

WHEN SUBSISTENCE RIGHTS ARE JUST CLAIMS AND THIS IS UNJUST*

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Abstract: Most of the liberal moral and political debate concerning global poverty has focused on the duties of justice or assistance that the well-off have toward the needy. In this essay, I show how rights-based theories in particular have unanimously understood subsistence rights just (and only) as claims, where all it means to have a claim—following Hohfeld—is that others have a duty toward us. This narrow interpretation of subsistence rights has led to a glaring omission; namely, there has been no careful examination of what the rights-holders themselves may do to realize the object of their rights. Furthermore, in the few cases where this question gets posed, rights are again understood just (and only) as claims, but this time of an Austinian kind: rights-holders are limited to the performance of speech-acts like demanding, pleading, and entreating to make noncompliers fulfill their duties. I suggest that this approach betrays the original spirit of subsistence rights as individual moral powers delineating a sovereign sphere of action. More seriously, it is unjust to the rights-holders themselves, to the extent that many of the actions they undertake to realize the objects of their rights fall off the radar of moral analysis.

KEY WORDS: global poverty, right of necessity, Samuel Pufendorf, self-preservation, speech-acts, subsistence rights, *sum*

Since Peter Singer's groundbreaking essay "Famine, Affluence, and Morality" (1972), a number of liberal moral and political philosophers have grappled with the question of what morality dictates in the face of basic human need on a global scale.¹ Roughly, the answers to what is morally appropriate to do have come in two main kinds. On the one hand, joining Singer's camp, many have emphasized the duties of assistance that the well-off have toward the worst-off—for why would one allow enormous amounts of suffering to take place if one can prevent them at relatively little cost?² On the other hand, starting from a human rights discourse, others have focused on the duties of justice derived therefrom.

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¹ Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1, no. 3 (1972): 229–43.

² For a view as demanding as Singer's, see Peter Unger, *Living High and Letting Die* (New York: Oxford University Press, 1996). For a more moderate version of the duty to assist, see Garrett Cullity, *The Moral Demands of Affluence* (New York: Clarendon Press, 2004).

In Henry Shue's typology, for example, the duties correlated to the basic right to subsistence are to refrain from depriving, to protect from deprivation, and to aid the deprived; in Thomas Pogge's global application of Rawlsian principles, we should be concentrating our efforts above all on our negative institutional duties not to keep people in a state where their basic rights are permanently unfulfilled.³

More than forty years after Singer's initial call for action, what has come to be known as the "global poverty debate" has made uneven progress. "Assistance cosmopolitans" have realized the importance of measuring the efficiency of different types of aid, and this has helped to curb skepticism and motivate more people to give.⁴ However, in the theoretical realm the issues of how physical proximity and what others do or fail to do should affect our duties remain highly contested.⁵ "Justice cosmopolitans" have also come under heavy criticism. Talking about rights that have no specified duty-bearers has been denounced as unhelpful at best and pure rhetoric at worst, and talking about rights without having clarity on who is to effectively enforce them has been deemed prone to the charge of emptiness.⁶ Moreover, the assertion that the well-off are harming the worst-off in a foreseeable and avoidable way, and the empirical assumptions underlying the idea that changing some global rules is "the" key to solving the problem have been questioned on several scores.⁷

In this essay I contend that, in the case of justice cosmopolitans and their rights-based theories specifically, such uneven progress is partly due to the almost unanimous understanding of rights as just (and only) claims, where all it means to have a claim—following Hohfeld—is that others

³ See, respectively, Henry Shue, *Basic Rights: Subsistence, Affluence, and American Foreign Policy*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996); and Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 2nd ed. (Malden, MA: Polity Press, 2008).

⁴ Singer himself has become one of the main advocates of "Effective Altruism," the slogan of which is "using reason and evidence to do the most good." (<https://www.effectivealtruism.org/peter-singer-ted/>) See also William MacAskill, *Doing Good Better: How Effective Altruism Can Help You Make a Difference* (London: Gotham, 2015).

⁵ On the relevance of physical proximity for moral duties, see Frances Kamm, "Famine Ethics: The Problem of Distance in Morality and Singer's Ethical Theory," in Dale Jamieson, ed., *Singer and His Critics* (Oxford: Blackwell Publishing, 1999), 162–208; and Constanze Binder and Conrad Heilman, "Duty and Distance," in *Journal of Value Inquiry* 51, no. 3 (2017): 547–61. On duties of assistance under generalized noncompliance, see Liam B. Murphy, "The Demands of Beneficence," *Philosophy and Public Affairs* 22, no. 4 (1993): 267–92.

⁶ See, respectively, Onora O'Neill, "Rights, Obligations and Needs," in Gillian Brock, ed., *Necessary Goods* (Lanham, MD: Rowman and Littlefield, 1998), 95–112; and Susan James, "Rights as Enforceable Claims," *Proceedings of the Aristotelian Society, Supplementary Volumes* 103 (2003): 133–47.

⁷ On unduly stretching the notion of harm, see Christian Barry and Gerhard Øverland, "The Feasible Alternatives Thesis: Kicking Away the Livelihoods of the Global Poor," *Politics, Philosophy, and Economics* 11, no. 1 (2012): 97–119. On the controversial empirical assumptions, see Matthias Risse, "Do We Owe the Global Poor Assistance or Rectification?" *Ethics and International Affairs* 19, no. 1 (2005): 9–18.

have a duty toward us.⁸ A glaring omission in the debate, however, has been a more careful examination of the role of the rights-holders themselves toward realizing the objects of their rights.⁹ Furthermore, in the few cases where this point gets discussed their rights are again understood just (and only) as claims, but this time of an Austinian type; that is, they are limited to the production of speech-acts like demanding, pleading, entreating, and complaining.¹⁰ I go on to show how this way of understanding subsistence rights betrays the original spirit in which rights were first conceptualized, as individual moral powers delineating a sovereign sphere of action. More gravely, this approach is unjust to the rights-holders themselves, insofar as many of the actions they currently perform in order to fulfill their rights fall off the radar of moral analysis.

Before proceeding, it is important to clarify two points. First, as I just noted, the focus of this essay is on what seems to be a serious omission of liberal rights-based theories when it comes to the moral implications of global poverty. The diagnosis, however, is ecumenical enough to invite other theoretical perspectives (mainly utilitarian ones) to think through it. The general message is that more attention needs to be paid to the range of actions (legal and illegal) that the needy themselves may undertake in order to get out of their plight, and this is clearly not something that only rights-based theories should be interested in. Second, I do not purport to conduct a thorough revision to then conclude that all theorists are guilty of the same omission. My more limited purpose is to show how some of the most influential positions within the discourse have systematically ignored a crucial aspect of the problem and that, by so doing, they have foreclosed an important avenue of moral reflection and action. What I say here, then, should be understood as an attempt to complement rather than replace those views.

