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## CORRELATIVE DUTIES

### “NEGATIVE” RIGHTS AND “POSITIVE” RIGHTS

Many Americans would probably be initially inclined to think that rights to subsistence are at least slightly less important than rights to physical security, even though subsistence is at least as essential to survival as security is and even though questions of security do not even arise when subsistence fails. Much official U.S. government rhetoric routinely treats all “economic rights,” among which basic subsistence rights are buried amidst many non-basic rights, as secondary and deferrable, although the fundamental enunciation of policy concerning human rights by the then Secretary of State did appear to represent an attempt to correct the habitual imbalance.<sup>1</sup> Now that the same argument in favor of basic rights to both aspects of personal survival, subsistence and security, is before us, we can examine critically some of the reasons why it sometimes appears that although people have basic security rights, the right, if any, to even the physical necessities of existence like minimal health care, food, clothing, shelter, unpolluted water, and unpolluted air is somehow less urgent or less basic.

Frequently it is asserted or assumed that a highly significant difference between rights to physical security and rights to subsistence is that they are respectively “negative” rights and “positive” rights.<sup>2</sup> This position, which I will now try to refute, is considerably more complex than it at first appears. I will sometimes refer to it as the position that subsistence rights are *positive* and *therefore*

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*secondary*. Obviously taking the position involves holding that subsistence rights are positive in some respect in which security rights are negative and further claiming that this difference concerning positive/negative is a good enough reason to assign priority to negative rights over positive rights. I will turn shortly to the explanation of this assumed positive/negative distinction. But first I want to lay out all the premises actually needed by the position that subsistence rights are positive and therefore secondary, although I need to undercut only some—strictly speaking, only one—of them in order to cast serious doubt upon the position's conclusions.

The alleged lack of priority for subsistence rights compared to security rights assumes:

1. The distinction between subsistence rights and security rights is (a) sharp and (b) significant.<sup>3</sup>
2. The distinction between positive rights and negative rights is (a) sharp and (b) significant.
3. Subsistence rights are positive.
4. Security rights are negative.

I am not suggesting that anyone has ever laid out this argument in all the steps it actually needs. On the contrary, a full statement of the argument is the beginning of its refutation—this is an example of the philosophical analogue of the principle that sunlight is the best antiseptic.<sup>4</sup>

In this chapter I will concentrate on establishing that premises 3 and 4 are both misleading. Then I will suggest a set of distinctions among duties that accurately transmits the insight distorted by 3 and 4. Insofar as 3 and 4 are inaccurate, considerable doubt is cast upon 2, although it remains possible that someone can specify some sharply contrasting pair of rights that actually are examples of 2.<sup>5</sup> I will not directly attack premise 1.<sup>6</sup>

Now the basic idea behind the general suggestion that there are positive rights and negative rights seems to have been that one kind of rights (the positive ones) require other people to act positively—to “do something”—whereas another kind of rights (the negative ones) require other people merely to refrain from acting in certain ways—to do nothing that violates the rights. For example, according to this picture, a right to subsistence would be posi-

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tive because it would require other people, in the last resort, to supply food or clean air to those unable to find, produce, or buy their own; a right to security would be negative because it would require other people merely to refrain from murdering or otherwise assaulting those with the right. The underlying distinction, then, is between acting and refraining from acting; and positive rights are those with correlative duties to act in certain ways and negative rights are those with correlative duties to refrain from acting in certain ways. Therefore, the moral significance, if any, of the distinction between positive rights and negative rights depends upon the moral significance, if any, of the distinction between action and omission of action.<sup>7</sup>

The ordinarily implicit argument for considering rights to subsistence to be secondary would, then, appear to be basically this. Since subsistence rights are positive and require other people to do more than negative rights require—perhaps more than people can actually do—negative rights, such as those to security, should be fully guaranteed first. Then, any remaining resources could be devoted, as long as they lasted, to the positive—and perhaps impossible—task of providing for subsistence. Unfortunately for this argument, neither rights to physical security nor rights to subsistence fit neatly into their assigned sides of the simplistic positive/negative dichotomy. We must consider whether security rights are purely negative and then whether subsistence rights are purely positive. I will try to show (1) that security rights are more “positive” than they are often said to be, (2) that subsistence rights are more “negative” than they are often said to be, and, given (1) and (2), (3) that the distinctions between security rights and subsistence rights, though not entirely illusory, are too fine to support any weighty conclusions, especially the very weighty conclusion that security rights are basic and subsistence rights are not.

In the case of rights to physical security, it may be possible to *avoid violating* someone’s rights to physical security yourself by merely refraining from acting in any of the ways that would constitute violations. But it is impossible to *protect* anyone’s rights to physical security without taking, or making payments toward the taking of, a wide range of positive actions. For example, at the very least the protection of rights to physical security necessitates police forces; criminal courts; penitentiaries; schools for training

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police, lawyers, and guards; and taxes to support an enormous system for the prevention, detection, and punishment of violations of personal security.<sup>8</sup> All these activities and institutions are attempts at providing social guarantees for individuals' security so that they are not left to face alone forces that they cannot handle on their own. How much more than these expenditures one thinks would be necessary in order for people actually to be reasonably secure (as distinguished from merely having the cold comfort of knowing that the occasional criminal is punished after someone's security has already been violated) depends on one's theory of violent crime, but it is not unreasonable to believe that it would involve extremely expensive, "positive" programs. Probably no one knows how much positive action would have to be taken in a contemporary society like the United States significantly to reduce the levels of muggings, rapes, murders, and other assaults that violate personal security, and in fact to make people reasonably secure.

Someone might suggest that this blurs rights to physical security with some other type of rights, which might be called rights-to-be-protected-against-assaults-upon-physical-security. According to this distinction, rights to physical security are negative, requiring others only to refrain from assaults, while rights-to-be-protected-against-assaults-upon-physical-security are positive, requiring others to take positive steps to prevent assaults.

