as charity actually suffice to fulfill the right to food is an empirical matter beyond the scope of this ethical thesis.<sup>107</sup> However, even if formal governmental protection were needed to solve dire situations of acute hunger, such market distortion comes with morally relevant negative externalities (unintended side-

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<sup>105</sup>Ryan Cardwell, "Food Assistance and International Trade," in *Encyclopedia of Food and Agricultural Ethics*, eds. Paul B. Thompson and David M. Kaplan (Springer, 2014): 854.

<sup>106</sup>I will elaborate upon these challenges in chapter 4 on markets.

<sup>107</sup>Cohen, 2004: 70; Shue, 2014: 23.

effects). The FAO holds that purchasing power determines food security, on the level of households and arguably of nations. This picture of the national level is too simplistic, as geopolitical relations and institutions are also able to jeopardize food security significantly. Yet the FAO is right that “*for many developing countries, food security and equity are two sides of the same coin*”.<sup>108</sup> A focus on redistributive measures prioritizes equality, but there are alternative ways to discuss governmental duties regarding the right to food.<sup>109</sup> That is, the current ‘global institutional order’ of the WTO (even though affluent countries do not force it upon developing countries like Pogge claims) is unjust, because it systematically benefits affluent people at the cost of the global poor. More clearly, dumping subsidized foods clearly is a morally and economically suboptimal EU strategy, as it is costly to the EU countries and it disrupts developing markets. The governmental duties regarding the right to food discussed so far are *pro tanto* obligations.<sup>110</sup> This means that, in theory, other possibly more important duties could overrule them. Therefore, the next chapter will focus on the competing duties that a national government stumbles upon in the context of a market on which foods are traded.

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108 Food and Agriculture Organization of the United Nations, “*Trade Reforms and Food Security*,” <http://www.fao.org/docrep/005/y4671e/y4671e05.htm#fn14>, chapter 1.6.

109 Iris Marion Young, “Displacing the Distributive Paradigm,” in *Ethics in Practice*, ed. Hugh LaFollette (Blackwell, 2010), 591-601.

110 ‘Pro tanto’ is the Latin expression for ‘only to that extent’. Danny Frederick, “Pro-Tanto Obligations and Ceteris-Paribus Rules,” *Journal of Moral Philosophy* 12 (2015): 255–266.

## 4 Governmental duties regarding food markets

Charles Beitz notices that discussions on human rights tend to focus on the right holders, but enforcing the right to food also comes with some costs.<sup>111</sup> By introducing import tariffs and export subsidies, governments interfere with food markets. These policy instruments can contribute to the fulfillment of the right to food security of some people. However, a government risks to violate other (e.g., property) rights of other people at the same time. A government can even violate one right by protecting another right of the same individual, due to the side-effects of its policies. Different distortions of food markets deserve different moral evaluations. A governmental action does not determine the actual market distortion on its own, as context also has influence on the results of such policies. In coordinated market economies such as Germany the national government has a wider scope of action than in liberal market economies such as the USA. In this chapter I attempt to find categorical duties of governments towards food markets. So my possible moral imperatives are applicable to both German and American contexts. Transactions between suppliers and buyers are primarily governed by market mechanisms. Therefore, I will first argue why market distortions are morally significant.

### 4.1 Criticisms on food market interventions

A market distortion is not some amoral phenomenon. Governmental interventions are concrete acts that affect the well-being of actual human beings, so they are well within the scope of moral assessment. In order to morally assess governmental distortions of food markets, more empirical research on their actual effects needs to be done. At least the dominant economic frameworks suggest that not all market distortions are morally equivalent. For instance, governments *facilitate* rather than *distort* markets by policing property rights. The buying and selling of goods requires that the seller first holds the

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<sup>111</sup>Hence Beitz calls rights holders 'beneficiaries' in this respect. Charles Beitz, "Human Rights," in *A Companion to Contemporary Political Philosophy*, ed. Robert E. Goodin et al. (2009), 630.



goods that (s)he can transfer to a buyer after the sale. This is enabled by property rights.<sup>112</sup> If all goods were possessed equally by everyone (or not possessed at all by anyone) rather than possessed by individual people, then the acts of buying and selling would lose all their meaning. Therefore, property rights enforcement is an example of governmental interference with markets by law that does not distort the markets. Governments also act in ways that do affect the prices and quantities of goods that are sold, which is the main focus of this chapter.

### **(1) Freedom: why free trade is right**

Food market interventions entail choices about which foods to support, so which niche markets to distort deliberately. For the sake of argument, assume that the government always chooses the right good. A libertarian argument against food market interventions is that governments should not distort the free exercise of supply and demand.

