

Abstract

This chapter constitutes an exploration and evaluation of the so-called “linkage argument” in support of the inclusion of a right to subsistence among human rights. While it is uncontroversial that avoiding poverty is hugely important for all humans, the human right to subsistence and other socioeconomic human rights are often regarded as social goals rather than genuine rights. The linkage argument aims to show that a commitment to the existence of any human rights at all entails a commitment to the inclusion of a right to subsistence among them. I argue that the linkage argument does not succeed in vindicating the inclusion of a right to subsistence among *moral* human rights, but I conclude that a modified version of it might support the justification of a *legal* human right to subsistence.

Keywords

human rights, poverty, subsistence, moral human rights, legal human rights

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Chapter 9

The Link between Subsistence and Human Rights

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1 Introduction

It is by now a familiar fact that a huge number of people worldwide suffer from chronic and severe poverty. Exactly how many is difficult to ascertain; but even conservative estimates suggest that one in ten people worldwide has difficulty consistently meeting their most basic human needs.¹ This widespread poverty is mirrored by vast wealth owned by the global rich.² This suggests that eradicating global poverty is feasible, at least in the sense that there are sufficient resources to do so at relatively little cost.³ The persistence of extensive poverty in the face of the feasibility of its eradication strikes many as a serious injustice. According to one prevalent view, this is because it constitutes a violation of universal human rights, and in particular of the human right to subsistence (e.g. [Ashford 2007](#); [Caney 2005](#); [Gilabert 2006](#); [Miller 2007](#)).⁴

The human right to subsistence is a right to the means necessary to live a life free from severe poverty. These means include at least food adequate to avoid malnutrition, clean water adequate to avoid dehydration, and clothing and shelter adequate to avoid exposure to the elements. The human right to subsistence is generally argued for on the basis of the importance for all humans of the interest in having secure access to these means (e.g. [Caney 2005](#); [Griffin 2008](#); [Tasioulas 2007](#)). Lacking the means for subsistence is unquestionably among the worst situations that can befall any human. Malnutrition, dehydration, and

exposure cause physical pain, illness, developmental problems, and premature death, not to mention the profound psychological distress associated with these. Furthermore, when people cannot meet their most basic needs, they struggle to lead an autonomous life in that they are unable to pursue their desired projects. Lacking the means for subsistence also tends to perpetuate social and political marginalization. The very poor often lack any power to shape the institutions to which they are subject. In short, lacking the means for subsistence undermines physical and mental well-being as well as autonomy, and therefore constitutes a serious harm.

While it is uncontroversial that having the means for subsistence is of paramount importance for all humans, the inclusion of a right to subsistence among human rights is not. It is widely accepted that there are human rights to a variety of civil and political goods such as freedom from torture and freedom of speech, association, and religion; but the human right to subsistence and other socioeconomic human rights are often regarded as social goals or aspirations rather than genuine rights. Powerful challenges to the inclusion of a right to subsistence among human rights come from those who argue that we cannot move directly from interests to rights, regardless of how strong the interests may be. I will advocate one version of this view in [Section 3](#). According to this view, the justification of rights can include considerations about interests; they argue that the move from interests to rights must be mediated by other conditions, which ultimately preclude the human right to subsistence, while allowing for at least some civil and political human rights.

It is unclear, however, that the denial of a human right to subsistence is compatible with the affirmation of other human rights. It has been forcefully argued that there is an important link between civil and political human rights and subsistence, such that a commitment to the former entails a commitment to the inclusion of a right to subsistence among human rights. This kind of “linkage argument” was notably advanced by Henry [Shue \(1996\)](#), and has more

recently been developed by Elizabeth [Ashford \(2009\)](#). This line of argument will be our focus in what follows. In [Section 4](#) and [Section 5](#), I critically discuss both Shue's and Ashford's version of the linkage argument. The innovation of the linkage argument is that it eschews the standard move from the interest in subsistence to a human right to subsistence, and in this way promises to circumvent challenges that rest on a rejection of this move. While I ultimately argue that the success of the linkage argument in vindicating the human right to subsistence is limited, it nevertheless contains important insights, some of whose implications I explore in [Section 6](#).

2 Human Rights Disambiguation

We are primarily interested here in a debate over the *content* of human rights, but it will be helpful to begin by saying a little about the *concept* of human rights, since what human rights *are* is likely to affect what human rights *there are*. One of the central debates in the recent philosophical literature on human rights is between *naturalistic* and *political* accounts. According to naturalist accounts, human rights are the fundamental moral rights held universally by all humans simply in virtue of being human (e.g. [Gewirth 1978](#); [Griffin 2008](#)). Naturalist accounts differ from each other with respect to what it is about our humanity that gives rise to these rights, but they all agree that human rights are grounded in characteristics shared by all humans and that they are, therefore, held necessarily by all humans.