Perhaps if one were dealing with some wilderness situation in which individuals' encounters with each other were infrequent and irregular, there might be some point in noting to someone: I am not asking you to cooperate with a system of guarantees to protect me from third parties, but only to refrain from attacking me yourself. But in an organized society, insofar as there were any such things as rights to physical security that were distinguishable from some other rights-to-be-protected-from-assaults-upon-physical-security, no one would have much interest in the bare rights to physical security. What people want and need, as even Mill partly recognized, is the protection of their rights.<sup>9</sup> Insofar as this frail distinction holds up, it is the rights-to-be-protected-against-assaults that any reasonable person would demand from society. A demand for physical security is not normally a demand simply to be left alone, but a demand to be protected against

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harm.<sup>10</sup> It is a demand for positive action, or, in the words of our initial account of a right, a demand for social guarantees against at least the standard threats.

So it would be very misleading to say simply that physical security is a negative matter of other people's refraining from violations. Ordinarily it is instead a matter of some people refraining from violations and of third parties being prevented from violations by the positive steps taken by first and second parties. The "negative" refraining may in a given case be less significant than the "positive" preventing—it is almost never the whole story. The end-result of the positive preventative steps taken is of course an enforced refraining from violations, not the performance of any positive action. The central core of the right is a right that others not act in certain ways. But the mere core of the right indicates little about the social institutions needed to secure it, and the core of the right does not contain its whole structure. The protection of "negative rights" requires positive measures, and therefore their actual enjoyment requires positive measures. In any imperfect society enjoyment of a right will depend to some extent upon protection against those who do not choose not to violate it.

Rights to subsistence too are in their own way considerably more complex than simply labeling them "positive" begins to indicate. In fact, their fulfillment involves at least two significantly different types of action. On the one hand, rights to subsistence sometimes do involve correlative duties on the part of others to provide the needed commodities when those in need are helpless to secure a supply for themselves, as, for example, the affluent may have a duty to finance food supplies and transportation and distribution facilities in the case of famine. Even the satisfaction of subsistence rights by such positive action, however, need not be any more expensive or involve any more complex governmental programs than the effective protection of security rights would. A food stamp program, for example, could be cheaper or more expensive than, say, an anti-drug program aimed at reducing muggings and murders by addicts. Which program was more costly or more complicated would depend upon the relative dimensions of the respective problems and would be unaffected by any respect in which security is "negative" and subsistence is "positive." Insofar as any argument for giving priority to the fulfillment of "nega-

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tive rights" rests on the assumption that actually securing "negative rights" is usually cheaper or simpler than securing "positive rights," the argument rests on an empirical speculation of dubious generality.

The other type of action needed to fulfill subsistence rights is even more difficult to distinguish sharply from the action needed to fulfill security rights. Rights to physical subsistence often can be completely satisfied without the provision by others of any commodities to those whose rights are in question. All that is sometimes necessary is to protect the persons whose subsistence is threatened from the individuals and institutions that will otherwise intentionally or unintentionally harm them. A demand for the fulfillment of rights to subsistence may involve not a demand to be provided with grants of commodities but merely a demand to be provided some opportunity for supporting oneself.<sup>11</sup> The request is not to be supported but to be allowed to be self-supporting on the basis of one's own hard work.

What is striking is the similarity between protection against the destruction of the basis for supporting oneself and protection against assaults upon one's physical security. We can turn now to some examples that clearly illustrate that the honoring of subsistence rights sometimes involves action no more positive than the honoring of security rights does. Some cases in which all that is asked is protection from harm that would destroy the capacity to be self-supporting involve threats to subsistence of a complexity that is not usually noticed with regard to security, although the adequate protection of security would involve analyses and measures more complex than a preoccupation with police and prisons. The complexity of the circumstances of subsistence should not, however, be allowed to obscure the basic fact that essentially all that is being asked in the name of subsistence rights in these examples is protection from destructive acts by other people.

### SUBSISTENCE RIGHTS AND SCARCITY

The choice of examples for use in an essentially theoretical discussion that does nevertheless have implications for public policy presents an intractable dilemma. Hypothetical cases and actual cases each have advantages and disadvantages that are mirror im-

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ages of each other's. A description of an actual case has the obvious advantage that it is less susceptible to being tailored to suit the theoretical point it is adduced to support, especially if the description is taken from the work of someone other than the proponent of the theoretical point. Its disadvantage is that if the description is in fact an inaccurate account of the case in question, the mistake about what is happening in that case may appear to undercut the theoretical point that is actually independent of what is happening in any single case. Thus the argument about the theoretical point may become entangled in arguments about an individual instance that was at most only one supposed illustration of the more general point.

Hypothetical cases are immune to disputes about whether they accurately depict an independent event, since, being explicitly hypothetical, they are not asserted to correspond to any one real case. But precisely because they are not constrained by the need to remain close to an independent event, they may be open to the suspicion of having been streamlined precisely in order to fit the theoretical point they illustrate and having thereby become atypical of actual cases.

The only solution I can see is to offer, when a point is crucial, an example of each kind. It is vital to the argument of this book to establish that many people's lack of the substance of their subsistence rights—of, that is, the means of subsistence like food—is a deprivation caused by standard kinds of threats that could be controlled by some combination of the mere restraint of second parties and the maintenance of protective institutions by first and third parties, just as the standard threats that deprive people of their physical security could be controlled by restraint and protection against non-restraint. So I will start with a hypothetical case in order to clarify the theoretical point before introducing the partly extraneous complexity of actual events, and then I will quote a description of some actual current economic policies that deprive people of subsistence. The hypothetical case is at the level of a single peasant village, and the actual case concerns long-term national economic strategies. Anyone familiar with the causes of malnutrition in underdeveloped countries today will recognize that the following hypothetical case is in no way unusual.<sup>12</sup>

Suppose the largest tract of land in the village was the property

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of the descendant of a family that had held title to the land for as many generations back as anyone could remember. By absolute standards this peasant was by no means rich, but his land was the richest in the small area that constituted the universe for the inhabitants of this village. He grew, as his father and grandfather had, mainly the black beans that are the staple (and chief—and adequate—source of protein) in the regional diet. His crop usually constituted about a quarter of the black beans marketed in the village. Practically every family grew part of what they needed, and the six men he hired during the seasons requiring extra labor held the only paid jobs in the village—everyone else just worked his own little plot.

One day a man from the capital offered this peasant a contract that not only guaranteed him annual payments for a 10-year lease on his land but also guaranteed him a salary (regardless of how the weather, and therefore the crops, turned out—a great increase in his financial security) to be the foreman for a new kind of production on his land. The contract required him to grow flowers for export and also offered him the opportunity, which was highly recommended, to purchase through the company, with payments in installments, equipment that would enable him to need to hire only two men. The same contract was offered to, and accepted by, most of the other larger landowners in the general region to which the village belonged.