### **Entitlement theories of justice**

The aforementioned approach of Thomas Pogge and the following of Robert Nozick are two examples of entitlement theories of justice. Entitlements are permissions to act. Nozick is a natural rights theorist who emphasizes how people legitimately obtain goods, namely according to the principles of acquisition and transfer.<sup>113</sup> If someone has legitimately acquired a good, one has an entitlement to that good. If someone else is entitled to hold a good, other people cannot have that good at their disposal at the same time. For that, the possessor would have to transfer the entitlement to someone else in a legitimate manner (by direct consent), which Nozick calls the fulfillment of the 'principle of justice in transfer'.<sup>114</sup> The same principles go for the government: if the government has not obtained a resource legitimately, it cannot redistribute that resource legitimately either. Redistribution by the government is usually legitimized by flaws in the initial distribution of resources, but Nozick objects: *"there is no central distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange*

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<sup>112</sup>Hence Nozick calls possessions 'holdings' of persons.

<sup>113</sup>Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), 150.

<sup>114</sup>*Ibid.*, 150.

for something or as a gift.”<sup>115</sup> That is why Nozick calls his framework ‘justice in holdings’, rather than ‘justice in (re)distribution’.<sup>116</sup> But why should the distribution be central to be unjust? Pogge shows that entire institutions can be morally flawed as well. He even criticizes global economic institutions for creating central conditions for wealth distribution.<sup>117</sup> Surprisingly, these political opposites both attack governmental market distortions, albeit on other grounds: Pogge because such institutions violate welfare rights by contributing to global poverty, and Nozick because governments violate liberty (i.e., property) rights by collecting resources for redistribution.

### **The economic intervention of taxation**

Basically, taxation is unjust according to Nozick, who holds that the government thereby violates the principles of legitimate entitlement. This is why libertarians see inherent value in free markets.<sup>118</sup> Nozick clarifies the relations among market actors in his thought experiment by means of the well-known ‘state of nature’. The central question is: how would human life be like if there were no societies? Nozick’s state of nature is rather benign, and in that sense closer to the state of nature as conceived by John Locke than that by Thomas Hobbes.<sup>119</sup> Whereas Hobbes’ state of nature was one in which *the man is man a wolf*<sup>120</sup> and life was thus “solitary, poor, nasty, brutish, and short”,<sup>121</sup> Locke did have a less grim picture of human nature. This condition is necessary for a market to achieve any socially desirable goals. My criticism here is that the government cannot just act like any other market actor though. Its purposes are precisely to solve what the market does not solve. Any role for the state implies that the

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115Ibid., 149.

116Ibid., 150.

117Pogge, 2005; Pogge, 2007.

118Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford University Press, 2002), 102.

119Ian Shapiro, *The Evolution of Rights in Liberal Theory* (Cambridge University Press, 1986): 157.

120Thomas Hobbes, *Leviathan* (Cambridge University Press, 1991 [1651]): 258. Hobbes hereby conveys the idea of man as a ruthless lone predator, even though wolves (and human beings) actually are evolutionarily hardwired to be rather cooperative creatures that live in packs. See Frans de Waal, *Primates and Philosophers: How Morality Evolved* (Princeton University Press, 2009): 3-4.

121Hobbes, 1991: 192. Hobbes thus legitimizes the establishment of sovereign authority, that he deemed necessary to escape from such a state of nature.

government needs resources to fulfill that role, hence taxation. That is, night-watchmen have to be paid for their work as well.

### **Rights: processes and/or outcomes?**

Both Pogge and Nozick provide *historical* approaches in the sense that the process that has led to a (wealth) distribution determines its moral legitimacy. Nozick uses the term *historical* in opposition to *current time-slice* approaches, such as utilitarianism. In the latter frameworks, outcomes ('end-results' in Nozick's terms) determine whether a distribution is just.<sup>122</sup> Pogge's and Nozick's conceptions of justice are deontological in that they emphasize a just process, rather than a just outcome. That is, Nozick reckons any outcome just as long as the process by which that outcome is achieved respects the principles of entitlement (rather than norms for equality).<sup>123</sup> Rights theorists like Pogge and Nozick resist the idea of a right being the accumulation of preferences or welfare effects. Instead, rights are moral side-constraints to actions.<sup>124</sup> Both Pogge and Nozick strongly criticize certain governmental hindrances in market contexts as rights violations, so they both arrive at negative duties for policymakers. Still, we need to know the effects of governmental trade policies, before we can morally assess them — regardless of whether one is interested in their impacts on individual rights (whose?) or in their impacts on net utility. For this purpose, I will analyze how consequentialists would defend free trade.

