In What Sense Is the Right to Subsistence a Basic Right?

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Henry Shue’s Basic Rights presents an extremely powerful and influential argument for the claim that the right to subsistence is a basic human right, full enjoyment of which is necessary for the full enjoyment of any other human right. Recently, however, Shue’s argument has been widely critiqued, including by philosophers sympathetic to his goal of defending the view that the right to subsistence is a human right of central moral importance but skeptical of his attempt to defend this by appeal to the claim that it is a basic right. The principal objection has been that while the right to subsistence is strongly supportive of other rights, Shue’s claim that it is strictly necessary to the full enjoyment of other rights is too strong.

Clearly, the credibility of Shue’s claim that the right to subsistence is a basic right depends in large part on how it is interpreted. I aim here to clarify the best way of understanding this claim, and to show that on the most plausible interpretation of it, Shue’s argument for it can in fact withstand many of the criticisms leveled against it. I then aim to show that while Shue’s argument as it stands is nevertheless vulnerable to an important objection, a development of it, which is very much in the spirit of his original argument, avoids this objection.

I focus in particular on Thomas Pogge’s recent sustained critique of Shue’s argument, which crystallizes several core objections to it in a way that is especially systematic and incisive. Pogge offers a series of possible ways of interpreting Shue’s argument, and claims that it fails on each interpretation. I begin in section 1 by offering an analysis of Shue’s argument that the right to subsistence is a basic right, and showing why I take only one of Pogge’s interpretations of it to be plausible. Pogge’s other interpretations of Shue’s argument, and the objections he raises to it on these interpretations, nevertheless highlight a number of key points that are central to assessing Shue’s argument. I discuss these points in sections 2 and 3, and show why a correct interpretation of Shue’s argument avoids the worries raised by these other interpretations. In section 4 I turn to Pogge’s final (and, as I argue, correct) interpretation of Shue’s argument, and argue that the objection Pogge raises to Shue’s argument on this interpretation is a compelling one, which identifies an important weakness in Shue’s argument as it stands. In section 5, however, I argue that a natural development of Shue’s argument does establish his ground-breaking claim that the right to subsistence is a basic human right.
1. An Analysis of Shue’s Argument

1.1 The Structure of the Argument

Shue’s central claim is that the right to security and the right to subsistence are both basic human rights, in the sense that full enjoyment of them is essential to the full enjoyment of all other human rights. Since the right to security is, as Shue says, not particularly controversial, he offers a preliminary discussion of why it should be understood as a basic right in order to illustrate the general structure of his argument that the right to subsistence is a basic right. The main objective of his argument, then, is to defend the claim that the right to subsistence is a basic right. In my discussion of his argument, I also focus on the right to subsistence.

Shue sets out the key steps of his argument that the right to subsistence is a basic right as follows (BR 31):

1. Everyone has a right to something.
2. Some things are necessary for enjoying the first thing as a right, whatever the first thing is.
3. Therefore, everyone also has rights to the other things that are necessary for enjoying the first as a right.

Shue’s argument is directed at those who accept the first premise that “everyone has a right to something.” The claim “everyone has a right to something” involves a commitment to the existence of at least one general human right, that is, a right that everyone possesses simply in virtue of being a human being. While there is broad consensus that there are some human rights, there is also considerable skepticism about whether the right to subsistence (together with welfare rights in general) is one such genuine human right. The lynchpin of Shue’s argument is the second premise, that “some things are necessary for enjoying the first thing as a right, whatever the first thing is.” He aims to establish that among these things is the right to subsistence. His goal is to show, then, that a commitment to the existence of any human rights has to involve acknowledging a human right to subsistence.