Naturalistic accounts have been challenged on the grounds that they overlook the essentially political nature of human rights. According to political accounts, the nature and content of human rights must be gleaned from facts about the international legal and political practices in which human rights figure prominently as norms (e.g. [Sangiovanni 2008](#); [Beitz 2009](#); [Buchanan 2013](#)). Looking at international human rights doctrine which centrally

includes the 1948 Universal Declaration of Human Rights and the two International Covenants of 1966, and at the political and legal apparatus surrounding them, we can identify at least two senses in which human rights are political. First, they are held primarily against political institutions—states in particular—by their members. Second, they are characterized and distinguished from other norms by the function(s) they have in international political and legal practice.

I argue that the debate between naturalist and political accounts of human rights presents a false dichotomy. We need not see either naturalist or political accounts as offering the exclusively correct account of the concept of human rights. Rather, we can see them each as identifying a distinct concept. This is supported by the fact that the term “human rights” is widely used to pick out *both* the rights held by all humans simply in virtue of being human *and* the rights articulated in international human rights doctrine and belonging to international political practice. The former are essentially moral rights, and the latter are essentially legal rights that form part of a broader international political practice. Rather than determining which of these constitutes the *correct* use of the term “human rights,” I propose that theorizing about human rights should be focused on developing a better understanding of moral human rights (MHRs) and legal human rights (LHRs) independently, and, importantly, on determining what kind of relationship holds between them.⁵

As to the relationship between MHRs and LHRs, three positions are available: One is that LHRs are context-sensitive manifestations or applications of MHRs, and so the justification of a given LHR necessitates the justification of a corresponding MHR (e.g. [Gewirth 1978](#); [Griffin 2008](#)). This is what [Buchanan \(2013\)](#) refers to as the “mirroring view,” since it requires that the justification of any LHR be mirrored by a corresponding MHR. The second available position is that LHRs are completely independent of MHRs, and so the justification of MHRs plays no part in the justification of LHRs (e.g. [Beitz 2009](#)). And

the third position is that there are some connections between LHRs and MHRs, but that the justification of a given MHR is neither necessary nor sufficient for the justification of a corresponding LHR (e.g. [Wellman 2011](#); [Buchanan 2013](#)).

My purpose here is not to settle the question of the relationship between MHRs and LHRs. Rather, I wish only to point out (a) that MHRs and LHRs are two distinct concepts of human rights, and (b) that there is an open question of how they relate to each other. This is important because in discussing the debate over the inclusion of a right to subsistence among human rights, it must be clear whether we are talking about MHRs, LHRs, or both. The central debate I will discuss in [Section 3–5](#) concerns the inclusion of a right to subsistence among *moral* human rights. In [Section 6](#) I consider the implications of this discussion for the inclusion of a right to subsistence among *legal* human rights. As we shall see, these will depend on which of the above views on the relationship between MHRs and LHRs turns out to be most apt.

3 The Claimability Objection

There are a number of objections to the moral human right to subsistence that challenge the inference from the interest of all humans in subsistence to a moral human right. In what follows, I will discuss only the one that I find most persuasive, namely the *claimability objection*.⁶ This objection has been most notably advanced by Onora [O’Neill \(1996, 2000, 2005\)](#), who argues that a right to subsistence cannot be included among moral human rights because such a right is not claimable, and is, therefore, not a genuine right. In the absence of claimability, O’Neill argues, the universal interest in having the means for subsistence is not sufficient for the justification of a human right to subsistence.

The claimability objection hinges on the distinction between positive and negative rights. Negative rights are distinguished from positive rights on the basis of their correlative duties: Positive rights correlate with positive duties, and negative rights correlate with negative duties.⁷ The distinction between positive and negative duties reflects the distinction between actions and omissions: A negative duty is a duty that can be fulfilled by omission alone. While it is widely acknowledged that the human right to subsistence entails negative duties on the part of others to abstain from action that deprives right-holders of the means for subsistence, it also characteristically correlates with positive duties to assist those who are unable to obtain access to the means for subsistence on their own. It is, therefore, a positive right.