### **(2) Utility: why free trade is good**

A consequentialist argument against governmental market interventions is that free trade maximizes total utility, which the government ought not to hinder. Kymlicka's variant for preference utilitarians is: "*many utilitarians favour the free market, since its efficiency allows for the greatest overall satisfaction of preferences*".<sup>125</sup> This chapter started with criticism on governmental market interventions in order to make the case for free trade. Libertarians categorically believe that the government should not

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<sup>122</sup>Nozick, *Anarchy, State and Utopia*, 1974: 153-154; Pogge, 2007.

<sup>123</sup>Shapiro, 1986: 160.

<sup>124</sup>*Ibid.*, 160-161.

<sup>125</sup>Kymlicka, 2002: 102.

interfere, as it would violate the rights of market actors — more specifically, their 'liberties' in the Hohfeldian scheme. This case can also be framed in more positive terms: what is good about trade?

### Comparative advantage

The comparative advantages of nations are the main driving force for international trade. Product specialization leads to welfare gains for all countries. Drawing upon this idea, ethicist and classical economist Adam Smith prescribes that countries should not produce a product domestically if they can buy an identical product cheaper abroad.<sup>126</sup> Assume that there are only two countries (A and B) that can both produce only two crops (wheat and corn). If we also assume that labour is the only production factor in both countries, this could be their possible productivity:<sup>127</sup>

<i>Output in units (bushels) per labour unit (man hour)</i>	<b>Wheat</b>	<b>Corn</b>
<b>Country A</b>	4	5
<b>Country B</b>	2	1

Apparently, country A has an absolute advantage for both crops: it can produce more wheat and more corn with the same labour input. Even if country B is the least efficient producer of corn and of wheat, the labour force of country B still can produce something. So country B will produce the food it is relatively best at (wheat), that is, relative to the other crop it could produce.<sup>128</sup> Even the less productive labour of country B can thus be allocated, albeit less efficiently than the more productive labour of country A. This makes sense: country B's labour would still yield an output above zero, which is what its otherwise unemployed labour force would yield.<sup>129</sup>

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126Comparative advantage is the trade theory of David Ricardo. Moore McDowell et al., *Principles of Economics with Redemption Card* (McGraw-Hill Higher Education, 2006), 38; Thomas A. Pugel, *International Economics* (McGraw-Hill Education, 2009): 37.

127This is my adaptation of the table in Pugel, 2009: 37.

128In terms of opportunity costs: country B has to sacrifice only 0,5 bushels of corn in order to let its labourers produce 1 bushel of wheat (or 2 wheat for 1 corn), whereas country A would have to sacrifice 1,25 bushels of corn for 1 bushel of wheat (or only 0,8 wheat for 1 corn).

129McDowell, 2006: 46-47.

Consequentialists deem this morally relevant, because trade maximizes the output quantity that a given input quantity can yield. International trade among rich and poor countries maximizes total welfare as well: both countries trade if and only if both countries can gain welfare from it. Many nuances could be made to this trade model, but the takeaway message of this paragraph is as follows. The reallocation of countries' fixed factors of production (only labour in this simplified example) yields the world more goods. That is the basic story behind *free trade*. The question over whom these outputs are distributed drives *fair trade* initiatives, i.e., to increase the welfare gains for smallholder farmers. However, national interests should not be reckoned an aggregate of individual interests found in one country. Food producers have other interests than food consumers do. Producers aim for higher prices to make higher profits (larger margins between the costs of production input and their revenues from sales), whereas consumers benefit from lower prices. The interests of all actors who pursue their own self-interests in an economy are aligned by *the invisible hand* in a perfectly competitive market. Smith used this metaphor to defend the efficiency of competitive markets in a state of equilibrium between supply and demand.<sup>130</sup>

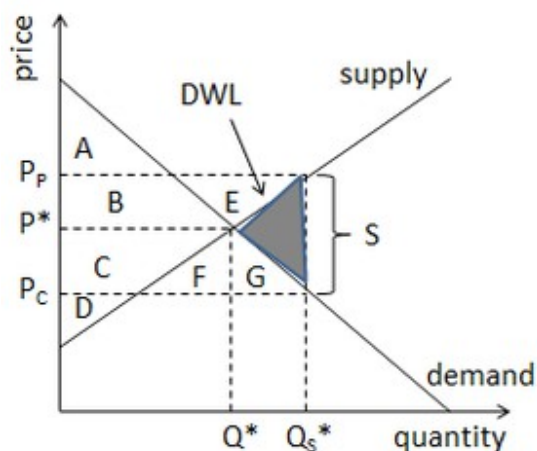
### **The effects of subsidies**

The libertarian case against wealth redistribution (such as by subsidies) primarily targets the way taxes are funded. There is also a strong argument against the effects of governmental food market interventions. For instance, agricultural subsidies affect different stakeholders differently. Production subsidies lead to more domestic supply of a good than for which there is domestic demand — hence the aforementioned phenomenon of dumping excess supply. Subsidies always create so-called 'deadweight losses' of total welfare. At whose cost do these losses come, is shown in this graph and table:<sup>131</sup>

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<sup>130</sup>Per Pinstrup-Andersen and Derrill D. Watson II, *Food Policy for Developing Countries: The Role of Government in Global, National, and Local Food Systems* (Cornell University Press, 2011), 312-314.