Immediately after outlining these premises, Shue explains that the term “necessary” in the second premise has to be interpreted “in the restricted sense of ‘made essential by the very concept of a right’” (BR 31). This indicates that the phrase “enjoying the first thing as a right” denotes enjoyment of it in the full sense of the word “right.” Thus, what is necessary to enjoying something as a right has to be understood by reference to the definition of a right. Shue gives his definition of rights in the first sentence of Basic Rights: “A moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats” (BR 13).
second premise, then, is the claim that it follows from the definition of a right that in order for someone to enjoy something as a right (whatever the content of that right), it must be the case that standard threats to the right-holder’s enjoyment of the substance of that right have been blocked, and that the measures taken to bring this about are understood as a justified demand. Shue’s central claim is that not enjoying the right to subsistence as a right is one such standard threat to the enjoyment of the substance of any other right. If so, then the right to subsistence has to be enjoyed as a right in order for it to be the case that any other right is enjoyed as a right. (For ease of exposition, I will use the phrase “full enjoyment of a right” to refer to “enjoyment of a right as a right”—that is, in the full sense of the word “right”).

Shue’s argument, then, is grounded on what is involved in enjoying something as a right, where this is to be understood by reference to the concept or definition of a right, and to each of the three components of a right this definition encompasses. It is central to understanding Shue’s argument for basic rights to see the essential role in the argument played by all three parts of the definition of a right.

The first part of his definition, that a right is a justified demand, is important in identifying the fact that rights impose corresponding duties that are owed to the right-holder and the consequent link between rights and human dignity. However, as Shue emphasizes, this condition on its own would denote “enjoying the status” conferred by the right, “and would have to mean something like taking satisfaction that there is such a status” (BR 15). Shue says that this is not ordinarily what we mean by enjoyment of a right; what we ordinarily mean is that someone is actually enjoying the substance of the right to a reasonable degree of security.

The central impetus behind Shue’s argument for basic rights is the claim that what primarily grounds the importance of a right from the right-holders’ point of view is the importance of actually enjoying the substance of the right. This is the second component of the definition. However, guaranteeing right-holders’ actual access to the substance of the right would require blocking all threats to the substance of the right, however rare the threats and however costly it would be to block them. The duties that would be imposed by a right against every possible threat to the substance of that right would be neither feasible nor reasonable. For this reason, a right is to social guarantees that the substance of the right be protected against standard threats, which is the third component of the definition. A standard threat is, broadly, a threat that is common and eradicable (in the sense that it would be feasible and not unreasonably costly to eradicate it).

This third component of a right, “being socially guaranteed against standard threats,” is, Shue argues, “probably the single most important aspect of a standard right,” because it is this that imposes correlative obligations to implement whatever steps are needed to ensure that standard threats to the substance of the right have been blocked. The claim that the right to subsistence is a basic right is the claim that not enjoying the right to subsistence is one such standard threat to the
enjoyment of any of any other right. Accordingly, one step that needs to be taken
to ensure that actual enjoyment of the substance of any right is socially guaranteed
against standard threats is the implementation of the right to subsistence.

Thus, while actual enjoyment of the substance of the right is what principally
matters to the right-holder and is the driving force behind Shue’s argument for
basic rights, the third component of a right, “being socially guaranteed,” is the
cornerstone of the argument. Furthermore, although Shue’s argument is grounded
in the importance for the right-holder of actually enjoying the substance of the
right, having actual access to the substance of a right is, strictly, neither necessary
nor sufficient for fully enjoying the right. It is not necessary, given that rights are
not plausibly taken to be claims to protection against every threat to the substance
of the right, but only against standard threats. It is not sufficient because, as Shue
argues, even if right-holders happen to have access to the substance of the right,
unless social guarantees are in place to ensure that standard threats to the sub-
stance of the right have been blocked, the right-holders’ enjoyment of the sub-
stance of the right is too contingent for them to be held to have full enjoyment of
the right; as Shue claims, they are still vulnerable to being coerced and intimidated
into forgoing their other rights.

Pogge by contrast draws a distinction between Shue’s full definition of a right
and what Shue means by the phrase “enjoying a right as a right.” Pogge explicates
Shue’s definition of rights by identifying three conditions which he takes to be
“necessary and jointly sufficient conditions” (p. 115) for the fulfilment of a moral
right to some substance X by some person P, each of which, Pogge argues, “can
be met even while the other two are not” (p. 116):

(A) P actually enjoys X;
(B) P’s enjoyment of X is socially guaranteed against standard threats;
(C) P enjoys X as a right.

As Pogge points out, the first two conditions are straightforward. They refer to
components (2) and (3) respectively, in Shue’s definition.