I. SUBSISTENCE RIGHTS AS JUST (AND ONLY) HOHFELDIAN CLAIMS

In his 1980's classic, *Basic Rights*, Henry Shue defends the right to subsistence as a basic right, that is, one of those rights without which no other rights can be enjoyed. Together with security and the liberties of political participation and free movement, subsistence rights are necessary, according to Shue, if we are to live minimally acceptable human lives. Understood as "minimum reasonable demands upon the rest of humanity," basic rights in general and subsistence rights among them create a requirement that

⁸ Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *The Yale Law Journal* 23, no. 1 (1913): 16–59, 33.

⁹ I discuss a few exceptions below.

¹⁰ As opposed to statements, speech-acts are, according to Austin, utterances that have some performative function in language and communication: J. L. Austin, *How to Do Things with Words*, 2nd ed. (Oxford: Clarendon Press, 1975), 6–7.

“the actual enjoyment of [their] substance be socially guaranteed against standard threats.”¹¹

From the very beginning, Shue makes it clear that subsistence rights are claims in the Hohfeldian sense. This means that they correlate with someone else’s duty. Shue’s original twist to the received wisdom on these matters is that there is not a one-to-one, but rather a three-to-one correlation. For subsistence rights to be fulfilled, Shue affirms, three types of duties have to be attended to. These are to avoid depriving, to protect from deprivation and to aid the deprived.¹²

Another prominent rights-based account in the global poverty debate is that of Thomas Pogge, who shares with Shue the view that human rights (including subsistence rights) are moral claims. More specifically, they are claims “on any coercive social institutions imposed upon oneself and therefore [moral claims] *against* anyone involved in their design or imposition.”¹³ Pogge starts from the Rawlsian conception of justice as the first virtue of social institutions, and applies it to the global level. He affirms that, by avoidably and foreseeably creating and maintaining coercive institutions that keep millions in a state of chronic deprivation, the global well-off are harming the worst-off. The proper response to this massive human rights violation is to fulfill our negative institutional duties of justice. This might be done in a variety of ways, like strengthening the position of developing countries in global trade agreements, eliminating harmful privileges that undemocratic governments currently have (like the resource and borrowing privileges), rethinking intellectual property rights over life-saving medicines, and so on and so forth.¹⁴

A third, related view is presented by Elizabeth Ashford, who takes both persons’ capacity for well-being and suffering, and their rational autonomous agency, as grounding the universal moral status of all human beings. Given this status, human rights are claims of basic justice against other individuals and social institutions, and they have a positive and a negative aspect. In the case of the human right to basic necessities, others have a negative duty not to deprive the agent from accessing them, and a positive duty to guarantee a reasonably secure access to them.¹⁵

What these theories share is that they take subsistence rights as a starting point from where to formulate a duty-based approach to global poverty. Shue’s book is entitled *Basic Rights*, but most of it is devoted to spelling out the correlated duties and their challenges; Pogge’s book, *World Poverty and Human Rights*, is fully focused on showing our current noncompliance with

¹¹ Shue, *Basic Rights*, 19, 13.

¹² *Ibid.*, 52.

¹³ Pogge, *World Poverty and Human Rights*, 52 (his emphasis).

¹⁴ *Ibid.*, 18–23, 159–72, and 224 ff.

¹⁵ Elizabeth Ashford, “Duties Imposed by the Human Right to Basic Necessities,” in Thomas Pogge, ed., *Freedom from Poverty as a Human Right* (Oxford: Oxford University Press, 2007), 183–218.

institutional negative duties of justice, and on why and how this should be rectified; Ashford's thoughts on what she calls "the human right to basic necessities" are a mere preamble for a long and sustained discussion of the duties they impose.

Two common criticisms to these views have been that they are too vague when it comes to specifying the duty-bearers of subsistence rights, and that it is not clear who is supposed to do the enforcement. Regarding the first point, Onora O'Neill has claimed that "[t]he prospects of the hungry would be transformed if specified others were obliged to provide each of them with adequate food; but unless obligations to feed the hungry are a matter of allocated justice rather than unallocated beneficence, a so-called right to food, and many other 'rights' that would be important for the needy, will be only manifesto rights."¹⁶ Regarding the second point, Susan James has remarked that, for a right to be claimable in the morally relevant sense it not only needs specified correlated duty-bearers, but also institutional enforcement. In the absence of the latter, it is vacuous to talk about rights as claims.¹⁷

At first sight, the positions presented by James and O'Neill might seem in tension with the first three. As O'Neill suggests, when it comes to morally responding to chronic material deprivation, there seems to be a real asymmetry between starting from rights discourse and starting from the language of duties and obligations. But this apparent disagreement is deceptive. What these rights-based theories and their critics share is an almost exclusive emphasis on the importance of duties and on the actions that duty-bearers should undertake. In short, rights are seen as normative triggers of duties. Conceptualized as Hohfeldian claims and no more, all they mean is that someone (specified or yet-to-be specified, under enforcement or yet-to-be enforced) must do something or abstain from doing something in order to realize the content of the right.

A different criticism, one that has been almost entirely absent from the discussion, regards the almost utter lack of attention to the actions that the needy individuals themselves may be morally permitted to undertake toward the fulfillment of their rights. I show next that, when this question gets posed at all, the answer given is unsatisfactory. But first, let me address an objection that is likely to be raised at this point. "It is simply not true that what the needy may do in the face of systematic rights-violations is something that liberal theorists have ignored," someone could say: "Just look at the literature on subsistence wars!"

The main claim of those theorizing subsistence wars is that the violation of subsistence rights (in the form of wrongful actions or omissions) gives victims a just cause of war. Developing at length what I find problematic about the subsistence-wars approach would take this essay in a different

¹⁶ Onora O'Neill, "Rights, Obligations, and Needs," 98.