<sup>131</sup>Jodi Beggs, Analysis of a Subsidy, <http://f.tqn.com/y/economics/1/S/p/F/subsidy-10.png>.



	Free Market	Subsidy
Consumer Surplus	A+B	A+B+C+F+G
Producer Surplus	C+D	B+C+D+E
Government Revenue	0	-(B+C+E+F+G+H)
Total Surplus	A+B+C+D	A+B+C+D-H

Supply and demand curves cross each other at  $(Q^*, P^*)$ . At this point, the market is in equilibrium. The consumer surplus is the difference between the price ( $P$ ) that the consumers would be willing to pay for a quantity ( $Q$ ) of this good and the equilibrium price ( $P^*$ ).<sup>132</sup> The producer surplus is the difference between the price for which producers would be willing to sell their goods and the price the equilibrium price.<sup>133</sup> The economic intervention shifts some surpluses from one group of actors to another, but the deadweight loss triangle (indicated by DWL in the graph and by H in the table) represents the loss of total welfare. Production subsidies increase the prices domestic consumers pay and increase the revenues domestic producers gain.<sup>134</sup> Thereby, the government benefits domestic producers and harms domestic consumers — and it harms foreign producers, as the impact of dumping on foreign farmers shows.<sup>135</sup>

Agricultural subsidies clearly have winners and losers, that is, they promote the food security of some persons and they hinder the food security of others. Furthermore, food market interventions entail choices about which foods to support. The market for the 'selected' foods will be distorted. That is, it will cost some welfare of domestic consumers and foreign producers of those foods, which depends upon the chosen governmental intervention. The government can deliberately influence which crops its country will produce by subsidizing them. Farmers will be triggered to produce the most

<sup>132</sup>Pugel, 2009: 18-19.

<sup>133</sup>Pugel, 2009: 22-23.

<sup>134</sup>Jon C. Pevehouse and Joshua S. Goldstein, *International Relations* (Pearson Longman, 2007), 177.

<sup>135</sup>See paragraph 3.5.

profitable foods, to the extent that their production factors (labour in the thought experiment on corn and wheat above) are mobile. This tends to happen in any market, regardless of whether that profitability is artificially induced by public policies. This is in harmony with the right of producers to use their resources freely, that is, to the end they deem most desirable. However, it is less clear *who* those winners and losers are in a globalized economy. Arguably, the effects of subsidies are even more complex than sketched above. For instance, the current terms of trade of countries strongly influence the effects of export subsidies.<sup>136</sup> The effects are positive for countries that export more food than they import, and negative for countries that import more food than they export.

While assessing these deadweight losses, two related reservations should be made. Firstly, deadweight losses due to governmental interventions are only losses in terms of aggregate welfare impact. For utilitarians, aggregate output is the standard for ethical evaluation. It is a net welfare loss means that if total surpluses for consumers and/or producers are less than the maximum that could have been achieved with the available resources. On top of that, public action such as the distribution of subsidies also has bureaucratic costs that require additional taxes.<sup>137</sup> Secondly, the fact that a public policy has deadweight losses is not conclusive for its moral assessment. Libertarians such as Nozick would object that the government infringes upon the property of domestic consumers (and foreign producers) without their consent. Yet a thorough moral assessment also takes into account the arguments *for* market interventions.<sup>138</sup>

Some of the economic terms used should be clarified for the purpose of ethical analysis. For instance, ‘winners’ and ‘losers’ are not moral judgments, but they merely indicate the balance of someone’s material gains. Moreover, food producers are food consumers themselves, too. For example, a corn farmer uses part of his profits to buy the wheat he consumes every day. So we compare the utility effects of policies for

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<sup>136</sup>The terms of trade of a country are its exports value expressed in terms of its imports value.

<sup>137</sup>Actually, total government expenses are more than just the value of the subsidies (B+C+E+F+G+H).