According to the claimability objection, the problem with the moral human right to subsistence is that moral human rights cannot be positive. Moral human rights, as we have seen, are the rights held by all humans simply in virtue of being human. Moral human rights are, therefore, *general* rights. Rights are either special or general. Special rights are held in virtue of special relationships in which some people stand to others, such as institutional membership, kinship ties, and contractual agreements. By contrast, general rights are held regardless of such special relationships, and are, therefore, held by each right-holder against all moral agents (Hart 1955: 183–8). Since moral human rights are held by all humans *simply in virtue of being human*, they must be general rights, since they are, by definition, not contingent on any special relationships in which right-holders stand to others. Moral human rights are, then, held by each and against all.

According to O’Neill’s objection, there cannot be a right to subsistence among moral human rights because (a) the right to subsistence is positive, (b) moral human rights are general, and (c) rights cannot be both positive and general. This is because positive general rights would have to have as their correlates positive general duties, but positive general

duties are imperfect, and therefore cannot be the correlates of any right. Duties that are imperfect in the sense relevant to this objection are not owed to anyone in particular, although their fulfillment will typically benefit some.⁸ Perfect duties, by contrast, are owed either to all others or to some specified others on the basis of special relationships. The general duties of assistance and protection associated with the moral human right to subsistence are imperfect because, for any given duty-bearer, it is impossible to provide assistance and protection to all those in need. Therefore, in the absence of institutional mechanisms that serve to allocate specific duties to specific duty-bearers, these duties are not owed to anyone in particular. Although this does not detract from their stringency, it is left to the discretion of duty-bearers to decide whom to assist and protect.

As O'Neill argues, imperfect duties cannot be the correlates of rights because they are not claimable. On this view, to have a right is just to have a claim to the performance of some duty by some particular duty-bearer. But where duties are imperfect, they are not owed to anyone in particular, and so no one can have a claim to their fulfillment. According to the claimability objection, for any given person suffering from severe poverty, it is indeterminate who, if anyone, is required to assist and protect them. This indeterminacy makes it "systematically obscure" who has neglected or violated their (moral) human right to subsistence, or whether there is any perpetrator at all (O'Neill 2000: 105). This in turn calls into question the normative value of affirming such a right.

Although a full-fledged defence of the claimability condition is beyond the scope of this chapter, I will mention two reasons that suggest that we should take it very seriously.⁹ First of all, it is difficult to see how a right could be fully justified unless it is determinate against whom it is held. All rights involve both claims *to* some particular object(s) and claims *against* some particular duty bearer(s) (Feinberg 1966). The claimability condition requires that both the claim-to and claim-against dimensions of a right be justified in order for the right itself to

be justified. In the case of the human right to subsistence, it is the claim-against dimension that is not justified. This is because, for any given right-holder, it is indeterminate against whom they have a claim. A reason for thinking that both dimensions of a right must be justified is that the justification of either dimension depends on the content of the other dimension. The justification of what a right is a claim *to* always depends in part on who it is a claim *against*.¹⁰ For example, my claim to a suitable workspace is justified as a claim against my employer, but not as a claim against my neighbor. (Unless, of course, my neighbor also happens to be my employer. But even then, my right would be held against my neighbor in her capacity as my employer, and not simply as my neighbor.) Even claims that are held against all moral agents and grounded in very important interests nevertheless presuppose that it is reasonable to require all moral agents to fulfill the relevant duty. For example, the justification of my general claim not to be tortured assumes that it is reasonable to require all moral agents to abstain from torturing me. In order to know whether the object of a claim is justified, we must, therefore, also know against whom the claim is held. Otherwise, what we have is not really a claim, but merely a consideration in support of a claim.

Second, even if it were possible to justify the claim-to dimensions of rights independently of their claim-against dimensions, such partially justified rights would lack many of the distinctive characteristics of rights as they are normally understood. For example, rights are widely thought to have important implications in case they are violated. In particular, where a right is violated, the victim or her agents can demand *compensation* or *restitution* from the perpetrator. Rights are also widely thought to have implications prior to their violation. In particular, the affirmation of a right implies at least pro tanto grounds for its *coercive enforcement* by or on behalf of the right-holder. It is difficult to see, however, how an affirmed right could have these implications where it is indeterminate against whom it is held. Compensation and restitution can only be demanded of the perpetrator of a rights

violation if it is known against whom the claim is held, which in turn requires that the duty-bearers are determinate. Furthermore, to say that the duties correlative to a right are justifiably enforceable prior to knowing who the relevant bearers are contributes nothing to normative reasoning, since no action can be justified on its basis.