¹⁷ James, "Rights as Enforceable Claims," 142.

direction, but let me mention three issues. First, there is an oversimplifying assumption required to make the argument for subsistence wars work, which eventually turns it into a mere theoretical exercise. This is the assumption that the world is divided into poor states where only poor people live, and rich states where only rich people live.¹⁸ Second, subsistence wars are to be waged against liable agents, that is, agents who have wronged others to such a degree that it is now permissible for the latter to inflict lethal harm on them. Leaving aside the practical difficulties of targeting those and only those clearly liable for global poverty, the deeper problem with this approach is its choice of a binary normative framework of guilty and innocent. Instead, seeing the complex problem of global poverty through the lenses of a social connection model of responsibility—where we are all co-participants in institutional processes that generate and keep structural injustices—seems much better suited and attuned to reality.¹⁹ Third, to be permissible, subsistence wars should be non-futile, that is, there should be some reasonable expectation of success. In practice this means that, unless one believes that the biblical story of David against Goliath can repeat itself, it is hard to see how this condition could ever be satisfied. Summing up, I take this approach to reinforce rather than challenge the view that it is only up to the well-off to correct wrongful states of affairs. As one of these theorists admits, in the course of discussing the actual feasibility of these wars, “what hope do the scores of desperately poor individuals throughout the world—many of them children and women with burdensome family responsibilities—have to arm themselves and act in defense of their rights? None whatsoever.”²⁰ It is precisely this view that needs to be questioned.²¹

II. SUBSISTENCE RIGHTS AS JUST (AND ONLY) AUSTINIAN CLAIMS

The theorists mentioned above denounce noncompliance with the duties correlated to subsistence rights in the harshest terms. They recognize, however, that if one looks at our actual world according to their standards,

¹⁸ See, for example, Kasper Lippert-Rasmussen, “Global Injustice and Redistributive Wars,” *Law, Ethics, and Philosophy (LEAP)* 1, no. 1 (2013): 65–86, at 67. Cécile Fabre acknowledges that this is methodologically inadequate, but still uses the labels of *rich* and *poor* to describe countries “for the sake of stylistic convenience”: Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), 101.

¹⁹ Iris Marion Young, “Responsibility and Global Justice: A Social Connection Model,” *Social Philosophy and Policy* 23, no. 1 (2006): 102–30.

²⁰ Fabre, *Cosmopolitan War*, 117.

²¹ Bas van der Vossen and Jason Brennan have criticized the famous analogy used by Singer forty years ago for a similar reason, namely, for comparing the global poor with children drowning in a pond and waiting to be rescued. A more accurate analogy, they contend, is that they are “people, perfectly capable of swimming and rescuing themselves, who are trapped in a pond surrounded by fences keeping them from escaping on their own initiative”: Bas van der Vossen and Jason Brennan, *In Defense of Openness: Why Global Freedom Is the Humane Solution to Global Poverty* (New York: Oxford University Press, 2018), 158.

most of us are noncompliers. Even if the numbers might look better now than before, it is still the case that, even on the least demanding reading of these theories, duty-bearers fall way short of what is required from them. It is only when it seems necessary to give their affluent readers an extra motivation that some attention is paid to the rights-holders as agents. Extrapolating Joel Feinberg's characterization of legal rights, Shue contends that the moral rights of the needy can be "*urged, pressed, or rightly demanded* against other persons. In appropriate circumstances the rights-holder can 'urgently, peremptorily, or insistently' *call* for his rights, or *assert* them authoritatively, confidently, unabashedly . . . A right is something that can be *demande*d or *insisted upon* without embarrassment or shame."²² Compared to his extensive analysis of duties, Pogge succinctly notes that when it comes to rights-holders, "a valid *complaint* against our social institutions can be presented by all those whose physical integrity is not sufficiently secure." He also admits that "human rights ultimately *make demands upon* (especially the more influential) citizens [of one's society]."²³ Elizabeth Ashford points out that "[e]ach person is entitled to the objects of their human rights and can justifiably *insist on* them as their due." When these rights go unmet, they "could justifiably *complain* that they were being deprived of what they were entitled to as a matter of basic justice." When these deprivations become chronic, furthermore, the individual "can *object to* a set of principles under which his or her being secured access to basic necessities is treated as morally optional, and can *propose* an alternative set of principles under which it is considered to be an enforceable duty of justice."²⁴

What these quotes reveal is a further point of agreement between these theories: namely, that having a subsistence right enables the rights-holder to claim her rights in an Austinian fashion. By this I mean that she may perform a speech-act directed at enticing duty-bearers to realize the objects of her rights. This would not necessarily be a problem were it not for the fact that only speech-acts are suggested as the permitted course of action for rights-holders under these circumstances.²⁵ This means that, if someone is chronically deprived, having a subsistence right means that she may

²² Shue, *Basic Rights*, 14–15, quoting Joel Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), 58–59, my emphasis.

²³ Pogge, *World Poverty and Human Rights*, 53, 70, my emphasis.

²⁴ Ashford, "Duties Imposed by the Human Right to Basic Necessities," 185, 210, and 210–11, my emphasis.

²⁵ When discussing hypothetical consent arguments like Rawls's to justify the basic structure of society, Shue admits that it would be extremely unfair to frame a system where the deprived are prevented from stealing, and yet are provided with no alternative to access the essentials of subsistence. Under those circumstances, "[o]ne alternative to agreement on principles of justice is to reserve to oneself the option of taking by stealth or force, if necessary, one's vital necessities. I am not saying that this alternative is clearly more rational but only that it is not clearly less rational": Shue, *Basic Rights*, 128. Unfortunately, Shue neither elaborates this idea, nor says much on what the actual (rather than the hypothetical) needy may do under similar circumstances.

remind duty-bearers in an imperative manner that they owe her the object, or law reform, or structural redesign that will put an end to her deprivation. Alternatively, she may *verbalize* in a variety of ways the frustration of being permanently underfed against those who should not be depriving her of food, or who should be protecting her from being deprived of food, or who should be directly providing the food for her. But she may do no more. In terms of action-guiding behavior, having a subsistence-right boils down to having a permission to verbally *request* in an exercitive tone that others put an end to one's deprivation, or to *express* in a behabitive mode one's deep dissatisfaction with their response.²⁶

This approach is deeply wanting for two reasons. First, it assumes an idealized relationship between rights-holders and duty-bearers, as if it took place over a level playing field between parties with roughly equal bargaining power. Second, it makes rights-talk eventually collapse into duty-talk, by anointing duty-bearers as the sole agents in the fight against global poverty. I examine these in turn.

A. An idealized talk exchange

In standard speech-act theory, speakers try their best to communicate their intentions to their hearers, while the latter try their best to understand those intentions and respond to them in the conventionally expected way. In this ideal speech world, if the creditor claims his money back from his debtor, the debtor will pay it back; if your doctor demands that you do not eat chocolate because you are on a diet, you will refrain from eating it; if I entreat my visitors to take off their boots before entering my house, they will please me and walk around in socks. *In* saying these words, Austin perspicuously noted, speakers bring about certain effects in the world: having their debts paid back, keeping you on track with your diet, and preventing others from ruining my shiny wood floor with their dirty boots.