Soon, with the sharp reduction in supply, the price of black beans soared. Some people could grow all they needed (in years of good weather) on their own land, but the families that needed to supplement their own crop with purchases had to cut back their consumption. In particular, the children in the four families headed by the laborers who lost their seasonal employment suffered severe malnutrition, especially since the parents had originally worked as laborers only because their own land was too poor or too small to feed their families.

Now, the story contains no implication that the man from the capital or the peasants-turned-foremen were malicious or intended to do anything worse than single-mindedly pursue their own respective interests. But the outsider's offer of the contract was one causal factor, and the peasant's acceptance of the contract was another causal factor, in producing the malnutrition that



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would probably persist, barring protective intervention, for at least the decade the contract was to be honored. If the families in the village had rights to subsistence, their rights were being violated. Society, acting presumably by way of the government, ought to protect them from a severe type of active harm that eliminates their ability even to feed themselves.

But was anyone actually harming the villagers, or were they simply suffering a regrettable decline in their fortunes? If someone was violating their rights, who exactly was the violator? Against whom specifically should the government be protecting them? For, we normally make a distinction between violating someone's rights and allowing someone's rights to be violated while simply minding our own business. It makes a considerable difference—to take an example from another set of basic rights—whether I myself assault someone or I merely carry on with my own affairs while allowing a third person to assault someone when I could protect the victim and end the assault. Now, I may have a duty not to allow assaults that I can without great danger to myself prevent or stop, as well as a duty not to assault people myself, but there are clearly two separable issues here. And it is perfectly conceivable that I might have the one duty (to avoid harming) and not the other (to protect from harm by third parties), because they involve two different types of action.<sup>13</sup>

The switch in land-use within the story might then be described as follows. Even if one were willing to grant tentatively that the villagers all seemed to have rights to subsistence, some of which were violated by the malnutrition that some suffered after the switch in crops, no individual or organization can be identified as the violator: not the peasant-turned-foreman, for example, because—let us assume—he did not foresee the “systemic” effects of his individual choice; not the business representative from the capital because—let us assume—although he was knowledgeable enough to know what would probably happen, it would be unrealistically moralistic to expect him to forgo honest gains for himself and the company he represented because the gains had undesired, even perhaps regretted, “side-effects”; not any particular member of the governmental bureaucracy because—let us assume—no one had been assigned responsibility for maintaining adequate nutrition in this particular village. The

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local peasant and the business representative were both minding their own business in the village, and no one in the government had any business with this village. The peasant and the representative may have attended to their own affairs while harm befell less fortunate villagers, but allowing harm to occur without preventing it is not the same as directly inflicting it yourself. The malnutrition was just, literally, unfortunate: bad luck, for which no one could fairly be blamed. The malnutrition was, in effect, a natural disaster—was, in the obnoxious language of insurance law, an act of God. Perhaps the village was, after all, becoming overpopulated.<sup>14</sup>

But, of course, the malnutrition resulting from the new choice of crop was not a natural disaster. The comforting analogy does not hold. The malnutrition was a social disaster. The malnutrition was the product of specific human decisions permitted by the presence of specific social institutions and the absence of others, in the context of the natural circumstances, especially the scarcity of land upon which to grow food, that were already given before the decisions were made. The harm in question, the malnutrition, was not merely allowed to happen by the parties to the flower-growing contract. The harm was partly caused by the requirement in the contract for a switch away from food, by the legality of the contract, and by the performance of the required switch in crops. If there had been no contract or if the contract had not required a switch away from food for local consumption, there would have been no malnutrition as things were going.<sup>15</sup> In general, when persons take an action that is sufficient in some given natural and social circumstances to bring about an undesirable effect, especially one that there is no particular reason to think would otherwise have occurred, it is perfectly normal to consider their action to be one active cause of the harm. The parties to the contract partly caused the malnutrition.

But the society could have protected the villagers by countering the initiative of the contracting parties in any one of a number of ways that altered the circumstances, and the absence of the appropriate social guarantees is another cause of the malnutrition. Such contracts could, for example, have already been made illegal. Or they could have been allowed but managed or taxed in order to compensate those who would otherwise predictably be

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damaged by them. Exactly what was done would be, *for the most part*, an economic and political question.<sup>16</sup> But it is possible to have social guarantees against the malnutrition that is repeatedly caused in such standard, predictable ways.

Is a right to subsistence in such a case, then, a positive right in any important ways that a right to security is not? Do we actually find a contrast of major significance? No. As in the cases of the threats to physical security that we normally consider, the threat to subsistence is human activity with largely predictable effects.<sup>17</sup> Even if, as we tend to assume, the motives for deprivations of security tend to be vicious while the motives for deprivations of subsistence tend to be callous, the people affected usually need protection all the same. The design, building, and maintenance of institutions and practices that protect people's subsistence against the callous—and even the merely over-energetic—is no more and no less positive than the conception and execution of programs to control violent crimes against the person. It is not obvious which, if either, it is more realistic to hope for or more economical to pursue. It is conceivable, although I doubt if anyone really knows, that the two are more effectively and efficiently pursued together. Neither looks simple, cheap, or “negative.”

This example of the flower contract is important in part because, at a very simple level, it is in fact typical of much of what is happening today among the majority of the people in the world, who are poor and rural, and are threatened by forms of “economic development” that lower their own standard of living.<sup>18</sup> But it is also important because, once again in a very simple way, it illustrates the single most critical fact about rights to subsistence; where subsistence depends upon tight supplies of essential commodities (like food), a change in supply can have, often by way of intermediate price effects, an indirect but predictable and devastating effect on people's ability to survive. A change in supply can transport self-supporting people into helplessness and, if no protection against the change is provided, into malnutrition or death. Severe harm to some people's ability to maintain themselves can be caused by changes in the use to which other people put vital resources (like land) they control. In such cases even someone who denied that individuals or organizations have duties to supply commodities to people who are helpless to obtain them for them-

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selves, might grant that the government ought to execute the society's duty of protecting people from having their ability to maintain their own survival destroyed by the actions of others. If this protection is provided, there will be much less need later to provide commodities themselves to compensate for deprivations.