These reasons suggest that the claimability condition applies, and that the claimability objection thus provides a powerful challenge to the inclusion of a (positive) right to subsistence among (general) moral human rights.¹¹ Any persuasive argument in support of the moral human right to subsistence should, therefore, have a convincing answer to it. Simply insisting that the importance of the interest of all humans in having the means for subsistence can all on its own give rise to a right will not do. This is precisely what the claimability objection denies in its affirmation of the claimability condition, which imposes a constraint on the inference from interests (even highly important ones) to rights. In what follows, I aim to ascertain whether the linkage argument might succeed in vindicating the moral human right to subsistence in the face of the claimability objection.

4 The Linkage Argument

On the face of it, the linkage argument looks like a promising way of defending the moral human right to subsistence, since it does not rely on drawing the inference from the importance of the interest of all humans in having the means for subsistence to the existence of a moral human right to subsistence. The linkage argument aims, instead, to show that a commitment to any human rights at all, including civil and political human rights, entails a commitment to the inclusion of a right to subsistence among them. In what follows, I argue that as a defence of the moral human right to subsistence against the claimability objection outlined above, the linkage argument misses the mark.

4.1 Shue's Linkage Argument

Building on the widespread commitment to civil and political human rights, the original articulation of the linkage argument by Shue emphasizes an important connection between these rights on the one hand and subsistence on the other. The relevant connection, according to Shue, is that the enjoyment of subsistence is necessary for the enjoyment of all other rights, including civil and political moral human rights. This, he argues, is because the lack of secure enjoyment of the means for subsistence poses a standard threat to the enjoyment of any other right (Shue 1996: 22–9).

For Shue, the enjoyment of a right involves not merely having the object of the right contingently, but rather having it guaranteed (pp. 15–16). For example, on Shue's account, an individual who is highly susceptible to being physically assaulted but who has not so far endured physical assault does not enjoy his right against physical assault. Of course, nothing can be guaranteed against any and all threats. Shue's view is that a right is enjoyed by the right-holder in so far as its object is reasonably guaranteed against standard threats. Standard threats are threats that are “common, or ordinary, and serious but remediable” (p. 23). The enjoyment of a right thus requires not just that others refrain from violating it, but also that social mechanisms are in place to protect the right-holder against violations.

Shue's linkage argument employs a “transitivity principle” for rights: “If everyone has a right to y, and the enjoyment of x is necessary for the enjoyment of y, then everyone also has a right to x” (p. 23). To say that “everyone has a right to y” can be read as expressing a moral human right to y. The transitivity principle can then alternatively be put as follows: If there is a moral human right to y, and the enjoyment of x is necessary to the enjoyment of y, then there is a moral human right to x. Shue argues that not only is the enjoyment of subsistence necessary for the enjoyment of the objects of *some* other rights, but that it is necessary for the enjoyment of the objects of *all* other rights.¹² His claim, then, is that, in so far as there are any

moral human rights at all, the right to subsistence must be among them. Of course, this leaves open the possibility that there are no moral human rights at all, and so by extension no moral human right to subsistence. Shue's argument, therefore, relies on a commitment to the existence of at least some moral human rights. This is not unreasonable, given that even opponents of the moral human right to subsistence tend to endorse other moral human rights, notably at least some civil and political rights.

Shue's linkage argument can helpfully be summarized as follows:

1. If there is a moral human right to y, and the enjoyment of x is necessary to the enjoyment of y, then there is a moral human right to x (the transitivity principle).
2. There are some moral human rights (for example, against torture and to freedom of speech, assembly, and religion).
3. The enjoyment of subsistence is necessary for the enjoyment of the object of any moral human right.

Therefore,

4. There is a moral human right to subsistence.

The bulk of Shue's effort goes to defending premise (3). He argues that lacking subsistence constitutes a standard threat to the enjoyment of all other rights. One reason that Shue provides for thinking this is that lacking the means for subsistence has the effect of physically weakening individuals to the point at which they are incapable of exercising their rights (pp. 24–5). For example, freedom of assembly cannot actually be enjoyed by those who are too sickly to assemble. As [Caney \(2005\)](#): 119–20) points out, whether this is true for all rights is not clear. Some rights, it seems, can be enjoyed even by those who are too weak to act. Enjoyment of the right against physical assault or of equality before the law, for example, does not seem to require persons to be strong enough to act. The second reason Shue offers is

stronger. He argues that where people's subsistence needs are not met, their vulnerability to coercion constitutes a standard threat to the enjoyment of other rights (pp. 185–7, n. 13).