In the case under examination, rights-theorists conceptualizing the sphere of agency of those whose subsistence rights go chronically unmet seem to have in mind a similar scenario. Rights-holders do their best to communicate their frustration in the face of chronic deprivation, or to straightforwardly demand that this situation be fixed, hoping that well-off duty-bearers will respond—where responding means realizing the objects of their rights. But, as Mary Louise Pratt notes, standard speech-act theory

²⁶ Exercitives and behabitives are what Austin labeled “explicit performative verbs.” By this he meant verbs with an *illocutionary* force, that is, verbs that produced an effect *in* being said, due to some established convention. Typical in legal contexts, exercitives refer to the giving of a decision regarding a certain course of action. For example, in filling offices and appointments; in orders, sentences, and annulments; in conducting business, and in talking about [legal] rights, claims, accusations: Austin, *How to Do Things with Words*, 157. Behabitives, meanwhile, express a reaction to other people's behavior, past or present: Austin, *How to Do Things with Words*, 149 ff.

assumes a verbal utopia, “where a mythical free enterprise of words prevails, all voices vying equally to be heard . . . [a] vision of free exchange of ideas among peers untrammelled by hierarchy.”²⁷

If one is not to accuse global justice theorists of bad faith or mere tittle-tattle, one must suppose that there are two assumptions at work. First, it is assumed that rights-holders will in fact get to dialogue with the duty-bearers. Second, it is assumed that, if they do get to dialogue, they will engage in a cooperative talk exchange that will issue in things being done. Neither is warranted.

Regarding the first assumption, hoping that the chronically deprived and those who should end their deprivation will actually get to see each other and talk to each other is overly optimistic under current conditions. Fights for recognition of subsistence rights at the domestic level are hard enough. It takes time, effort and organization to have those who are securely positioned listen and act upon the requests of those for whom insecurity is the only certainty, and not even then is there any guarantee that this will be met with the desired response. There are a series of challenges one must confront to mobilize for one’s rights. Feeling a common identity is key to the kind of collective organization that is required here, but “‘proud to be poor’ is not a banner under which many are likely to march.”²⁸ There are also important practical problems, beginning with the fact that those living under chronic deprivation are almost fully focused on everyday survival. Lack of “proper” clothing, low self-confidence, poor information and low educational levels, bad transport and no money are among the many factors that keep those in need “stuck at home” and away from the sphere of social and political agency.²⁹ At the global level, this is all the more notorious. Due to the sheer distance and lack of adequate communication channels, in many cases (if not most) claiming one’s rights will amount to a cry in the desert met by silence, or to a cry that will go unheard among many other cries.

Regarding the second assumption, in our own imperfect world Austin himself recognized that the performance of speech-acts was mined with infelicities; namely, situations where the act does not succeed because one or more necessary conditions are absent.³⁰ Imagine that the needy and the well-off sit around a table with the intention to engage in a cooperative dialogue. Or imagine that the former voice their claims against the latter so that they listen to them attentively and try to respond accordingly. It is hard to see how this could happen when the first requirement for acts like these to succeed is that there must exist an “accepted conventional procedure having a certain conventional effect, the procedure to include the

²⁷ Mary Louise Pratt, “Ideology and Speech-Act Theory,” *Poetics Today* 7, no. 1 (1986): 59–72, at 68.

²⁸ Ruth Lister, *Poverty* (Cambridge: Polity Press, 2004), 152.

²⁹ *Ibid.*, 153, 171.

³⁰ Austin, *How to Do Things with Words*, 14.

uttering of certain words by certain persons in certain circumstances."³¹ Austin's examples of misfires because of a lack of such conventional procedure are that of a wife saying "I divorce you" to her husband in a country where there is no divorce law, and that of Don Quixote challenging the windmills to a duel when there are no established provisions for dueling between windmills and knight-errants. Similarly here, no accepted conventional procedure exists for the global needy to successfully demand that the objects of their rights be satisfied by their hearers. But if exercitives like *claiming, urging, pressing, and pleading* are to have any impact on reality, this and no less is what is needed.

Some could object that, even if there is no conventional procedure, the needy could engage in acts of civil disobedience that have a perlocutionary (rather than illocutionary) element.³² Instead of bringing about an effect *in* saying them, perlocutionary acts produce consequences independent of conventions—for example, when someone threatens another to do something. If this is the suggestion, however, it should be made much more explicit, and the question would remain whether this is an option available to the needy.³³

What all this reveals is a confused idea regarding the illocutionary force of moral prescriptions to enact real change. It is as if these authors were assuming (or hoping?) that having some utterances said will mobilize noncompliers into compliance. One must here recall, however, the predominant legal context in which exercitives are commonly used.³⁴ Without the law and the capacity for enforcement backing it up, it is unclear how these claims could succeed.

In short, giving needy agents the chance to utter Austinian exercitives when the legal context is lacking amounts to giving them a Hohfeldian privilege not to stay quiet about their unfortunate situation (where all it means to have a Hohfeldian privilege to ϕ is that one has no duty not to ϕ ³⁵). This opens the possibility that their Austinian claims will clash against an equal Hohfeldian privilege of their hearers to ignore their voice, or to be equally or more vociferous so as to neutralize it. In fact, the issue of giving people a voice and no more is a common criticism leveled against policymakers and organizations working with the needy.³⁶

³¹ *Ibid.*, 26.

³² *Ibid.*, 107–8.

³³ Global initiatives like the World Social Forum, Via Campesina and ATTAC are examples of groups that have engaged in active protesting against what they take to be an unjust economic system imposed upon them. As I explain below, however, they represent only one way (and the least frequent) through which rights-holders seek to realize their rights.

³⁴ See note 26 *supra*.

³⁵ Hohfeld, "Some Fundamental Legal Conceptions," 32.

³⁶ Deepa Naraya, Raj Patel, Kai Schafft, Anne Rademacher, and Sarah Koch-Schulte, eds., *Voices of the Poor: Can Anyone Hear Us?* (New York: Oxford University Press, 2000).

B. *Duty-bearers as monopolistic agents*

“It is easy to succumb to the charm of rights, and delightful to think about claiming them . . . It is a matter of thinking about what one ought to get or to have done for one, and about what others (but which others?) ought to do or provide for one.”

Onora O’Neill, *Bounds of Justice*³⁷

It is hard to see what O’Neill finds charming or delightful about claiming one’s rights, especially one’s right to subsistence, and my choice of adjectives would surely be different if I were to describe the plea of those living under a material threshold considered minimal to lead a human life. Putting that to the side, however, the quote above condenses very well the spirit in which the needy currently get portrayed when it comes to the question of what they may do in order to fulfill their rights.