In explicating the third condition, Pogge argues that Shue “occasionally has
condition B in mind,” but that, on what he takes to be Shue’s “considered view,”
condition C goes beyond B in three respects: it is met if “the contributions others
must make to conditions A and B being met are understood as duties that are owed
to P . . . and [that] are culturally anchored.” Pogge then, however, conceives con-
dition C “narrowly as including only what A and B leave out”; that is, not simply
as going beyond condition B—in specifying that the steps taken to block standard
threats to the enjoyment of the right should be understood as duties owed to the
right-holder—but as specifying simply that a right imposes correlative duties.
Understood in this way, enjoyment of something “as a right”—condition
C—refers to number (1) in Shue’s definition; it stipulates simply that a moral right
is a justified demand, leaving completely open the question of whether or not the
 Corresponding duties are fulfilled.
On Pogge’s interpretation, then, condition C can be met even when condition B has not been. Accordingly, he suggests that the aftermath of Hurricane Katrina can perhaps serve as an example of the fulfillment of condition C:

Many residents of New Orleans did not actually enjoy access to clean water, and no social guarantees were in place against standard threats to such access. Nonetheless, Condition C was arguably met: it was widely accepted throughout the US that the state owed a duty to the residents of New Orleans to ensure secure access to clean water for them. (pp. 116–17)

Pogge thus interprets the three components of Shue’s definition of rights in such a way that “each of them can be fulfilled when the other two are not.” Pogge then argues that when Shue refers to “enjoying a right,” he might mean different combinations of the three components: he might mean condition A alone, or condition A in conjunction with condition C, or all three conditions together. Pogge explores these various combinations, and argues that Shue’s argument fails on each of them.

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It is true that while Shue principally focuses on condition B (that enjoyment of the substance of the right is socially guaranteed against standard threats) in his account of what is involved in enjoying a right, condition C goes beyond it in the way Pogge identifies; it specifies that the measures taken to block standard threats to the substance of the right must be understood as a justified demand. However, it is not plausible to interpret condition C exclusively, in terms of what the first two conditions leave out. Rather, enjoying something “as a right” has to be understood inclusively, as encompassing all three parts of the definition. As we have seen, Shue explains that what it is that is necessary to enjoying something as a right has to be understood “in the restricted sense of ‘made essential by the very concept or definition of a right’” (BR 31); that is, it has to be understood by reference to the full definition of a right, as encompassing all three components of this definition. (Shue does sometimes simply use the phrase “enjoyment of a right” in his argument, but as his explication of the formal structure of his argument makes clear, he is using this phrase as short-hand for “enjoyment of a right as a right.”) Thus, I suggest that only Pogge’s last interpretation of Shue’s argument (according to which basic rights are essential to the full enjoyment of any other right, where full enjoyment includes all three conditions) is a plausible one.

Having analyzed the structure of Shue’s argument, I now turn to his defense of the claim that not fully enjoying the right to subsistence is a standard threat to the full enjoyment of any other human right.

1.2 Shue’s Defense of the Claim that the Right to Subsistence Is a Basic Right

It is worth stressing that while Shue’s argument is based on the claim that as a matter of “conceptual necessity” a right cannot be enjoyed as a right (i.e., in the...
full sense of the word “right”) unless standard threats to the substance of the right have been blocked, what those threats are, and what measures need to be put in place to block them, is an empirical matter. This includes the claim that one such standard threat is not enjoying the right to subsistence. Shue is not, therefore, arguing that it is logically impossible for anyone to fully enjoy any other right without fully enjoying the right to subsistence. Rather, his argument is that if the empirical premise that not fully enjoying the right to subsistence is a standard threat to the full enjoyment of all other rights is true, then it follows from the definition of a right (i.e., as a matter of conceptual necessity) that no other right can be fully enjoyed (i.e., in the full sense of the word “right”) unless the right to subsistence has been secured. Counter-examples to Shue’s argument therefore cannot just appeal to a possible world in which someone enjoys another right without enjoying the right to subsistence. They have to appeal to realistic possibilities in the actual world. One of the strengths of Pogge’s critique is that he looks for examples that are realistic and escape “the charge of being ‘quite contorted and exotic’” (p. 121, n. 7).