This, he contends, is true for any right.

Shue offers the following example in support of the latter claim: The widely accepted moral human right against torture, he argues, cannot be fully enjoyed by those who cannot meet their subsistence needs because they will always be vulnerable to offers of subsistence goods in exchange for submitting to a limited amount of non-fatal torture (ibid.). The central claim is that subsistence is so fundamentally important to all human beings that, without it, we cannot enjoy any other right because the susceptibility to this sort of trade-off constitutes a standard threat to the enjoyment of other rights. As such, Shue holds that in so far as we are committed to the enjoyment of any moral human rights at all, we must affirm a moral human right to subsistence because there is a necessary connection between this right and the enjoyment of any other right, including all moral human rights.

Shue's claim is that the enjoyment of subsistence rights is "inherently necessary" for the enjoyment of all other rights (p. 27). What he means by "inherent necessity," however, is somewhat vague. A plausible way of interpreting the claim that *A* is inherently necessary for *B* in light of what Shue says is that there is a conceptual connection between *A* and *B*. Shue is explicit that "an 'inherent necessity' needs to be distinguished carefully from a mere means to an end" (p. 27). His suggestion is not merely that subsistence is a means to the enjoyment of other rights; rather, his claim is that part of what it means to enjoy any other right is that one has access to the means for subsistence.

But the idea that there is a conceptual connection between the secure enjoyment of all rights and having the means for subsistence falls prey to the following powerful objection: It is in fact possible to securely enjoy other rights while suffering severe shortfalls in subsistence goods.¹³ It is possible, according to the critic, to enjoy freedom from torture

despite being severely malnourished. It may be the case, as Shue suggests, that those who do not have secure access to the means for subsistence are liable to agree to compromise their other rights in exchange for subsistence goods; but then these sorts of contracts could simply be outlawed. Recall that the enjoyment of a right for Shue means that its object is socially guaranteed against standard threats. If the rules against torture are strictly enforced, as are rules against such torture contracts as have been described, then it seems that people do in fact enjoy their right against torture even if they fall below the threshold for subsistence. Therefore, the objection goes, enjoying the right to subsistence is not necessary in order to enjoy freedom from torture, among other rights.

The claim that there is a conceptual connection between the enjoyment of all moral human rights and the enjoyment of the moral human right to subsistence is, then, surely misguided, since there is nothing conceptually incoherent about the possibility of enjoying, say, one's moral human right against torture despite suffering severe malnourishment, so long as effective enforcement mechanisms are in place to guarantee that people do not engage in torture as well as to guarantee that people do not enter into torture contracts.

4.2 Ashford's Variation of the Linkage Argument

Ashford (2009) has recently offered a more plausible variation of Shue's original linkage argument. According to her variation, the connection between subsistence and the enjoyment of other rights is not conceptual, but rather substantive. Although it is conceptually possible to enjoy one's right against torture while lacking the means for subsistence, this would require the banning of torture contracts. Banning torture contracts, Ashford rightly notes, would, however, be against the interests of people who lack the means for subsistence. The reason that a person would be willing to enter into a torture contract in the first place is that the interest in subsistence is so important as to outweigh the interest in not being tortured.

That is to say that lacking access to the means for subsistence and not being tortured are worse for a person than having the means for subsistence and submitting to (a limited amount of non-fatal) torture. As such, denying someone who lacks access to the means for subsistence the option of the torture contract would make her worse off than she would be if such contracts were available to her; if they were not, there would be insufficient motivation for her to enter into the contract in the first place, and so such contracts would not constitute standard threats.

The point is somewhat easier to illustrate with outlandish cases like the torture contract, but Ashford points out that there are real cases in which guaranteeing one right through enforcement actually results in people being worse off in terms of subsistence than they would have otherwise been. She appeals in particular to child labour (pp. 106–12). While it is widely accepted that children have a right not to be forced to work, securing this right by banning child labour will in many cases result in families being unable to obtain the material means for subsistence. Although the children may then be said to enjoy their right not to be forced to work, they are subsequently made to suffer malnourishment and poverty-related illness, among other harms.