Just like “Ready, steady, go” has the illocutionary force to start a race, in the ideal talk exchange the needy utter certain verbal formulae that will set the well-off duty-bearers in motion. The function that the rights-holders play toward the fulfillment of their rights is limited to triggering the actual delivery of the resources needed by the relevant moral agents. But one should be suspicious when only one of the sides playing a game gets to write and interpret the rules—especially if it is the side of those who recognize themselves as systematic cheaters in that very game.

By explicitly conceptualizing the well-off of the world as Hohfeldian duty-bearers with the mission to fulfill some important claims of others, I said before that rights-holders disappear from the picture as agents in the quest to realize the objects of those claims. To this should be added that, by implicitly conceptualizing the well-off of the world as attentive interlocutors who will take action in listening to the Austinian claims of rights-holders, duty-bearers are effectively left as the only agents of change in the global poverty debate. Some, like O’Neill, could reply that this is a welcome shift. For her, there are advantages in dropping the language of subsistence rights and focusing on the language of obligations instead. First, the latter leaves space for doing things that are right without them necessarily being a matter of rights (because not all obligations are correlated with rights); and second, only the latter is genuinely agent-centered: “When we discuss obligations, our direct concern is with what should be done; but when we discuss rights, our direct concern is with what should be received.”³⁸ I disagree on both fronts.

Starting with the last point, it is a stipulation more than an argument. One could paraphrase it and say that “when we discuss obligations, our direct concern is with what should be done; but when we discuss rights,

³⁷ Onora O’Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), 100.

³⁸ O’Neill, “Rights, Obligations and Needs,” 105.

our direct concern is with what may be done.” Without further justification, both assertions seem equally plausible, and I will argue in the next section that there is a lot to commend the latter.

As for the language of obligations being preferable to that of rights in responding to subsistence needs (insofar as it leaves space for the performance of imperfect obligations), this paints an incomplete picture of the moral landscape. For one thing, it is a lot to expect that people sheepishly dwindle while those self-appointed to get them out of their plight persist in their moral failure. For another thing, the figure of the needy as agents has been mostly missing in the global poverty debate, even though they may be just as (or more) capable than well-off individuals, governments, and supranational institutions and agencies when it comes to the fulfillment of their subsistence rights. As Monique Deveaux has recently suggested, the sociopolitical empowerment of the poor should be an integral part of the solution to the problem of global poverty. Exceptional among global justice theorists, for Deveaux it is a matter of principle and not just a pragmatic point that those whose rights are not yet fulfilled may act toward that fulfillment and not just passively wait. There is both a moral and a political dimension to this: “The moral agency of the poor derives from their capacity to act in response to concerns for the welfare or survival of those in dire need—including themselves and their families—and their political agency similarly stems from considerations of solidarity with their communities or others struggling in poverty.”³⁹ If a solution to this problem is wanted, then, all moral agents (including the most deprived and marginalized) have to play their part. This is both a call to treat those in need with respect rather than condescension and to take advantage of the unique knowledge they have of their own situation—what social scientists call “insider expertise.”

While Deveaux shows how actual poor-led movements like the *Sem Terra* in Brazil and *Nijera Kori* in Bangladesh reveal the power of agency of the needy, *getting organized* is only one type of agency exercised by people in poverty, and it is also the least frequent and most challenging.⁴⁰ In the next section, I bring back Samuel Pufendorf’s account of the right to subsistence or self-preservation—and how it is expressed via the right of necessity—to suggest that there are yet other types of action that should be included in the normative analysis: actions where individuals do not organize, but act on their own; actions through which they are not necessarily pursuing long-term, strategic goals, but simply everyday survival; actions which may be illegal, but morally permissible.

³⁹ Monique Deveaux, “The Global Poor as Agents of Justice,” *Journal of Moral Philosophy* 12 (2015): 125–50, 144–45. See also Monique Deveaux, “Poor-Led Social Movements and Global Justice,” *Political Theory* (2018): 1–28.

⁴⁰ Lister, *Poverty*, 149ff.

III. SUBSISTENCE RIGHTS AND AGENCY

Two injustices are committed by understanding subsistence rights only in the restricted ways presented above. First, an injustice is done to the original spirit of rights-language, the primary purpose of which was to conceptualize rights-holders as agents. Second, an injustice is done to rights-holders themselves, insofar as many of the actions through which they may be realizing the objects of their subsistence rights on a daily basis are left out of the analysis.

A. *The original spirit of subsistence rights*

Known as the father of international law, the Dutch jurist and moral and political philosopher Hugo Grotius is also considered the father of modern rights-talk. To the conventional meanings of “right” as that which is just, or part of the law, Grotius added another definition that inaugurated a new era of thinking about rights: “a moral quality annexed to the person, enabling him to have or do something justly.”⁴¹

To the description of rights-holders as claimants who “point to others’ duties . . . [who] do not have to take much action, and may even wrap themselves passively in a cloak of grievance or of resentment,”⁴² Grotius would have raised his eyebrows in astonishment. For him and for the tradition following him, rights are moral powers of action that delineate an individual sovereign sphere: the *suum*, or that which belongs to the person.⁴³ Those who have rights have a standing in the world (rather than a *sitting*, forgive the pun). Rights are where the action is, and rights-holders are the paradigmatic moral agents, who recognize each other as equals regarding these entitlements. This is most clearly the case with the natural right to self-preservation, the predecessor of contemporary basic rights. In the remainder of this section, I briefly present Samuel Pufendorf’s analysis and justification for this right. Pufendorf follows the Grotian tradition but develops and perfects it.⁴⁴ His account is especially illuminating considering that, unlike Grotius and like contemporary global justice theorists, he focused on

⁴¹ Hugo Grotius, *The Rights of War and Peace*, 3 vols. (Indianapolis, IN: Liberty Fund, 2005), I.I.4, 138.

⁴² O’Neill, *Bounds of Justice*, 101.

⁴³ Alejandra Mancilla, “What We Own Before Property: Hugo Grotius and the *Suum*,” *Grotiana* 36, no 1 (2015): 63–77. The idea of the *suum* can easily be seen as grounding contemporary theories of self-ownership. Although this is not the place to develop a comparison, I would say, however, that there is at least one obvious difference between the two. While the stereotype version of self-ownership theories recognizes only negative rights and duties and is therefore criticized as picturing a society formed by self-sustaining moral atoms, those who theorized the *suum* saw the individual as inextricably enmeshed with others and, therefore, as having to respond not just negatively, but also positively to them.

⁴⁴ Alejandra Mancilla, “Samuel Pufendorf and the Right of Necessity,” *Aporia* 3 (2012), 47–64.

duties more than rights. Unlike the latter, however, he acknowledged that there were some natural rights that individuals never relinquished so that, under certain circumstances, they may exercise them even if this meant breaking human laws.