Shue gives two principal explanations for this claim that not having full enjoyment of the right to subsistence is a standard threat to the full enjoyment of any other right.

The first is that adequate subsistence is a physical precondition for enjoying other rights. Lack of nutrition or basic medical care leading to brain damage or debilitating illness precludes the enjoyment of rights that involve the pursuit of rational autonomous activity, while “any fatal deficiencies end all possibility of the enjoyment of rights as firmly as an arbitrary execution” (BR 24–25).

The second principal explanation is that unless right-holders enjoy the right to subsistence, they are vulnerable to being coerced and intimidated into forgoing the substances of their other rights. Shue first illustrates this vulnerability to coercion and intimidation by drawing a parallel with the right to security. Security against violence is a basic right, he argues, “because its absence would leave available extremely effective means for others, including the government, to interfere with or prevent the actual exercise of any other rights that were supposedly protected” (BR 21). Shue then argues that in just the same way, unless people enjoy the right to subsistence they are “readily open to coercion and intimidation through threats of the deprivation of [subsistence]” (BR 26).

Shue’s other example is given in an endnote, in response to the objection that it is possible to implement institutional measures to guarantee reasonably secure access to the objects of other rights without securing the right to subsistence. Shue focuses on Mark Wicclair’s version of the objection, according to which the right not to be tortured, for example, could be secured without securing the right to subsistence, by putting in place institutional measures to ensure that the duty not to torture was strictly enforced. If so then the secure enjoyment of the right to subsistence cannot be said to be literally essential to the full enjoyment of all other rights. Shue’s reply is that unless persons have been guaranteed reasonably secure access to subsistence they could not be said to actually enjoy security against
torture, because they would be vulnerable to being drawn into a bargain (with, say, a sadistic millionaire) involving undergoing torture in exchange for subsistence (BR 184–87).

I now turn to Pogge’s arguments against Shue’s defense of the claim that the right to subsistence is a basic right. Although, for the reasons I have mentioned, I only take Pogge’s last interpretation of Shue’s argument to be plausible, the objections he raises to the argument on other interpretations of it highlight several considerations important to identifying the strengths and weaknesses of Shue’s argument.

2. Can Certain Threats to Life Be Threats to the Enjoyment of Other Rights?

On Pogge’s first interpretation of Shue’s argument, the argument appeals to condition A on its own: “On the first interpretation, Shue’s definition would identify as basic all and only those rights whose substance must be actually enjoyed in order for the substance of any other right to be actually enjoyed.” Pogge begins by considering and rejecting what he takes to be “the most obvious candidate” for a right whose substance must be actually enjoyed in order for the substance of any other right to be actually enjoyed, namely, “the right not to be killed.” Pogge rejects this candidate, however. He gives the example of a killer, who, he says, “does bring it about that his victim’s right not to be killed is unfulfilled; but he is not thereby bringing it about that all her other rights—to freedom of movement, say, or political participation—are unfulfilled as well” (p. 118). Pogge concludes that “the situation after P’s death is not one in which P lacks the substance of her moral right, but rather one in which she is no longer around to have or lack rights or their substance.”

Earlier in his paper Pogge argues along similar lines that Shue’s three conditions for the fulfillment of a right implicitly presuppose the right-holder is alive:

We should read all three conditions [for fulfilment of a right] as implicitly presupposing that P is alive. P’s death does not led to her moral rights being unfulfilled (because P no longer enjoys their substances), but rather to P’s no longer being around to have or to lack either moral rights or their substances. (p. 115)

In defense of this claim, Pogge gives the example of a smoker who is likely to die from lung cancer before an election. Pogge argues:

To fulfil a destitute smoker’s right to vote, his society is not morally required to do whatever it can do (say, to pay for his expensive lung operation) to ensure that he lives to future election days. He may have a moral right to expensive treatment, to be sure. But no such right is entailed by his right to vote. (p. 115)

Pogge’s response to Shue’s argument, on this first interpretation of it, then, is to consider what Pogge takes to be the most obvious candidates for a right the
substance of which must be enjoyed in order for any other right to be enjoyed: the right not to be killed, or, in the case of the smoker, to be kept alive. The reason these are the most obvious candidates is presumably because being alive might seem the most fundamental precondition for enjoying the substance of any other right. Pogge rejects these candidates, however, and argues instead that when determining whether or not a right is enjoyed at a certain time, we presuppose the right-holder is alive at that time. If so, then by killing someone or letting someone die, the agent cannot thereby deprive the victim of other rights she would have enjoyed if she had continued to live.