Ashford goes on to argue that if we hold the plausible view that, at the very least, the secure enjoyment of a right should not thwart the very fundamental interests of the right-holder, banning the torture contract in order to protect the right against torture, or banning child labour practices in order to protect the right against child labour would fail to be appropriate measures. The only way to ensure that torture contracts and other perverse trade-offs do not constitute a threat to the enjoyment of rights is, therefore, to annihilate the incentive for entering into them in the first place. This entails, *inter alia*, guaranteeing access to the means for subsistence. So while we can perhaps conceive of the enjoyment of the right against torture and the right against child labour, among other rights, independent of

guaranteed access to the means for subsistence, this kind of situation is morally inconsistent in light of the needs that human beings actually have and the social circumstances in which they actually exist. Ashford concludes that having guaranteed access to the means for subsistence is thus a substantively necessary condition for the enjoyment of any other right; and so the moral human right to subsistence can be derived from the existence of any other moral human right. Therefore, in so far as we think that there are any moral human rights at all, the right to subsistence must be among them. Or so the linkage argument goes.

5 The Limits of Linkage Arguments

Ashford's argument for the substantive necessity of subsistence for the enjoyment of other moral human rights provides a forceful defense of premise (3) of Shue's original linkage argument, as stated in [Section 4.1](#) above. In what follows, however, I offer a novel challenge to the linkage argument which targets the transitivity principle expressed in premise (1). In particular, I argue that the transitivity principle is incompatible with the conception of rights that underpins the claimability objection. The linkage argument thus begs the question against the claimability objection rather than providing an answer to it.

Recall that according to the transitivity principle, if there is a moral human right to y, and the enjoyment of x is necessary for the enjoyment of y, then there is a moral human right to x. An initial problem with the transitivity principle is that it conflates the right to y and the enjoyment of y. On Shue's account, all rights are rights to the enjoyment of some object. A right, according to Shue, "provides (1) the rational basis for a justified demand that (2) the actual enjoyment of a substance be (3) socially guaranteed against standard threats" ([Shue 1996](#): 13). Thus, the right against physical assault, for example, implies a right that freedom from physical assault be socially guaranteed against standard threats.

By contrast, opponents of the moral human right to subsistence tend to draw a sharp distinction between the enjoyment of rights on the one hand and their non-violation on the other. On this sort of account, rights correlate directly with obligations of non-violation, and indirectly with obligations of protection (e.g. Pogge 2009). The right against physical assault is one thing; the right to the enjoyment of freedom from physical assault another. The former correlates with obligations not to physically assault the right-holder; the latter correlates with obligations to protect the right-holder against threats of physical assault. And because the latter is a positive duty, according to the claimability objection, it is either special and therefore perfect or it does not correlate with any right. To the extent that there are rights to be protected against physical assault, they must therefore be special rights, and cannot therefore be moral human rights.

Shue argues that we should resist dissecting rights in this way, since, even if there is a meaningful line to be drawn between the non-violation of a right and its enjoyment, the former is of little interest to persons living in the sorts of social conditions in which they actually live in the absence of the latter (p. 38). Shue is certainly right in thinking that the enjoyment of rights is of greater interest to right-holders than merely not having them violated as a matter of contingency. But just because having guarantees against violations of our rights is of greater interest to us than not having our rights violated merely as a matter of contingency, this does not give us reason to think that there is no morally relevant distinction to be drawn between the two. At the very least, surely, the violation of a right can aptly be regarded as morally worse than the failure to prevent the violation of that right.

Shue and Ashford argue that in so far as we take rights seriously, we should not downplay the importance of protecting right-holders against standard threats to the enjoyment of the substance of their rights, and that this in turn requires that right-holders enjoy access to the means for subsistence. I think this is a point of crucial importance in thinking about the

implementation of rights, as Shue himself rightly notes (p. 38). I doubt, however, that it provides support for the existence of a moral human right to subsistence, as the linkage argument suggests.

The transitivity principle infers a moral human right to *x* on the basis of a moral human right to *y*, and the necessity of the enjoyment of *x* for the enjoyment of *y*. This principle thus assumes that the existence of a moral human right to *y* entails a moral human right to the enjoyment of *y*—otherwise, it is unclear why we should infer a moral human right to *x*. But the claimability objection suggests that we should reject this move. This is because of the constraints on rights that hold on this account. Recall that the claimability objection denies that there can be general positive rights because they are not claimable. If the objection holds—which I have argued it does—we should thus reject the move from the existence of a moral human right to *y* to the existence of a moral human right to the *enjoyment* of *y*. And without this step, we cannot draw the inference to the existence of a moral human right to *x* on the basis that the enjoyment of *x* is necessary for the enjoyment of *y*.