Self-preservation is, according to Pufendorf, the strongest interest shared by all human beings, and its normative relevance is reflected twofold. On the one hand, one may protect one's sovereign sphere from the encroachment of others, and may appeal to force if necessary. This is the *reactive* side of self-preservation and constitutes the traditional right to self-defense. On the other hand, as an embodied being, one may undertake different actions in order to get "those things necessary without which we cannot keep ourselves alive,"⁴⁵ so long as one does not encroach upon the sovereign sphere of others in so doing. This is the *proactive* side of self-preservation and comes close to our contemporary understanding of subsistence rights.⁴⁶ Self-defense and subsistence are therefore two sides of the same coin: rights that all individuals have to remain sovereign over themselves, marking a minimal sphere of free action and generating a duty on others to respect that sphere. In Hohfeldian terminology, they are both privileges and claims.

This picture might give the impression of a minimal morality designed for atomistic loners, but it is quite the opposite. Pufendorf thinks that preserving sociability is the first principle of natural law and that, therefore, delimiting each other's moral terrain is fundamental. Because we are social beings who want to live with others, but are also prone to conflict with them, it is only by acknowledging the importance of self-preservation that we can keep a peaceful society.

While in a pre-institutional state each of us is the enforcer of her own rights, with the advent of civil society and property laws we expect the common authority to defend and protect our sovereign sphere while we make our living. Pufendorf offers a contractualist story of the genesis of civil society and the institution of property, whereby we agree to give up these basic rights and to abide by certain rules insofar as these are beneficial (or, at least, not prejudicial) to us.

Under exceptional circumstances, however, individuals may break human laws and become the enforcers of their own preservation if this is the only way out. For example, if someone is attacked by a band of night-robbers in the middle of a solitary road, she may resort to self-defense. And if someone cannot provide what she needs for subsistence through the established legal channels, she may exercise her *right of necessity*, taking and using

⁴⁵ Samuel Pufendorf, *The Whole Duty of Man, According to the Law of Nature*, ed. Ian Hunter and David Saunders (Indianapolis, IN: Liberty Fund, 2003), V.23, 90.

⁴⁶ Confusingly, Pufendorf sometimes calls this the right to self-preservation, even though it is only one part of the more encompassing right.

someone else's property as if it were her own.⁴⁷ The right of necessity is, so to speak, the executive branch of subsistence rights—a right triggered when these would go unfulfilled if human laws were to be respected.

Foreseeing the disruptive effects of having an exceptional right such as the right of necessity turn into a common occurrence, Pufendorf's insight was that minimal provisions had to be in place for all those subject to the law, so that they could get what they needed to support their lives without having to appeal to this last resort solution.⁴⁸ However, if such provisions were not in place, no one should expect individuals to perish for the sake of respecting laws that demanded more from them than what they could tolerate. Furthermore, the exercise of the right of necessity knew no boundaries. On the contrary, states had a duty to let in those driven to them by necessity.⁴⁹

The strong human interest in self-preservation thus limited both what should be maximally demanded from, and minimally allowed to, individuals.⁵⁰ Here is the duty-focused philosopher *par excellence* acknowledging that, if duties remain unfulfilled, rights may do the work.

These are insights worth bringing into the global poverty debate. After all, the situation that Pufendorf describes is not unlike the current one, where needy individuals are oftentimes subject to laws that constrain their actions and do not benefit them, but rather harm them (such as, notably, property laws and migration laws).⁵¹ If nothing is done to make those laws work for them (or, at least, not against them), why should they be bound by them? And, if they are not bound, what may they do instead?

⁴⁷ Regarding the right of self-defense in civil society, those subject to the civil power may "use violence in the defense of themselves, when the time and place will not admit of any application to the magistrate for his assistance in repelling such injuries by which a man's life may be hazarded, or some other most valuable good which can never be repaired, may be manifestly endangered" (*Ibid.*, V.16, 84). Regarding the right of necessity: "If a man, not through his own fault, happen to be in extreme want of victuals and clothes necessary to preserve him from the cold, and cannot procure them from those who are wealthy and have great store, either by intreaties, or by offering their value, or by proposing to do work equivalent; he may, without being chargeable with theft or rapine, furnish his necessities out of their abundance, either by force or secretly, especially if he do so with a design to pay the price, as soon as he shall have an opportunity": *Ibid.* V.30, 93.

⁴⁸ Samuel Pufendorf, *Of the Law of Nature and Nations*, ed. Jean de Barbeyrac, 4th ed. (London: J. Walthoe, 1729), II.VI.5, 207.

⁴⁹ If a government has not made any provisions to guarantee that its subjects will be able to fulfill their subsistence rights, and there are no other means for the person to fulfill them, Pufendorf asks rhetorically, "must he therefore perish with famine? Or can any human institution bind me with such a force, that in case another man neglects his duty towards me, I must rather die, than recede a little from the ordinary and the regular way of acting?" His answer is negative: *Ibid.*, II.VI.5, 207. Regarding the right of necessity of strangers: "It is left on the power of all states, to take such measures about the admission of strangers, as they think convenient; those being ever excepted, who are driven on the coast by necessity, or by any cause that deserves pity and compassion": *Ibid.*, III.III.9, 245.

⁵⁰ *Ibid.*, II.VI.5, 207.

⁵¹ See, for example, Amartya Sen's illuminating analysis of famines in the twentieth century, none of which were caused by lack of food, but by bad laws and abuse of power: Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press, 1981).

B. "Owning it"

If one follows Pufendorf's interpretation of the right of necessity, five conditions need to be fulfilled for its exercise to be permissible: the need in question must be indeed basic; the person must not be responsible for her plight; she must not take from others who are in a similar or worse situation; she must only use this prerogative as a last resort, and she must have the intention to retribute if possible. Briefly, this means that the person may only exercise her right to cover basic needs (Pufendorf's examples are about food, clothing, and shelter), and she can only exercise this right when she has come to that situation through no fault of her own.⁵² Moreover, this prerogative may only be exercised when "we suppose the owner to abound,"⁵³ and never when the owner is in a similar respect just as needy as, or needier, than the original person in need. The last resort clause ensures that the right can only be invoked after one has sought unsuccessfully to satisfy one's needs via legal means—for example, by working, offering to do something in exchange, appealing to the relevant authorities, actively seeking the aid of others, and so on and so forth. Finally, the individual must intend to give back what was taken, or must at least show gratitude toward those she took from.