Pogge has raised a very important question in evaluating Shue’s argument, concerning whether or not any threats to right-holders’ lives can plausibly be considered threats to right-holders’ enjoyment of their other rights. Shue does, as we have seen, appeal to the claim that fatal deficiencies of subsistence are standard threats to the enjoyment of other rights partly on the ground that the resulting death precludes the possibility of enjoying any other rights.

Pogge’s examples establish that we cannot infer, simply from the fact that being alive is a precondition for the enjoyment of any right, that the right-holder’s society is “morally required to do whatever it can do” to ensure the right-holder is kept alive so he can continue to enjoy rights into the future. If Pogge’s first interpretation of Shue’s argument were correct, according to which a basic right was one “whose substance must be actually enjoyed in order for the substance of any other right to be actually enjoyed,” then Pogge’s examples would undermine Shue’s argument. However, as we have seen, it is central to Shue’s argument that rights are claims to protections only against standard threats to the substance of the right, where standard threats are ones that are common and that could feasibly be eradicated at a reasonable cost. Rights are not claims to actual enjoyment of the substance of the right, because the measures that would need to be taken to ensure that right-holders had actual access to the substance of their rights would be unreasonably costly (and would also be unlikely to be feasible). The reason why a failure to provide very expensive medical life-saving medical treatment to the smoker would not count as thereby depriving him of the right to vote might be precisely because this would not constitute a reasonable demand. Accordingly, death from lung cancer would not constitute a standard threat to the enjoyment of the right to vote. By contrast, the right to subsistence might be held to be a basic right in part because death resulting from the absence of social guarantees against standard threats to subsistence in turn constitutes a standard threat to the enjoyment of other rights, given that lack of subsistence is a near-universal threat to life in the absence of adequate social protection, and given how cheaply this threat could be eradicated. The key question in assessing Shue’s argument, then, is whether standard threats to subsistence, in virtue of being a standard threat to life, can thereby plausibly constitute a threat to right-holders’ subsequent enjoyment of their other rights.

There is plausibly also a further condition that must be met in order for an agent or agency, in causing or allowing a victim’s death, to thereby count as
responsible for bringing it about that another of the victim’s rights was unfulfilled: that only the agent or agency responsible for blocking standard threats to the substance of a particular right could, in causing or failing to prevent the victim’s death, plausibly be held responsible for the victim’s being deprived of that particular right. The agency with primary responsibility for fulfilling the rights to vote and to political participation is the right-holder’s own government. Thus it might be held that a random killer (as opposed to a government agent engaged in murder) could not plausibly be held to have thereby deprived the victim he killed of his right to vote or to political participation, since the killer was not responsible for blocking standard threats to these other two rights in the first place.

To sum up, Pogge on this first interpretation takes Shue’s argument to be claiming that all threats to life are threats to the enjoyment of other rights. Pogge, by contrast, argues that no threats to life can be threats to the right-holders’ enjoyment of their other rights, on the ground that once right-holders are dead they are no longer around to have or lack rights. The key question in assessing Shue’s argument is whether standard threats to life can plausibly constitute threats to right-holders’ enjoyment of their other rights. If Pogge is right that “P’s death does not lead to her moral rights being unfulfilled . . . but rather to P’s no longer being around to have or to lack either moral rights or their substances,” this undermines an important plank of Shue’s argument, whether it is interpreted (implausibly as I have argued) as appealing to all threats to life, or only to standard ones. As I will now suggest, though, it is in fact more plausible to take standard threats to life to be threats to the enjoyment of subsequent rights than to claim, as Pogge does, that no threats to life can be threats to the enjoyment of subsequent rights.