What transmits the effect in such cases is the local scarcity of the vital commodity. Someone might switch thousands of acres from food to flowers without having any effect on the diet of anyone else where the supply of food was adequate to prevent a significant price rise in response to the cut in supply. And it goes without saying that the price rises are vitally important only if the income and wealth of at least some people is severely limited, as of course it is in every society, often for the rural majority. It is as if an abundant supply sometimes functions as a sponge to absorb the otherwise significant effect on other people, but a tight supply (against a background of limited income and wealth) sometimes functions as a conductor to transmit effects to others, who feel them sharply.

It is extremely difficult merely to mind one's own business amidst a scarcity of vital commodities. It is illusory to think that this first commandment of liberalism can always be obeyed. The very scarcity draws people into contact with each other, destroys almost all area for individual maneuver, and forces people to elbow each other in order to move forward. The tragedy of scarcity, beyond the deprivations necessitated by the scarcity itself, is that scarcity tends to make each one's gain someone else's loss. One can act for oneself only by acting against others, since there is not enough for all. Amidst abundance of food a decision to grow flowers can be at worst a harmless act and quite likely a socially beneficial one. But amidst a scarcity of food, due partly to a scarcity of fertile land, an unmalicious decision to grow flowers can cause death—unless there are social guarantees for adequate nutrition. A call for social guarantees for subsistence in situations of scarcity is not a call for intervention in what were formerly private affairs.

### TWO THESES ABOUT ECONOMIC DEPRIVATION

Our actual case is an economic strategy now being followed in a considerable number of Latin American nations. As already men-

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tioned, it also differs from the hypothetical, but very typical, example of the flower contract by being a matter of macro-economic strategy. And the actual case differs as well in a respect that is crucial to some of the policy recommendations in chapter 7: the precise relation between the economic decisions and the resulting deprivations of subsistence. In order to be able to characterize this relation accurately we need to draw an important distinction before we look at the description of the case.

“Systemic” deprivation—deprivation resulting from the confluence of many contributing factors—of the kind already seen in the case of the flower contract may or may not be systematic. That is, deprivations that are the result of the interaction of many factors may be (a) accidental—even unpredictable—and relatively easily remediable coincidences in an economic system for which there is no plan or for which the plan does not include the deprivations; or the deprivations may be (b) inherent—perhaps predictable—and acceptable, whether or not positively desirable, elements in a consciously adopted or endorsed economic plan or policy. In the former case they are not systematic but, as I will call them, *accidental*, and in the latter case they are systematic or, I will say, *essential*: essential elements in the strategy that produces them. Essential deprivations can be eliminated only by eliminating the strategy that requires them. Accidental deprivations can be eliminated by making less fundamental changes while retaining the basic strategy, since they are not inherent in the strategy.

The thesis that particular deprivations are accidental often seems to be the explanation recommended by common sense, although we may not ordinarily think explicitly in terms of this distinction. Well-informed people are aware, for example, that the “Brazilian miracle” has left large numbers of the poorest Brazilians worse off than ever, that the Shah’s “White Revolution” made relatively small inroads upon malnutrition and infant mortality, that President and Prime Minister Marcos’s “New Society” is a similar failure, etc.<sup>19</sup> But, especially if one assumes that those who dictate economic strategy are reasonable and well-intentioned people, one may infer that these repeated failures to deal with the basic needs of the most powerless are, in spite of the regularity with which they recur, unfortunate but unpredictable by-products of fundamentally benevolent, or anyhow enlightened, economic plans.

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Alternatively, one might infer that the continuing deprivations are inherent in the economic strategies being used, and that would lead to the second kind of thesis: that the continuance of the deprivations is essential to the economic strategies. Since this thesis may be less familiar, I would like to quote an example of it at some length. Because this particular formulation is intended by the analyst, Richard Fagen, to apply only to Latin America (with the exception of Cuba and, of course, to varying degrees in various different countries), a thesis concerning essential deprivation would naturally have to be formulated differently for Africa, Asia, and elsewhere. The following is intended, then, only as one good example, formulated in specifics to cover only a single region, of the second type of thesis:

—Aggregate economic growth in Latin America over the past decade has been above world averages. The per capita income in the region now exceeds \$1,000. . . .

—The actual situation with respect to income distribution and social equity is, in general, appalling. Fifty percent of the region's citizens have incomes of less than \$200 per year; one-third receive less than \$100. The top five percent of the population controls one-third of the total income. The emphasis on industrialization and export-led growth almost everywhere reinforces and accelerates the neglect of agriculture—at least agriculture in basic foodstuffs for domestic consumption. . . .

—Related to the income distribution and social equity issues is the problem of unemployment. In some countries as many as one out of three persons in the working-age population is unable to find a job of any sort. . . .

—The kind of development that has taken place is reflected in the structure of external indebtedness. Current estimates are that the countries of the region now owe approximately \$80 billion in public and publicly guaranteed debt alone. . . .

—The Latin American state is everywhere involved in economic development and management. It is usually the prime borrower abroad, often an important investor at home, frequently a chief partner of foreign capital, and al-

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ways a source of regulations on everything from wages to import quotas. State capitalism has come to Latin America with a vengeance, and even the governments that claim to give the freest play to market forces are in fact constantly intervening to establish the rules under which "free markets" will be allowed to operate.

The above sketch of Latin American development aids in understanding the nature of contemporary authoritarianism. . . . The linkages are complex, but very largely determine the public policies that will be followed. Creditors want to be paid in dollars or in other international currencies. The international financial institutions are critically concerned with the debtor country's balance of payments. A sharp increase in exports—acknowledged to be the best way to achieve a more favorable balance and repay the debt—is very difficult to achieve in the short run. Also difficult to accomplish is a dramatic increase in capital inflows—except by borrowing even more.

This leaves imports as a natural target for those who would save hard currency. But in order to cut imports—or at least that sector of imports that is least important to ruling elites, economic managers, and most national and international business—mass consumption must be restricted. Since quotas and tariffs are seen as inappropriate policy instruments, to a large extent consumer demand must be managed through restrictions on the real purchasing power of wage-earners—and increases in unemployment.