<sup>138</sup>As elaborated upon in paragraph 4.2.

people merely *qua producer* or *qua consumer* of the specific goods that are affected by the policies.<sup>139</sup>

### **The effects of direct cash transfers**

The policy instrument discussed so far is monetary support by the government for food security. By means of import restrictions governments can promote domestic food security, whereas food aid can promote foreign food security.<sup>140</sup> Yet there are alternative policy instruments for food security with different effects. If a government wants to relieve consumers from hunger, it can also give them cash.<sup>141</sup> Nagel fails to see the moral difference: "*aid of any kind permits the transfer of resources from that sector to another and is therefore equivalent to monetary aid*".<sup>142</sup> Direct cash transfers do not yield the deadweight losses though, so they are somewhat less harmful. This is why economists refer to market interventions by subsidies, tariffs and quotas as 'second-best policies', options that are second-best to direct cash transfers. However, direct cash transfers create inflation: an increased money supply drives down the value for that currency. So that policy instrument comes with negative net welfare effects as well. Altogether, both food market interventions tend to prevent the most efficient allocation of resources and thereby the maximization of utility.<sup>143</sup>

## **4.2 Defenses of food market interventions**

Ultimately, utilitarians John Stuart Mill and Adam Smith criticize governmental market interventions out of concern for net utility, while deontologists Pogge and Nozick do so out of genuine concern for rights. From my human rights perspective, governments should act from the understanding that basic rights (such as subsistence) trump other rights (such as property), which trump other interests. Therefore, market distortions might still be legitimate. If the market does not meet certain ethical standards, then that

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139That is, economic analyses focus on these roles rather than on individual people.

140Cardwell, 2014: 854.

141Unlike food vouchers, consumers can spend cash on any goods or services, so it does not drive up food prices as directly.

142Nagel, 2008: 57.

143Moore McDowell et al., *Principles of Economics* (McGraw-Hill Higher Education, 2006): 212.



gives reason for governmental interference. I will discuss two moral defenses of wealth redistribution in market contexts, for reasons of equity and freedom, respectively.

### (1) **Equity**

From more egalitarian perspectives, deadweight losses could be justified very well.<sup>144</sup> Apologists for the right to food could accept some deadweight losses if more people have their right to food fulfilled in the new than in the old distribution. After all, the right to food aims for social welfare, rather than for the maximization of total output from allocated resources. Indeed, economic rights promote equity at the cost of some freedom.<sup>145</sup> Utilitarians could still accept a deadweight loss as well, if a more equal distribution of resources leads to higher overall utility. Someone on the brink of starvation benefits more from 100 additional calories than someone who is already well-fed.<sup>146</sup> This priority principle fits Shue's case for the basic right to subsistence, in the sense that it commands relative moral weights for the malnourishment level of individuals. A discount rate should be applied to individuals who are already above some threshold of wealth. The basic right to subsistence implies that there are limits to what can reasonably be expected from governments: they only ought to guarantee a *minimum* level of adequate food for each person.

Adequate food is a necessary but no sufficient condition for survival. The same goes for water, shelter and security. Should the government interfere with all these markets, then? The government has many moral responsibilities that compete with the fulfillment of everyone's right to food. Of course, taxes can only be spent once. The right to food could be so important that its corresponding duties override other duties of the government. Nagel argues that governments ought to prioritize global equity more than they currently do. In the status quo some people suffer from poverty while that could have been avoided by global redistribution of some of the resources of wealthy people

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<sup>144</sup>Nagel, 2008: 53.

<sup>145</sup>Equity is economic equality. This should be understood not merely in terms of opportunities but in terms of actual possessions.

<sup>146</sup>Nagel, 2008: 56-57. Strictly speaking, this is a prioritarian rather than an egalitarian argument. For elaborations upon this nuance, see Derek Parfit, "Equality and Priority," *Ratio* 10 (1997): 202–21.

worldwide<sup>147</sup> — as long as these demands do not jeopardize the food security of the (currently) wealthy people.<sup>148</sup> This is a case of 'radical inequality'.<sup>149</sup> In an attempt to prescribe solutions against this evil, Nagel first defends the welfare state on a national level: *"the provision by sovereign states of a social minimum for their citizens is justified by the fact that morally arbitrary factors can exert so powerful a negative influence on people's lives in the absence of such a policy"*.<sup>150</sup> Likewise, the global economic order would be unjust because it creates tremendous wealth for some but hardly any for others. Because of this causal responsibility, charity alone does not suffice to meet the duties of affluent countries. Nagel does not address the negative duties of affluent countries that arise from the impact of their own actions, so Pogge's appeal to recognize poverty as a violation of human rights extends that.<sup>151</sup>

## (2) Freedom

Libertarians associate freedom with the free market, but the free market does not necessarily set people free in a valuable sense. Even the freedom of people might be best promoted by market distortions. In that sense, equity and freedom would be intertwined: the freedom of poor citizen X could be supported by food stamps financed by affluent citizen Y. Then, the aim of wealth redistribution is not equity itself, but freedom. Yet all taxes are redistributive, so equity remains part of the moral argument for the decision to tax Y and to spend it on X. Furthermore, Nozick stresses the importance of charity, as long as no one enforces it upon donors.<sup>152</sup> However, if starving people have to rely on the affluent people who happen to prefer them as the destination of their holdings, one cannot speak of food *security*. Governmental action provides a more reliable guaranteed minimum, especially in democracies where members of parliament can hold their administration to prioritize the fulfillment of the right to food.