Let us consider first the question Pogge raises of whether a killer can count as depriving someone of his right to political participation as well as his right not to be killed. Let us assume (in line with the second condition I mentioned) that the right-holder’s government, as the agency with primary responsibility for fulfilling the right to political participation, is also responsible for the killing. If any such killings could thereby deprive the victim of his subsequent right to political participation, this would be enough to counter Pogge’s claim that questions about whether or not a right is fulfilled presuppose that the right-holder is alive. Consider, then, an extreme case in which government death squads target political opponents, as a result of which many of these opponents are prevented from engaging in political participation. In this case it does seem clear that the government has deprived the people it killed of their right to political participation as well as their right to life. This suggests that some threats to life can plausibly constitute threats to the fulfillment of other rights that would have been enjoyed at a later time had the right-holder still been alive, counter to Pogge’s stipulation that “P’s death does not lead to her moral rights being unfulfilled . . . but rather to P’s no longer being around to have or to lack either moral rights or their substances.” (Pogge might respond that in this case their right to political participation was violated at the same time as the killing. This response, however, is also available
to Shue; he can argue that people are deprived of their other rights at the time that the fatal deficiency of subsistence leads to their death.

I now turn to the key question in evaluating Shue’s argument, concerning whether inadequate social protection against fatal deficiencies of subsistence, in virtue of constituting a common and easily eradicable threat to life, is plausibly held to be a standard threat to the enjoyment of other rights such as the right to vote. Let us consider a government determining how to allocate resources. It decides to give sharp priority to the right to vote over the right to subsistence, because, let us suppose, it is concerned with its international human rights record, and in the scenario we are imagining the international community gives far more weight to civil and political rights than to the right to subsistence. Let us suppose, then, that although the government is in a position to fulfill the right to subsistence for all its citizens, it fails to do so. Let us further suppose that as a predictable but intended result of this policy, many of the citizens are unable to vote because they are dead by the time of the election. These deaths were both common and eradicable.

There does seem something absurd about this policy, and the absurdity does not seem simply to lie with the fact that right to subsistence is likely to be of far greater importance to right-holders than the right to vote. There also seems to be an internal inconsistency in the government’s prioritization of resources. A political activist who cared passionately about being able to cast a vote would ipso facto care about still being alive at the time of the election so as to be able to cast his vote. Therefore, if the government failed to protect that person from a threat to his life that was both common and one that could feasibly and cheaply be eradicated, as a result of which he was not alive by the time of the election, it does seem plausible that the government has failed to adequately protect his right to vote. Shue’s argument can be seen as appealing in part to the same absurdity that is involved in claiming to take seriously political rights such as the right to vote without taking seriously the right not to die from fatal deficiencies of subsistence.

3. The Conditions for the Enjoyment of General Rights

Pogge’s second interpretation of Shue’s argument interprets “enjoyment of a right” as the conjunction of conditions A and C: “Shue’s definition would identify as basic all and only those rights whose substance must be actually enjoyed as a right in order for the substance of any other right to be actually enjoyed as a right” (p. 118). (To recall, Pogge is interpreting the phrase “as a right”—Pogge’s condition C—as referring to Shue’s condition 1, that a right is a justified demand, as opposed to denoting “in the full sense of the word right” and including all three conditions.) This interpretation again leaves out condition B (the condition that the right-holder’s enjoyment of the substance of the right is socially guaranteed against standard threats), which, I have argued, is the cornerstone of Shue’s argument.
Pogge gives the example of a group of nobles in a feudal society. These nobles:

are in power and they periodically elect a monarch from among themselves. They recognise one another’s moral claim to partake in the elections and would fiercely resist any effort to disenfranchise any from among themselves. Yet, they recognise no claim . . . to contribute to one another’s subsistence, . . . depending on their own resources and expecting one another to do so. (p. 119)

Pogge argues that these nobles “enjoy participation in periodic elections, and enjoy it as a right,” even while they “fail to enjoy . . . subsistence as a right.” They enjoy the substance of the right to vote, so that condition A for enjoyment of this right met: “as elections pass without a hitch, each of the nobles enjoys political participation.” Condition C for their enjoyment of the right to vote is also met, given that “they recognise one another’s moral claim to partake in the elections and would fiercely resist any effort to disenfranchise any from among themselves.” Pogge concludes that they can be held to enjoy the right to vote (interpreted as the claim that conditions A and C of the right to vote have been met) even though they do not enjoy subsistence as a right.