When coupled with cutbacks in government expenditures (typically in public works and welfare-enhancing subsidies), a huge proportion of the adjustment burden is thus transferred to the working class. In an inflationary economy, the proportional burden is even greater. Needless to say, where minimal possibilities of political expression exist, this kind of adjustment medicine does not go down easily. Repression of trade unions as effective organizations and workers as individuals is in this sense "necessary" for those in charge of managing the economy and for their friends and allies abroad.

Many of these same persons may decry the extreme and

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brutal measures used in countries such as Brazil, Uruguay, Argentina, Bolivia and Chile to establish and maintain control over the labor movement and hold wages well below the inflationary spiral. Some may even take comfort in the fact that, once the most extreme measures have been used, a partial relaxation of control seems possible at a later date. But minimal honesty requires that the repression in both its physical and financial dimensions be seen as an organic aspect of what is now the prevailing mode of economic development in Latin America. Social and economic human rights do not fare well in such an environment. . . .

What has evolved in Latin America (and by implication in some other areas of the Third World) is a political-economic model that has *no* historical precedent in the now more developed capitalist world. For lack of a more concise phrase, this model can be called illiberal state capitalism, a situation in which state intervention in the economy is substantial, but governmental policies tend to reinforce rather than soften or ameliorate income inequalities, class distinctions, and regional disequilibria.<sup>20</sup>

I take it to be evident that in various countries throughout the world deprivation is sometimes accidental and sometimes essential, and that one has no reason at all to expect that either thesis is applicable to all cases. Each continent, or rather each country, and often each regime, must be analyzed on its own. But it is fairly clear that current regimes include a number of instances of what Fagen calls "illiberal state capitalism" and that in these cases people are deprived of subsistence (and liberty) by their own government's choice of economic strategy.

In this brief theoretical work I obviously cannot attempt to establish under which governments deprivations of subsistence are essential and under which they are accidental, although I have already mentioned some cases I take to be strikingly evident. Illiberal state capitalism is only one prominent source of strategies of essential deprivation, and for us here the main point is the distinction between essential and accidental deprivation, whatever the detailed explanation for which one occurs. Especially when we come in chapter 7 to look at specific recommendations for U.S. foreign policy, it will be crucial to keep this underlying distinction between these two explanations of deprivation in mind. In most



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cases the formulation of policy must take the source of deprivations into account. A government that engages in essential deprivation—that follows an economic strategy in which deprivations of subsistence are inherent in the strategy—fails to fulfill even any duty merely to avoid depriving. Such systematic violation of subsistence rights is surely intolerable. Such a government is a direct and immediate threat to its own people, and they are entitled to resist it in order to defend themselves. But I am getting ahead of the theoretical story.

We turned to the actual case of illiberal state capitalism in Latin America with its macroeconomic strategies of essential deprivation, as well as to the hypothetical case of the village flower contract, which is a kind of contract encouraged by—but not dependent upon—strategies of essential deprivation, in order to see some illustrations of the inaccuracy of the philosophical doctrine that subsistence rights, like all economic rights, are positive, because their fulfillment consists largely of actively providing people with commodities like food. From these cases it is now, I hope, quite clear that the honoring of subsistence rights may often in no way involve transferring commodities to people, but may instead involve preventing people's being deprived of the commodities or the means to grow, make, or buy the commodities. Preventing such deprivations will indeed require what can be called positive actions, especially protective and self-protective actions. But such protection against the deprivation of subsistence is in all major respects like protection against deprivations of physical security or of other rights that are placed on the negative side of the conventional negative/positive dichotomy. I believe the whole notion that there is a morally significant dichotomy between negative rights and positive rights is intellectually bankrupt—that premise 2, as stated in the first section of this chapter, is mistaken. The cases we have considered establish at the very least that the dichotomy distorts when it is applied to security rights and subsistence rights—that premises 3 and 4 were mistaken. The latter is all that needed to be shown.

## AVOIDANCE, PROTECTION, AND AID

Still, it is true that sometimes fulfilling a right does involve transferring commodities to the person with the right and sometimes it

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merely involves not taking commodities away. Is there not some grain of truth obscured by the dichotomy between negative and positive rights? Are there not distinctions here that it is useful to make?

The answer, I believe, is: yes, there are distinctions, but they are not distinctions between rights. The useful distinctions are among duties, and there are no one-to-one pairings between kinds of duties and kinds of rights. The complete fulfillment of each kind of right involves the performance of multiple kinds of duties. This conceptual change has, I believe, important practical implications, although it will be only in chapter 7 that the implications can begin to be illustrated. In the remainder of this chapter I would like to tender a very simple tripartite typology of duties. For all its own simplicity, it goes considerably beyond the usual assumption that for every right there is a single correlative duty, and suggests instead that for every basic right—and many other rights as well—there are three types of duties, all of which must be performed if the basic right is to be fully honored but not all of which must necessarily be performed by the same individuals or institutions. This latter point opens the possibility of distributing each of the three kinds of duty somewhat differently and perhaps confining any difficulties about the correlativity of subsistence rights and their accompanying duties to fewer than all three kinds of duties.

So I want to suggest that with every basic right, three types of duties correlate:

- I. Duties to *avoid* depriving.
- II. Duties to *protect* from deprivation.
- III. Duties to *aid* the deprived.

This may be easier to see in the case of the more familiar basic right, the right to physical security (the right not to be tortured, executed, raped, assaulted, etc.). For every person's right to physical security, there are three correlative duties:

- I. Duties not to eliminate a person's security—duties to *avoid* depriving.
- II. Duties to protect people against deprivation of security by other people—duties to *protect* from deprivation.

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- III. Duties to provide for the security of those unable to provide for their own—duties to *aid* the deprived.

Similarly, for every right to subsistence there are:

- I. Duties not to eliminate a person's only available means of subsistence—duties to *avoid* depriving.
- II. Duties to protect people against deprivation of the only available means of subsistence by other people—duties to *protect* from deprivation.
- III. Duties to provide for the subsistence of those unable to provide for their own—duties to *aid* the deprived.