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147The term 'resources' is used deliberately, to avoid the choice between taxing wealth or taxing income, but some form of taxation seems to be the appropriate *prima facie* instrument for the government.

148Nagel, 2008: 58. Peter Singer was morally and rhetorically right to include the criterion that moral imperatives must not be too demanding. See chapter 3 of this thesis.

149Ibid., 50.

150Examples of such morally arbitrary factors are *"natural endowments, family influence, or access to resources"*. Ibid, 53-54.

151Ibid.

152Ibid., 54. E.g., by means of official development assistance (ODA).

Moreover, the libertarians should have taken into account the impact of poverty on people's ability to engage in market transactions. The aforementioned hunger-based poverty trap gives reason to believe that *“it is unfair for the naturally disadvantaged to starve just because they have nothing to offer others in free exchange”*.<sup>153</sup>

### **Different kinds of freedom**

Negative freedom in itself is nothing but the lack of constraints.<sup>154</sup> Then freedom is not intrinsically but instrumentally valuable, namely for the ends one seeks to use his/her freedom for.<sup>155</sup> The weak bargaining position of the global poor merely leave them free to starve. Perhaps the market ought to be constrained for genuine freedom of its poorest consumers. The government sets them free by economic rights that constrain the forces of the free market. Alternatively, governments ought to support the poor actively in order to become full market actors, who can fulfill their basic needs by transactions — and thereby exercise their human agency more fully.

### **4.3 Possible duty 3: food market development**

So far the focus has been on negative duties to alleviate trade barriers and on positive duties to provide food. One of the avoidable problems that further impoverish developing countries is that they lack reliable market institutions that are needed for long-term poverty eradication.<sup>156</sup> Especially in fragile states, which are torn by conflicts and where the vast majority of global poor live,<sup>157</sup> there are hardly any formal markets in place that local governments can distort by economic interventions.<sup>158</sup> The national governments of affluent countries still remain partially responsible for this situation due to their economic protectionist measures (the aforementioned combination of domestic agricultural subsidies and barriers to food import). So these governments could have

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153Kymlicka, 2002: 104.

154Ibid., 222.

155Dower, 1996: 13.

156Nagel, 2008: 57.

157World Food Programme, “WFP Strategic Plan (2014-2017),” 2013,

<http://documents.wfp.org/stellent/groups/public/documents/eb/wfpdoc062522~1.pdf>, 35.

158Ibid., 14.

positive duties to create rather than to distort local markets, too. Now that governments play such a pivotal role in guarding market mechanisms, they can influence the extent to which their countries have so-called 'enabling environments' which welcome businesses. In the long run, such a market-friendly policy can lead to consumers and producers maximizing their welfare and creating the conditions for economic growth which alleviates hunger. In the short run, governmental efforts and investments are needed for this purpose. So governments can also *promote* the right to food by creating, maintaining or restoring efficient markets.

As Nozick follows a historical approach, he also favours remedies for past injustices. However, he does not outline any mechanism for governments to determine which remedies are just.<sup>159</sup> Arguably, such a system would include a governmental duty to get rid of the economic interventions that have distorted the market in the first place. For this purpose, coordinated intergovernmental action such as via the UN and the WTO is imperative. The WTO already uses the 'most-favoured nation' principle that promotes non-discrimination in trade. This principle entails that, if a national government intervenes to benefit certain fellow member states, it is required to benefit other member states equally.<sup>160</sup> In principle, and from principle, a member state is not allowed to apply different conditions for trade with different member states. If an individual state gives up its protectionist measures, it in effect stops discriminating. Governments can thus *respect* and *protect* the right to food. Unfortunately, agriculture lags behind other sectors in adopting the non-discrimination principle, while trade discrimination in this sector affects people in dire need so directly. Altogether, by supporting the development and maintenance of free markets, governments can meet (what the UN calls) their positive duty to facilitate.<sup>161</sup>

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<sup>159</sup>Nozick, 1974: 152.

<sup>160</sup>This applies both to (import) tariff and non-tariff barriers to trade. Pevehouse and Golstein, 2007: 179.

<sup>161</sup>UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, point 15.