In order to engage with the claimability objection to the moral human right to subsistence, defenders of this right must explain why the claimability condition need not apply. The linkage argument fails in this respect by simply assuming that it does not. The linkage argument builds on the highly plausible point that secure access to the means for subsistence is necessary for the enjoyment of civil and political moral human rights; but this is something that can be accepted without endorsing a moral human right to subsistence. A moral human right to subsistence only follows if we presuppose that other moral human rights are in fact claims to the enjoyment of some object rather than simply claims to non-violation. But those who reject the moral human right to subsistence on the grounds that it is positive will reject this presupposition for the same reason. As we have seen, in order for any right to be enjoyed it must be socially guaranteed against standard threats; and social

guarantees against standard threats involve considerably more than mere forbearance on the part of duty-bearers.

6 Subsistence as a Legal Human Right

I have so far argued that the linkage argument does not avoid the claimability objection to the inclusion of a right to subsistence among moral human rights. This is because it must assume that each moral human right comes with a built-in claim to its own enjoyment, which, I have argued, is to beg the question against the claimability objection. But while I think that the claimability objection is ultimately successful in undermining positive moral human rights, including the moral human right to subsistence, it does not preclude positive *special* rights being provided with reasonable guarantees against the violation of one's moral human rights. And where such special rights exist, the linkage argument supports the (substantive) necessity of special rights to subsistence. This, I argue, has important implications for the justification of a *legal* human right to subsistence.

The rejection of a right to subsistence among *legal* human rights only follows from the rejection of a right to subsistence among *moral* human rights on the mirroring view, mentioned in [Section 2](#), above according to which, for each LHR, there must be a corresponding MRH. This view has recently been subject to damaging criticism on the grounds that it fails to provide a plausible interpretation of LHRs, given their content, nature, and function within the context of international legal and political practice ([Beitz 2009](#); [Wellman 2011](#); [Buchanan 2013](#)). Critics of the mirroring view tend to point in particular to the extensive lists of LHRs included in international doctrine, which they argue could not plausibly be derived solely from the relatively meagre set of MHRs.

It might, of course, be that LHRs actually manifest a conception of MHRs that is flawed in its failure to give due regard to the claimability condition or other constraints on the justification of rights, and that their content should therefore be curtailed accordingly. On a more charitable interpretation of international legal and political practice, however, LHRs simply do not manifest MHRs in any straightforward sense, but rather function (at least partly) so as to protect and promote their enjoyment. This would account for their more extensive content, since, as we have seen, the enjoyment of a right requires more than its mere non-violation. Furthermore, it is consonant with the fact that, in international practice, LHRs are systematically held in the first place against states by their members, and only secondarily impose duties of concern on the international community at large. LHRs are, in this regard, special rather than general rights. As such, they can be positive without facing the claimability objection.

There is an extensive discussion to be had about the relative merits of the mirroring view and its alternatives, which will be largely set aside here, as it would take us beyond the scope of our present concern. What I want to point out in what remains is that it is on the above-mentioned conception of LHRs as institutionalized special rights whose function is at least partly to promote the enjoyment of MHRs that the linkage argument really comes into its own.

Recall that the transitivity principle on which the linkage argument is premised is articulated above as follows:

If there is a moral human right to y, and the enjoyment of x is necessary to the enjoyment of y, then there is a moral human right to x.

I have argued that this principle must be rejected on account of the claimability condition. But if LHRs are institutionalized special rights whose function is at least partly to promote the enjoyment of MHRs, then a modified version of the transitivity principle is available:

If there is a moral human right to y and the enjoyment of x is necessary for the enjoyment of y, then there ought to be a *legal* human right to x.

This principle holds because LHRs on this conception are *by definition* meant to promote the enjoyment of MHRs, and as special rights they fulfill the claimability condition.

The modified transitivity principle provides a premise in a successful linkage argument in support of the inclusion of a right to subsistence among *legal* human rights, since, as Ashford (2009) persuasively argues, the enjoyment of subsistence is substantively necessary for the enjoyment of widely acknowledged *moral* human rights such as the right against torture and the right against child labor. The complete argument can be stated as follows:

1. LHRs are institutionalized special rights whose function is at least partly to promote the enjoyment of MHRs.
2. If there is an MHR to y, and the enjoyment of x is necessary to the enjoyment of y, then there ought to be a LHR to x (the transitivity principle).
3. There are some MHRs.
4. The enjoyment of subsistence is (substantively) necessary for the enjoyment of the object of any MHR.

Therefore:

5. A right to subsistence ought to be included among LHRs.

While the linkage argument as originally stated in [Section 4](#) does not succeed in vindicating the MHR to subsistence, this modified version provides a strong case in support of the inclusion of a right to subsistence among LHRs.