This is a very demanding list of conditions, and more discussion needs to be had, especially regarding what it means to be morally responsible for one's plight: at the time when Pufendorf was writing, the now discredited distinction between "deserving" and "undeserving" poor was very much alive, and the stigma of laziness and idleness haunted poor people.⁵⁴ It is plausible to think, though, that not all cases of chronic need should be treated alike. The restitution requirement is also worth questioning, especially if those claiming their right of necessity are doing so because the institutional framework failed to guarantee the satisfaction of their basic needs: it sounds odd to demand that the agents retribute if what they are claiming is their right in the first place.⁵⁵

However, even if one retains Pufendorf's list, I suggest that thousands, nay, maybe millions of individuals in the world today might arguably

⁵² "[For] how different the case is, when a man falls under such necessity by his own sloth or negligence, and when it comes on him without his fault": Pufendorf, *Of the Law of Nature and Nations*, II.VI.6, 208. Pufendorf is especially worried here that, by giving such prerogative to "idle knaves," the industrious would have to bear an unfair burden.

⁵³ *Ibid.*, II.VI.6, 209.

⁵⁴ See, for example, Steve Hindle, "Dependency, Shame, and Belonging: Badging the Deserving Poor, C. 1550–1750," *Cultural and Social History* 1, no. 1 (2004): 6–35.

⁵⁵ Unfortunately, Pufendorf did not have the chance to get acquainted with Iris Marion Young's social connection model of responsibility, which recognizes the difficulty, if not plain impossibility, of dividing agents into liable and nonliable in a complex social, political, and economic context. Pufendorf therefore assumes that potential duty-bearers (just like potential rights-holders) are either guilty or innocent. For a criticism of these conditions and a reformed version of the Pufendorfian right of necessity, see Alejandra Mancilla, *The Right of Necessity: Moral Cosmopolitanism and Global Poverty* (London: Rowman and Littlefield International, 2016).

fulfill it.⁵⁶ Against the standard account of the plea of necessity, which only applies in one-off, urgent, and unforeseeable situations that arise mostly via natural causes, in this reading a chronically deprived homeless person living on the streets is just as entitled as an inadvertent hiker in a mountain storm to take and use what she requires to subsist.⁵⁷ Against the standard argument against indigence being a justification for necessity (namely, that it would be a remedy worse than the disease), in this reading indigence is accepted as a justification, so long as the abovementioned conditions are met.⁵⁸ Human need is human need, regardless of its cause, and the goal of society and its institutions is therefore to eliminate it insofar as possible under normal circumstances. When this does not happen, however, one should not expect individuals to sit down quietly, but to do whatever is in their power to fulfill their right to subsistence. Furthermore, one should not interfere with them doing so, even if this breaks human laws. Indeed, regarding the ways in which the right may be exercised, Pufendorf allows for the use of force when property owners refuse to have their property taken away from them, especially when it is of negligible value for them and of great value for the claimants (who, as said above, are assumed to be innocent of their plight). Pufendorf also allows for the possibility of claiming one's right covertly rather than overtly.⁵⁹

I suggest that, if rights-based theories incorporate these considerations into their normative evaluations of the global poverty debate, the account of duties of the well-off toward the needy will be complemented by an account of rights that the needy may enact for themselves and by themselves. Both will be about standing in the world, and about respecting those minimal entitlements that Pufendorf subsumed under the natural right to

⁵⁶ Here are two statistics to motivate this claim: in spite of the advances to push back poverty in recent decades, in 2015 still 836 million people were living with less than 1.25 USD a day (United Nations, *The Millennium Development Goals Report 2015*, [https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%2015\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%2015).pdf), 4. Furthermore, among those defined as living in "multidimensional poverty," 689 million are children under the age of eighteen: Sabina Alkire, Christoph Jindra, Gisela Robles, and Ana Vaz, "Children's Multidimensional Poverty: Disaggregating the Global MPI," Briefing 46, May 2017, Oxford Poverty and Human Development Initiative, http://www.ophi.org.uk/wp-content/uploads/Brief_46_Child_MPI_2017-1.pdf. The advantage of taking this demanding reading of the right of necessity is that those wishing to relax any of the abovementioned conditions would see the scope of potential claimants extended even further, thus confirming its plausibility.

⁵⁷ The classic example where the plea of necessity applies is that of the hiker caught in a mountain storm who has to break into someone's cabin (and maybe even eat some of the groceries) to save himself from the cold: Joel Feinberg, "Voluntary Euthanasia and the Inalienable Right to Life," *Philosophy and Public Affairs* 7, no. 2 (1978): 93–123, at 102.

⁵⁸ Cf. Lord Denning in *London Borough of Southwark v. Williams*: "If hunger were once allowed to be an excuse for stealing, it would open a door through which all kinds of disorder and lawlessness would pass": Alan Brudner, "A Theory of Necessity," *Oxford Journal of Legal Studies* 7, no. 3 (1987): 339–68, at 340. Cf. also Jeremy Waldron, "Why Indigence is Not a Justification," in Hugh Hefner and John Kleinig, eds., *From Social Justice to Criminal Justice* (Oxford: Oxford University Press, 2000), 98–113.

⁵⁹ Pufendorf, *Of the Law of Nature and Nations*, II.VI.6, 208–9.

self-preservation, which are latent (but mostly ignored) in our contemporary understanding of subsistence rights.

Actions like shoplifting, pilfering, squatting, occupying, engaging in underground work, and illegally migrating have been extensively documented and examined by human geographers, social anthropologists, and economists. Not by vociferously claiming, but by silently doing, often those engaging in such actions are—in common parlance—“owning it.” They are *getting by* (or “coping”) under exacting circumstances, and they are *getting back at* (rejecting through acts of everyday resistance) “the constraints imposed by the socioeconomic order . . . even if they do not directly challenge that order or power.”⁶⁰ It is now time that liberal rights-based theories look at these actions more closely and with a sympathetic eye.⁶¹ By this I mean using Adam Smith’s concept of sympathy as the ability to put oneself in someone else’s shoes, trying to conceive “what we ourselves should feel in the like situation.”⁶²

At this point, there are different types of considerations that will worry even the most charitable reader. There are issues of epistemic overdemandingness (How will I, the duty-bearer, know that a truly needy person rather than a professional thief is taking from me?); psychological overdemandingness (What if the needy repeatedly target my property, even though there are many who are much better positioned than I to bear the loss?); and theoretical overdemandingness (Isn’t it self-defeating to fulfill the rights of some by failing to respect the rights of others?).⁶³ There is also the question of how much force and coercion should be allowed. Based on a binary model of liability, Pufendorf acknowledged that the needy may force those who had rampantly failed to fulfill their duties. But, should coercion be allowed to be used today, for example, against a common citizen who may be only indeterminately and diffusely responsible for the plight of the claimant (say, by sustaining through her tacit consent unjust institutions at the domestic and global level)? I cannot hope to answer these questions here, but put them forward to show that a whole new

⁶⁰ Lister, *Poverty*, 144. Acts of “everyday resistance” refer to those acts that “require little or no coordination or planning; they often represent a form of individual self-help; and they typically avoid any direct confrontation with authority or with elite norms”: James C. Scott, *Weapons of the Weak* (New Haven, CT: Yale University Press, 1985), 29.