### **Nuance: globalization complicates economic policy**

Economic globalization practically complicates the coordination of public action. For instance, realist international relations theories rely on a conception of national states and economies that date from before economic globalization. Economists have claimed that information technology and the mobility of labour and capital make the world flat.<sup>162</sup> However, 'gravity models' show that national boundaries still limit trade significantly. This is even the case within free trade zones, such as the North-American Free Trade Association (NAFTA). Surprisingly, northern American states are more inclined to trade with southern American states than with Canadian states that are geographically closer — even though the NAFTA agreements reduce the transaction costs of trade between the USA and Canada.<sup>163</sup> On top of that, these two countries have highly similar cultures and languages, which usually eases trade. Furthermore, the development of international structures for public governance lags behind international trade. This combination of a highly globalized economy with less globalized public administration implies that there is a 'global governance gap'.<sup>164</sup> As a result of this, no nation-state is able to unilaterally enforce institutional change in the current global economic order that Pogge rightly criticizes.<sup>165</sup> Moreover, it is more difficult to assess a government's economic human rights record worldwide than Pogge supposes. That is, not all effects of economic policies are deliberate: they also have side-effects that are both unforeseeable and hard to identify. For all these reasons, the world is not that flat.

#### **4.4 Weighing all arguments in public policy**

Governments ought to weigh the impacts on consumers (the people who claim their right to food) and producers (the people who claim their property rights) of agri-food trade policies. If each national government finds its own compromise between

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<sup>162</sup>Thomas L. Friedman, *The World Is Flat: The Globalized World in the Twenty-First Century* (Penguin, 2006).

<sup>163</sup>Pugel, 2009: 108-109.

<sup>164</sup>Andreas Georg Scherer and Guido Palazzo, "Toward a Political Conception of Corporate Responsibility: Business and Society Seen from a Habermasian Perspective," *Academy of Management Review* 32 (2007): 1110.

<sup>165</sup>Nagel, 2008: 56.

pressures by consumers and producers, then each government simultaneously affects the production, trading and redistribution possibilities of other countries. Unfortunately, it remains beneficial to each individual country to favour domestic producers through protectionist policies.<sup>166</sup> It thus influences the terms of trade positively, at the cost of all aggregate countries. Expressed in game theoretical terms: each country gains from defection (by embracing protectionism), regardless of whether the others cooperate (by avoiding protectionism). In the sense of political risks, protectionism secures a country's domestic food supply. Altogether, there is no panacea for governments to deal with the right to food. How governments should deal with the right to food partially depends on one's rights conception. According to three frameworks, rights are considered as constraints, as instruments or as goals:<sup>167</sup>

1. According to deontologists, rights are *constraints* to which actions are morally permissible. Then, the right to food is a side-constraint to market forces. In my human rights perspective, I follow Shue in that governments ought to prioritize basic rights over other rights.
2. Utilitarians think of rights as *instruments* to maximize well-being. So their commitment to any right is contingent upon its outcomes. That would severely undermine the function of rights as side-constraints. That is, consequentialists are already committed to the maximization of total well-being. If rights were nothing but means to this end, then the concept of rights would be redundant.
3. Amartya Sen, who proved that food insecurity is at heart a political problem, emphasizes the importance of the *goals* that rights are hoped to achieve.

So we can combine the utilitarian commitment to the promotion of (a certain understanding of) the good with the deontological recognition of the intrinsic value of

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<sup>166</sup>Ibid.

<sup>167</sup>Amartya Sen, "Property and Hunger," *Economics and Philosophy* 4, (1988): 57-58.

rights and duties.<sup>168</sup> In the end, governments ought to decide to what extent they let the values of liberty and equality prevail in their agri-food policies.<sup>169</sup>

#### **4.5 Sub-conclusion**

By means of barriers to trade, government undeniably distorts the market, which I have proven is only legitimate under certain conditions. The government creates the institution of the free market by rules and regulations to begin with, so it never is 'free' as such. Moreover, any governmental responsibilities towards markets are derived from its responsibilities to people in their roles of suppliers or buyers on these markets. It is difficult to formulate universal conditions under which it is morally legitimate for governments to distort food markets. By the economic intervention of food subsidies, the government violates property rights of all consumers of a good by causing its market price to raise. This right conflicts with the claim-right to food of the poorest consumers. The values equality and liberty seem to conflict where economic rights are concerned. Furthermore, they have to choose from different understandings of the values of equity and freedom. The third value of the Enlightenment that guides the human rights project, fraternity, is represented by the international community — whose existence is a necessary condition to enforce any human rights to begin with.<sup>170</sup> Discriminating between domestic and foreign producers is morally problematic, but it will remain as long as protectionism is more profitable for each individual country. In order to release countries from this prisoner's dilemma, intergovernmental organizations should weigh these conflicting rights and interests, and strive for a collective optimum.

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<sup>168</sup>Sen, 1988: 58.

<sup>169</sup>"*The rallying cry of the French Revolution 'liberte, egalite, et fraternite' lists the three basic ideals of the modern democratic age*". Kymlicka, 2001: 208.