If this suggestion is correct, the common notion that *rights* can be divided into rights to forbearance (so-called negative rights), as if some rights have correlative duties only to avoid depriving, and rights to aid (so-called positive rights), as if some rights have correlative duties only to aid, is thoroughly misguided. This misdirected simplification is virtually ubiquitous among contemporary North Atlantic theorists and is, I think, all the more pernicious for the degree of unquestioning acceptance it has now attained. It is duties, not rights, that can be divided among avoidance and aid, and protection. And—this is what matters—every basic right entails duties of all three types. Consequently the attempted division of rights, rather than duties, into forbearance and aid (and protection, which is often understandably but unhelpfully blurred into avoidance, since protection is partly, but only partly, the enforcement of avoidance) can only breed confusion.

It is impossible for any basic right—however “negative” it has come to seem—to be fully guaranteed unless all three types of duties are fulfilled. The very most “negative”-seeming right to liberty, for example, requires positive action by society to protect it and positive action by society to restore it when avoidance and protection both fail. This by no means implies, as I have already mentioned, that all three types of duties fall upon everyone else or even fall equally upon everyone upon whom they do fall. Although this tripartite analysis of duties is, I believe, perfectly general, I will focus here upon the duties correlative to subsistence rights: subsistence duties.

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#### THE GENERALITY OF THE TRIPARTITE ANALYSIS

However, perhaps a brief word on the general issue is useful before turning to a fairly detailed analysis of the threefold duties correlative to the rights that most concern us: subsistence rights. Obviously theses of three ascending degrees of generality might be advanced:

All subsistence rights involve threefold correlative duties.

All basic rights involve threefold correlative duties.

Most moral rights involve threefold correlative duties.

I subscribe to all three theses, and I believe that the remainder of this book offers significant support for all three. But naturally the support will be most thorough for the first thesis and least thorough for the last. For the most part I am content to leave matters at that, because the only point that I am concerned fully to establish is the priority of subsistence rights, that is, their equal priority with all other basic rights. Consequently, the arguments need, strictly speaking, to be thorough only for subsistence rights. But a contrasting pair of observations are also in order.

On the one hand, the argument here is from the particular to the general, not the converse. It is not because I assumed that normal rights involve some, or threefold, duties that I concluded that subsistence rights involve some, and threefold, duties. I explored subsistence rights, as we are about to do, and found that they can be fully accounted for only by means of admitting three kinds of correlated duties. I looked at the same time at security rights and, as we will do in chapter 3, at rights to liberty and found again that an adequate explanation involves all three kinds of multiply interrelated duties, thus coming to suspect that all basic rights, at the very least, require the same tripartite analysis of the duty side of the coin.

On the other hand, on the basis of these detailed examinations of these three rights I am indeed tempted to recommend that the most general thesis be made analytically true, that is, that any right not involving the threefold duties be acknowledged to be an exceptional case. If the account of a right given at the beginning of chapter 1 were made a strict definition, then it would do just this. If a right provides the rational basis for a justified demand

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that the actual enjoyment of the substance of the right be socially guaranteed against standard threats, then a right provides the rational basis for insisting upon the performance, as needed, of duties to avoid, duties to protect, and duties to aid, as they will shortly be explained. This picture does seem to me to fit all the standard cases of moral rights.<sup>21</sup> If, however, someone can give clear counter-examples to the final step of generalization (the move from duties for basic rights to duties for moral rights generally), I can see little cause for concern, provided the admission of rights that lack some kinds of correlative duties, to the realm of non-basic rights, is not allowed to devalue the coinage of rights generally.

## SUBSISTENCE DUTIES

The first type of subsistence duty is neither a duty to provide help nor a duty to protect against harm by third parties but is the most nearly "negative" or passive kind of duty that is possible: a duty simply not to take actions that deprive others of a means that, but for one's own harmful actions, would have satisfied their subsistence rights or enabled them to satisfy their own subsistence rights, where the actions are not necessary to the satisfaction of one's own basic rights and where the threatened means is the only realistic one.<sup>22</sup> Duties to avoid depriving require merely that one refrain from making an unnecessary gain for oneself by a means that is destructive for others.

Part of the relation between these subsistence duties to avoid depriving (type I) and subsistence duties to protect from deprivation (type II) is quite straightforward. If everyone could be counted upon voluntarily to fulfill duties to avoid, duties to protect would be unnecessary. But since it would be naive to expect everyone to fulfill his or her duties to avoid and since other people's very survival is at stake, it is clearly necessary that some individuals or institution have the duty of enforcing the duty to avoid. The duty to protect is, then, in part a secondary duty of enforcing the primary duty of avoiding the destruction of people's means of subsistence. In this respect it is analogous to, for example, the duty of the police to enforce the duty of parents not to starve their children.

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The natural institution in many societies to have the task of enforcing those primary duties that need enforcement is the executive branch of some level of government, acting on behalf of the members of society other than the offending individuals or institutions. Which level of government takes operating responsibility is largely a practical matter and might vary among societies. Where the source of harm is, for example, a transnational corporation, protection may need to be provided by the home government or even by multilateral government action.<sup>23</sup> But clearly if duties to avoid depriving people of their last means of subsistence are to be taken seriously, some provision must be made for enforcing this duty on behalf of the rest of humanity upon those who would not otherwise fulfill it. Perhaps it would be worth considering non-governmental enforcement institutions as the bearers in some cases of the secondary duty to protect, but the primary institution would normally appear to be the government of the threatened person's own nation. It is normally taken to be a central function of government to prevent irreparable harm from being inflicted upon some members of society by other individual members, by institutions, or by interactions of the two. It is difficult to imagine why anyone should pay much attention to the demands of any government that failed to perform this function, if it were safe to ignore its demands.

Duties to aid (type III) are in themselves fairly complicated, and only one kind will be discussed here. At least three sub-categories of duties to aid need to be recognized. What they have in common is the requirement that resources be transferred to those who cannot provide for their own survival. First are duties to aid (III-1) that are attached to certain roles or relationships and rest therefore upon only those who are in a particular role or relationship and are borne toward only those other persons directly involved. Some central cases are the duties of parents toward their own young children and the duties of grown children toward their own aged parents. Naturally, important issues can arise even with regard to such relatively clear duties as the duty to provide food to the helplessly young and to the helplessly old, but I have nothing to add here regarding these duties, which are not universal. By their not being universal I mean that although all parents may normally have certain duties toward their own children, no child can jus-

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tifiably hold that all people, or even all parents, have *this* sort of duty toward it. All people may of course have other duties toward the child, including universal ones, and possibly including one of the other two sub-categories of duties to aid that are to be mentioned next.