⁶¹ Illegal migration has attracted some attention from philosophers lately. See Chris Bertram, *Do States Have the Right to Exclude Immigrants?* (London: Polity Press, 2018). As for more general acts of resistance, Simon Caney has recently defended them in response to global injustice. Like Deveaux, however, Caney focuses almost exclusively on coordinated acts brought about by organized collectives and which have a long-term, strategic goal, that is, to bring about a more just state of affairs: Simon Caney, “Responding to Global Injustice: On the Right of Resistance,” *Social Philosophy and Policy* 32, no. 1 (2015): 51–73.

⁶² Adam Smith, *The Theory of Moral Sentiments*, ed. A. L. Macfie and D. D. Raphael (Indianapolis, IN: Liberty Fund, 1982), 9.

⁶³ I take the language of overdemandingness from Jan-Christoph Heilinger, “The Moral Demandingness of Socioeconomic Human Rights,” in Jan-Christoph Heilinger, and Gerhard Ernst, eds. *The Philosophy of Human Rights Contemporary Controversies* (Berlin: De Gruyter, 2012), 185–208, 196 ff.

spectrum of inquiry is opened once we stop thinking of the right to subsistence as a mere claim.

To avoid misunderstandings, I am not claiming that the free and unfettered exercise of the right of necessity by those who fulfill its conditions in today's world is the ultimate cure to the problem of global poverty. I am not claiming that by repeatedly infringing property laws and border control regulations the needy will finally be able to exit their precarious state—and that we should merrily accept that outcome. What I am claiming is that the right of necessity thus understood can no longer be ignored in the global poverty debate, unless we wish to accept that subsistence rights are truly no more than manifesto rights. What I am claiming is that, if individuals are prevented from pursuing their self-preservation within the legal framework (which is seemingly what most want anyway⁶⁴), it should come as no surprise that they will turn to whichever alternatives are available.⁶⁵ What I am claiming is that brushing off these actions from the analysis is as unjust as it is hypocritical. Acknowledging the disruptive potential and the many unwelcome—and even unfair—consequences that the repeated exercise of such a right could have should not deter us from thinking it through.⁶⁶

⁶⁴ For an account of entrepreneurship among the poorest, see Abhijit V. Banerjee and Esther Duflo, *Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty* (London: Penguin Books, 2012). See also Van der Vossen and Brennan, who highlight the importance to protect and respect individuals' productive rights, that is, their "abilities to provide for themselves, take charge of their lives, and raise their own prospects as well as the prospects of those around them": Van der Vossen and Brennan, *In Defense of Openness*, 111.

⁶⁵ Economist Hernando de Soto remarks that, in 1783, U.S. President George Washington complained about "banditti . . . skimming and disposing of the cream of the country at the expense of the many." These banditti, De Soto goes on to explain, "were squatters and small illegal entrepreneurs occupying lands they did not own. For the next one hundred years, such squatters battled for legal rights to their land and miners warred over their claims because ownership laws differed from town to town and camp to camp." In other words, they were criminalized by laws that were preventing them from, rather than letting them, provide for themselves: Hernando de Soto, *The Mystery of Capital* (London: Black Swan, 2001), 10.

⁶⁶ In discussing how justice should evolve in response to changed circumstances, David Schmidtz presents the case of *Hinman v. Pacific Air Transport* (1936), where a landowner did not want airlines to "trespass" (that is, fly) over his property, and thus sued them, but lost on the grounds that acceding to his claim would have brought all air traffic to a halt. Schmidtz points out that, while the right to say no is at the center of a system of property, "[it] cannot be used as a weapon of mass destruction. The right to say no is supposed to facilitate community, not enable people to hold a community for ransom": David Schmidtz, "Nonideal Theory: What It Is and What It Needs to Be," *Ethics* 121, no. 4 (2011): 772–96, 785. Although the circumstances are very different, a similar reasoning underlies cases of necessity, when saying no to an illegal action by the needy would mean cutting off their only chance to subsist. In *Hinman v. Pacific Air Transport*, the judge anticipated that what had been unproblematic and therefore unregulated so far (that is, control over airspace) would have to be regulated so that individual landowners may not say no to airplanes flying over their properties. In cases of illegal occupation, squatting, pilfering, and shoplifting by chronically deprived individuals (assuming that the aforementioned conditions are met), one could question the right to say no to the owners of the occupied/taken property on the grounds that only a radically unjust system of property rights could have allowed those situations of necessity to arise in the first place. What needs further defense, then, is the right to say no in a context where the laws themselves do not facilitate community, but hold people (in this case, the poorest) for ransom.

IV. CONCLUDING REMARKS

Language shapes reality if the necessary conditions are in place. By systematically affirming the role of the well-off of the world as the sole agents in the quest to end global poverty, while limiting the role of the needy to that of patients waiting to be helped, liberal moral and political philosophers who themselves belong to the affluent party have cemented a moral framework where the needy may claim, but not do. They may claim in the Hohfeldian sense of having rights that correlate with duties of others (but which others, and under whose enforcement?); and they may claim in the Austinian sense of verbalizing their demands against those bearing responsibility for their satisfaction, even though there is no established (legal) procedure to guarantee that their claims will be heard and acted upon. The constant repetition of this discourse has led to an ultimately myopic approach, with subsistence rights turning into disempowering handcuffs rather than empowering sources of individual action.

Language does not shape reality if the necessary conditions are not in place. This is why giving the needy a Hohfeldian privilege to claim their rights in Austinian fashion is pretty useless in the absence of an established legal procedure. It is not enough to give them a voice; it is equally necessary to make sure there will be ears that will listen attentively to their demands, and respond with the appropriate uptake.

This essay has been primarily a critique against moral and political theorists in the liberal tradition who have so far downplayed the role of rights-holders in the global poverty debate. The positive part has been to suggest that it is within this very tradition that one can find the conceptual resources to interpret and appraise some actions of the latter in a context where the established institutions are too weak or too demanding. Acknowledging the moral permissibility of exercising the right of necessity in cases of chronic deprivation is one necessary implication, I submit, of understanding the right to subsistence not just as empty rhetoric, but as a moral power to act in the world, delineating a sovereign sphere for the individual.

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