It might be pointed out that this argument in support of an LHR to subsistence is actually superfluous. To see why, consider what kind of justification might be given for thinking that the promotion of the enjoyment of MHRs should be institutionalized in international practice

in the form of LHRs and the extensive legal and political apparatus surrounding them. The reason, presumably, would refer to the tremendous importance for all humans of the interest not just in having their MHRs contingently non-violated, but in having reasonable guarantees to their non-violation. But if we think that LHRs to these guarantees can be justified on the basis of interests, then presumably the interest in having the means for subsistence would on its own support the inclusion of a corresponding LHR. As an argument in support of the inclusion of a right to subsistence among LHRs, the linkage argument, then, amounts to preaching to the choir. But preaching to the choir need not be superfluous. We all occasionally need to be reminded of our commitments and to have their implications pointed out. Even where the LHR to subsistence and other socioeconomic LHRs are affirmed, their importance tends to be downplayed in relation to that of civil and political LHRs. The modified version of the linkage argument is a powerful reminder of the inefficiency of efforts to promote the latter without also working to promote the former.

7 Conclusion

I have argued that the versions of the linkage argument advanced by Shue and Ashford fall short of their aim of vindicating a *moral* human right to subsistence. Nevertheless, they are founded on an important insight, namely that the expression of a commitment to the promotion of civil and political human rights rings hollow if not accompanied by a concern for the material conditions necessary to meaningfully enjoy and exercise those rights. This, I have suggested, has important implications with respect to the question of the justification and status of a *legal* human right to subsistence.

Notes

¹ For example, according to the [United Nations Development Programme \(2016\)](#), around 10% of the world's population fall below the World Bank's income poverty line of US\$1.90 per day.

² According to [Credit Suisse \(2018\)](#), the wealthiest 10% of the world's population hold around 84% of total wealth, with around 45% of total wealth being held by just the wealthiest 1% of the world's population.

³ Of course, the eradication of global poverty is more complicated than this suggests. It might be argued that there are other constraints on the feasibility of eradicating severe poverty, such as motivational and political obstacles. But even if these sorts of obstacles make it infeasible to eradicate severe poverty *right now*, they might be overcome in the foreseeable future. If overcoming an obstacle to the feasibility of realizing some goal is itself feasible, then we can still judge the realization of that goal to be feasible. For an illuminating discussion of issues surrounding the feasibility of the eradication of severe poverty, see [Gilbert \(2009\)](#).

⁴ What I am calling the human right to subsistence goes by other names, such as the human right against poverty and the human right to basic necessities.

⁵ I borrow the terminology and abbreviations from [Buchanan \(2010, 2013\)](#).

⁶ Other objections include the feasibility objection made, for example, by [Cranston \(1983, 2001\)](#), and the libertarian objection advanced, for example, by Jan [Narveson \(1988\)](#). Powerful replies to these can be found in [Gilbert \(2006, 2009\)](#).

⁷ Following [Shue \(1996\)](#), the distinction between positive and negative rights now tends to be regarded with skepticism. Shue argues that all rights entail both positive and negative duties, and therefore resist classification as positive or negative. But the various duties entailed by any given right stand in different relations to that right. In particular, only the violation of certain duties entailed by a right constitutes the violation of that right. We can, therefore, distinguish between positive and negative rights on the basis of these duties. See [Pogge \(2009\)](#).

⁸ There are other ways of understanding what it means for a duty to be imperfect, but this is the one relevant to the discussion at hand, so I set aside the others here. For a helpful discussion of various interpretations of imperfect duties, see [Hope \(2011, 2014\)](#).

⁹ For an extended discussion of the claimability condition, see [Tomalty \(2014\)](#).

¹⁰ [Kramer \(1998\)](#): 48) makes a similar point.

¹¹ There is a further possibility in defense of the moral human right to subsistence against the claimability objection, namely to show that it is in fact claimable (e.g. [Ashford 2007](#); [Stemplowska 2009](#)). I will not discuss this possibility here except to say that I am doubtful of its success largely because it tends to involve distorting either the content of the right or what is required for claimability. See [Tomalty \(2014\)](#) for a more extended discussion.

¹² One of Shue's central claims is that the right to subsistence is a "basic right." A basic right on [Shue's \(1996\)](#): 18–20) account is one whose enjoyment is necessary for the enjoyment of any other right.

¹³ [Shue \(1996\)](#): 184, n. 13) attributes this objection to Mark Wicclair. Thomas [Pogge \(2009\)](#): 119–21) makes a similar point.

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