The only difference between the second and third sub-categories of duties to aid is the source of the deprivation because of which aid is needed. In the second case (III-2) the deprivation is the result of failures to fulfill duties to avoid depriving and duties to protect from deprivation—some people have acted in such a way as to eliminate the last available means of subsistence for other people and the responsible government has failed to protect the victims. Thus, the need for assistance is the result of a prior twofold failure to perform duties, and the victims have been harmed by both actions and omissions of actions by other people.

In the third case (III-3) the deprivation is not the result of failures in duty and, in just this sense, the deprivation is “natural,” that is, the deprivation suffered is not a case of harm primarily caused by other people. The clearest case of a natural deprivation calling for aid is a natural disaster like a hurricane or an earthquake. As always, questions arise at the borderline between cases—for example, was the death toll increased because the weather bureau or civil defense organization failed to protect with timely warnings? But uncontroversial central cases in which no human beings are much to blame are perfectly familiar, even if not so frequent as we might like to believe.

Where supplies of the necessities of life, or of the resources needed to grow or make the necessities, are scarce, duties of types I and II take on increased importance. The results of the fulfillment only of I and II would already be dramatic in the poorer areas of the world, in which most of the earth's inhabitants eke out their existences. It is easy to underestimate the importance of these two kinds of subsistence duties, which together are intended to prevent deprivation. But to eliminate the only realistic means a person has for obtaining food or other physical necessities is to cause that person, for example, the physical harm of malnutrition or of death by starvation. When physical harm but not death is caused, the effect of eliminating the only means of support can be every degree as serious as the effect of a violation of physical secu-

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rity by means of a bodily assault. The physical effects of malnutrition can be irreversible and far more profound than the physical effects of many an assault in fact are. And when starvation is caused, the ultimate effect of eliminating the only means of support is precisely the same as the effect of murder. Those who are helpless in the face of insuperable obstacles to their continued existence are at least one level worse off than those who are defenseless in the face of assaults upon their physical security. The defenseless will at least be able to maintain themselves if they are provided with protection against threatening assaults. If protected but otherwise left alone, they will manage. But the helpless, if simply left alone—even if they should be protected against all assaults upon their security—will die for lack of the means of subsistence. They will merely, in Coleridge's phrase, "die so slowly that none call it murder."<sup>24</sup>

Now of course differences between deprivations of security and deprivations of subsistence can also be noted, as already mentioned. Normally in a violation of physical security by means of assault or murder, the human agent's central intention is indeed to bring about, or at least includes bringing about, the physical harm or death that is caused for the victim, although obviously one also can injure or kill inadvertently. In the case of the elimination of the means of physical subsistence, the human agent's central intention may at least sometimes be focussed on other consequences of his or her action, such as the increased security of income that would result from a multi-year salaried contract to grow flowers rather than a precarious annual attempt to grow food. The harm to the victims may be entirely unintended. Such difference in intention between the two cases is undoubtedly relevant to any assessment of the moral stature respectively of the two persons who partly cause the harm in the two cases. But for the two victims the difference between intended physical harm and unintended physical harm may matter little, since the harmfulness of the action taken may be the same in both cases and may be even greater where unintended.

Nevertheless, it may be arbitrary to assign a role of *the* perpetrator to any one person or group in a case of the deprivation of subsistence. The deprivations in question may in fact be "systemic": the product of the joint workings of individual actions and



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social institutions no one of which by itself caused the harm. But what follows from this is not that no one is responsible (since everyone is). What follows is that the distinction between duties to avoid (I) and duties to protect (II), which is relatively clear in the abstract, blurs considerably in concrete reality.<sup>25</sup> The division of labor between individual restraint and institutional protection can be worked out in any of several acceptable ways, the full details of which would go considerably beyond the scope of this book, but between the two kinds of duties, individuals ought not to be deprived by the actions (intentional or unintentional) of others of all hope of sustaining themselves.

This means, however, that duties to protect (II) are not simply secondary duties to enforce the primary duty to avoid (I). We can mark as II-1 the duties to protect that are merely secondary duties to enforce the duty to avoid. But duties to protect also encompass the design of social institutions that do not leave individuals with duties to avoid, the fulfillment of which would necessitate super-human qualities. This task of constructing institutions can be marked as II-2. In the original example of the flower contract, some would judge that the peasant receiving the offer to switch out of food production, in the circumstances stipulated, could reasonably have been expected to foresee the consequences of the switch and to refrain from making it. But it is probably more realistic neither to expect him to have the information and comprehension necessary to foresee the consequences nor to expect him to choose not to reduce his own insecurity—and certainly an example could readily be constructed in which an individual could not reasonably be expected to know in advance the probable bad consequences for others of his or her action or to give them more weight than improvements in his or her own precarious situation.<sup>26</sup>

For such cases, in which individual restraint would be too much to ask, the duty to protect (II-2) includes the design of laws and institutions that avoid reliance upon unreasonable levels of individual self-control. Many actions that are immoral ought nevertheless not to be made illegal. But one of the best possible reasons for making an act illegal is its contributing to harm as fundamental as the deprivation of someone's last available means of subsistence. And a number of intermediate steps between total

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prohibition and complete tolerance of an action are possible, such as tax laws that create disincentives of various strengths against the kind of action that would contribute to the deprivation of subsistence from others and create alternative sources of increased economic security for oneself. Social institutions must, at the very least, be designed to enable ordinary human beings, who are neither saints nor geniuses, to do each other a minimum of serious harm.

In sum, then, we find that the fulfillment of a basic right to subsistence involves at least the following kinds of duties:

- I. To avoid depriving.
- II. To protect from deprivation
  1. By enforcing duty (I) and
  2. By designing institutions that avoid the creation of strong incentives to violate duty (I).
- III. To aid the deprived
  1. Who are one's special responsibility,
  2. Who are victims of social failures in the performance of duties (I), (II-1), (II-2) and
  3. Who are victims of natural disasters.