<sup>170</sup>Boersema, 2011: 74.

## **5 Conclusion**

The main aim for this thesis was to find out what governments ought to do for the human right to food, taking market mechanisms into account. The following three subquestions were means to that end.

### **5.1 What right to food can citizens claim?**

Food is necessary for survival, which in turn is a necessary condition to exercise any (other) human rights — or any human agency for that matter. Citizens have a positive claim-right to food, indeed. It is even part of the basic right to subsistence, which claims priority over competing rights and interests.

### **5.2 Governmental duties regarding the right to food**

Governments have a negative duty to respect the right to food, that is, not to hinder food security by its economic interventions. As far as national governments contribute to global institutions that harms the global poor, then they bear a positive duty to compensate for their own harms.

### **5.3 Governmental duties regarding food markets**

The current food markets beg for an ethical evaluation of deliberate barriers to trade. Governmental promotion of the right to food often implies distortions of food markets, which both libertarians and consequentialists prescribe to avoid. From a libertarian perspective, there is no positive governmental duty to provide food because that would directly harm the property rights of producers and taxpayers. Consequentialists stress that free markets tend to be more efficient, while wealth redistribution always has certain deadweight losses. From an egalitarian perspective, the fulfillment of the right to food permits some deadweight losses. Economic effects are normatively significant, but that does not imply that aggregate wealth maximization is all that matters. Moreover, not



all governmental agri-food policies distort markets. Governments can also promote the right to food by helping primitive markets develop. For instance in fragile states, IGOs can help create rather than distort the market mechanism, which positively affects food security as well as freedom of choice. Such a governmental intervention would thus promote rather than violate both the consumers' right to food and the producers' property rights.

#### **5.4 Answer to the main question**

The basic right to subsistence has normative ramifications for agri-food policies. Basic rights do not demand wealth maximization, but respect for, protection of and fulfillment of the right to food, even before other rights. Human rights trump other interests, and basic rights trump other human rights. Therefore, governments ought to prioritize the fulfillment of the right to food over non-basic rights (such as property rights), let alone over other interests at stake. So citizens can claim a positive human right to food, which implies that governments have positive duties. Moreover, governments ought to stop violating their negative duty not to hinder food security by means of barriers to trade. It might be legitimate to help develop primitive markets and thereby promote the right to food of people whose food supply becomes more secure with than without these markets. Several limitations of this thesis lead to recommendations for further analysis:

- A deontological bias has inevitably crept in with my focus on the *right* to food and its corresponding duties. A consequentialist approach would require more empirical information on the effects of different policies, at least more than the thought experiment-based theories of the likes of Adam Smith contain.
- Classical economists such as Ricardo and Smith assume perfect competition, which means that neither producers nor consumers are able to influence prices. This assumption is unrealistic, because agricultural cooperations with large market shares actually do influence food prices, especially in relatively small developing markets.<sup>171</sup> This strengthens my case for food market development.

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<sup>171</sup>John S. Marsh, Food Aid and Trade," in *Food Ethics*, ed. Ben Mepham (Routledge, 1996): 22-23.

However, there are limits to resource mobility: it is costly for labourers (and capital, albeit to a lesser extent) to move among countries and/or sectors. More empirical data on international food trade could affect the conclusions but not the structure of these ethical arguments. Even the deontological imperatives in this thesis are not truly categorical, but conditional upon assumptions on the causal relations. For instance, even if it turned out that agricultural policies of affluent countries were not causally responsible for global poverty, they would have no positive duty to compensate for anything.

- The moral imperatives are thought of against the backdrop of contemporary market economies. In fragile states, the market mechanism does not function properly. One must meet a certain threshold of physical security before one can buy and sell anything. So physical security is a universal human need at least as basic as food security, which calls for policies that combine development with defense (and diplomacy).

For rhetorical purposes I have followed the argumentative strategies of Henry Shue, who relies on a 'thin' morality of (only) subsistence rights, without embracing his duties that I still reckon to be positive, and of Thomas Pogge, who avoids the positive duties discourse altogether. A commitment to such a minimal conception of the good must reduce the reasons for people to disagree with its imperatives. Altogether, governments should take great care in balancing the rights and interests that are at stake. So governments ought to choose: which rights, which freedoms and which equalities should prevail in agri-food policies? The basic right to subsistence adds more weight to the scale than non-basic rights and other interests. Regarding the right to food, this leads at least to negative duties and, under the specified circumstances, to positive duties for governments. *Erst kommt die Moral, dann kommt das Fressen.*<sup>172</sup>

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<sup>172</sup>Inspired by the lines of character Captain Macheath 'Mack' the Knife in the ballad opera *Die Dreigroschenoper* that German socialist playwright Bertold Brecht wrote 1928.

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