### THE SYSTEMATIC INTERDEPENDENCE OF DUTIES

Fulfillment of a basic right (and, I think, of most other moral rights as well) requires, then, performance by some individuals or institutions of each of these three general kinds of correlative duties. Duties to avoid depriving possibly come closest to failing to be essential, because duties to protect provide for the enforcement of duties to avoid. Even if individuals, organizations, and governments were otherwise inclined to violate rights to security, for example, by failing to fulfill their respective duties to avoid, forceful fulfillment of duties to protect by whomever they fell upon—presumably a national government—could probably produce behavior in compliance with duties to avoid. But reliance on duties to protect rather than duties to avoid would constitute heavy reliance on something like national police power rather than self-restraint by individuals, corporations, and lower-level governments, and would involve obvious disadvantages even

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if—probably, especially if—the police power were adequate actually to enforce duties to avoid upon a generally reluctant society. Unfortunately this much power to protect would also be enormous power to deprive, which is a lesson about police that even dictators sometimes have to learn the hard way.

Since duties to avoid and duties to protect taken together have only one purpose, to prevent deprivations, the reverse of what was just described is obviously also possible: if everyone who ought to fulfill duties to avoid did so, performance of duties to protect might not be necessary. Law-enforcement agencies could perhaps be disbanded in a society of restrained organizational and individual behavior. But although reliance entirely upon duties to protect is undesirable even if possible, a safe complete reliance upon duties to avoid is most improbable in the absence of at least minimal performance of duties to protect. Organizations and individuals who will voluntarily avoid deprivation that would otherwise be advantageous to them because they know that their potential victims are protected, cannot be expected to behave in the same way when they know their potential victims are without protection.

The general conclusions about duties to avoid and duties to protect, then, are, first, that strictly speaking it is essential for the guarantee of any right only that either the one or the other be completely fulfilled, but, second, that for all practical purposes it is essential to insist upon the fulfillment of both, because complete reliance on either one alone is probably not feasible and, in the case of duties to protect, almost certainly not desirable.

What division of labor is established by one's account of duties between self-restraint and restraint by others, such as police forces, will obviously have an enormous effect upon the quality of life of those living in the social system in question. I do not want to pursue the questions involved in deciding upon the division, except to note that if either duties to avoid or duties to protect are construed too narrowly, the other duty then becomes unrealistically broad. For example, if a government, in the exercise of its duty to protect, fails to impose constraints upon agribusinesses designed to prevent them from creating malnutrition, the prevention of malnutrition will then depend upon the self-restraint of the agribusinesses. But much evidence suggests that individual

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agribusinesses are unwilling or unable to take into account the nutritional effect of their decisions about the use of land, local credit and capital, water, and other resources. This is especially true if the agribusiness is producing export crops and most especially if it is investing in a foreign country, the nutritional level of whose people is easily considered irrelevant.<sup>27</sup> If indeed a particular type of corporation has demonstrated an inability to forgo projects that produce malnutrition, given their setting, it is foolish to rely on corporate restraint, and whichever governments have responsibility to protect those who are helpless to resist the corporation's activity—host governments, home government or both—will have to fulfill their duties to protect. If, on the other hand, the corporations would restrain themselves, the governments could restrain them less. How to work this out is difficult and important. The present point is simply that between the bearers of the two duties, the job of preventing deprivation ought to get done, if there is a right not to be deprived of whatever is threatened. And the side that construes its own role too narrowly, if it actually has the power to act, may be as much at fault for contributing to the violation of rights as the side that fails to take up all the resulting slack.

However, as I have already indicated, the duty to protect ought not to be understood only in terms of the maintenance of law-enforcement, regulatory, and other closely related agencies. A major and more constructive part of the duty to protect is the duty to design social institutions that do not exceed the capacity of individuals and organizations, including private and public corporations, to restrain themselves. Not only the kinds of acute threats of deprivation that police can prevent, but the kinds of chronic threats that require imaginative legislation and, sometimes, long-term planning fall under the duty to protect.<sup>28</sup>

Nevertheless, it is duties to aid that often have the highest urgency, because they are often owed to persons who are suffering the consequences of failures to fulfill both duties to avoid and duties to protect, that is, they are duties of type III-2. These people will have been totally deprived of their rights to subsistence if they are then not aided either. This greater urgency does not, of course, mean that duties to aid are more compelling overall than the first two types of duty, and indeed it is specifically against

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duties to aid that complaints that the correlative duties accompanying subsistence rights are too burdensome may seem most plausible. It is important to notice that to the extent that duties to avoid and to protect are fulfilled, duties to assist will be less burdensome. If the fulfillment of duties to protect is sufficiently inadequate, duties to assist may be overwhelming and may seem unrealistically great, as they do today to many people. For example, because the Dutch colonial empire failed to protect the people of Java against the effects of the Dutch schemes for agricultural exports, the nutritional problems of the majority of Indonesians today strike some people as almost beyond all solution.<sup>29</sup> The colossal failure of the Dutch colonial government in its duties to protect (or, even, to avoid deprivation) has created virtually Sisyphean duties to aid. These presumably fall to some degree upon the Dutch people who are today still profiting from their centuries of spoils. But whoever precisely has these duties to aid—there are plenty to go around—their magnitude has clearly been multiplied by past dereliction in the performance of the other two kinds of duties by the Dutch, among others. We will return in chapter 5 to some aspects of the difficult question of how to allocate duties to aid, especially when (chapter 6) they cross national boundaries.

This much, however, is already clear. The account of correlative duties is for the most part a more detailed specification of what the account of rights calls social guarantees against standard threats. Provisions for avoidance, protection, and aid are what are needed for a reasonable level of social guarantees. Making the necessary provisions for the fulfillment of subsistence rights may sometimes be burdensome, especially when the task is to recover from past neglect of basic duties. But we have no reason to believe, as proponents of the negative/positive distinction typically assert, that the performance of the duties correlative to subsistence rights would always or usually be more difficult, more expensive, less practicable, or harder to “deliver” than would the actual performance of the duties correlative to the rights that are conventionally labeled negative and that are more often announced than in fact fulfilled. And the burdens connected with subsistence rights do not fall primarily upon isolated individuals who would be expected quietly to forgo advantages to themselves for the sake

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of not threatening others, but primarily upon human communities that can work cooperatively to design institutions that avoid situations in which people are confronted by subsistence-threatening forces they cannot themselves handle. In spite of the sometimes useful terminology of third parties helping first parties against second parties, etc., it is worth noting, while assessing the burden of subsistence duties, that the third-party bearers of duties can also become the first-party bearers of rights when situations change. No one is assured of living permanently on one side of the rights/duties coin.