The first thing to note about this example is that although the right to subsistence is not recognized in this society, we can reasonably assume that for the nobles, their access to subsistence is in fact socially guaranteed against standard threats, given what we know about the operation of feudal societies. In such societies, those at the top of the social hierarchy enjoyed considerable wealth, and their access to this wealth was socially guaranteed both by entrenched custom and by laws governing inheritance, taxation and bonded labor from the serfs. Thus, although the right to subsistence is not recognized in the society Pogge describes, so that Pogge’s condition C is not met, the component of the right to subsistence that is most important to Shue’s argument is in fact fulfilled for the nobles: they do actually enjoy access to subsistence to a reasonable degree of security. In this respect it is not a particularly telling counter-example to Shue’s defense of basic rights, on what I have argued is the most plausible interpretation of it.

This brings us to the second point to note about Pogge’s example, that the nobles do not enjoy the right to vote as a human right—that is, as a right held by everyone simply in virtue of being a human being. Rather, in the feudal society Pogge describes, the right to vote is a special right, held exclusively by the nobles in virtue of their social status as nobles and in virtue of the special relationships they hold with one another; as Pogge says, “the nobles recognise one another’s moral claim to partake in the elections” (p. 119; my italics). Pogge’s example of the nobles in a feudal society is therefore not a counter-example to Shue’s claim that enjoyment of a human right to subsistence is necessary for the enjoyment of any other human right. Yet, as Pogge acknowledges in his analysis of Shue’s argument that the right to subsistence is a basic right, this argument is directed at those who accept the existence of general rights (i.e., human rights held simply in virtue of being human, rather than special rights held in virtue of a specific transaction or special relationship):
People differ about what moral rights there are, but few hold that there are no general moral rights at all. By showing that there is some right Rx whose enjoyment is necessary for the enjoyment of any right, Shue can hope to convince all those who recognize any general moral rights at all to add Rx to their respective lists. (p. 117)

Furthermore, it can be argued, in defense of Shue, that it is precisely because the nobles’ access to food is in fact secure that the nobles are able to enjoy the right to vote. Conversely, if we consider a hypothetical case of a feudal society in which the right to vote were recognized as a general human right held by everyone, serfs as well as nobles, but the right to subsistence was not recognized or implemented as a human right, the serfs could not plausibly be held to have adequate enjoyment of the right to vote in such a society, given that they would be dependent on the nobles for subsistence. They would be overwhelmingly vulnerable to being intimidated and coerced by their feudal masters into not casting a vote or into voting a certain way. In such a society, despite official recognition of right to vote, that right could in fact be adequately enjoyed only by those who happened to have secure access to subsistence because of their position in the social hierarchy.

To sum up, in defense of Shue, I suggest, first, that the nobles’ access to subsistence is in fact secure (so that most important aspect of the right to subsistence is enjoyed), and that this plays an essential role in their enjoyment of the right to vote. Second, the nobles do not enjoy the right to vote as a general human right. Third, an important aspect of why the human right to vote could not be plausibly held to have been adequately secured in the feudal society is that the human right to subsistence has not been fulfilled; the peasants could not be held to enjoy the right to vote because their access to subsistence was too insecure.

I will now turn to Pogge’s final (and in my view correct) interpretation of Shue’s argument, and to the powerful objection Pogge raises to this argument.

4. The Unavailability of Coercive Contracts

According to Pogge’s third interpretation:

Basic are all and only those rights whose substance must be actually enjoyed in order for any right to be fully enjoyed. By a right being fully enjoyed, I mean that the substance of the right is actually enjoyed and socially guaranteed and enjoyed as a right.

As I have argued, this is the interpretation of Shue I take to be plausible (with the proviso that the substance of the basic right must be socially guaranteed against standard threats, and need not be actually enjoyed).

Pogge argues that there is no such basic right. In response to Shue’s argument that those who do not enjoy the right to subsistence are vulnerable to being coerced into forgoing their other rights in exchange for subsistence, Pogge gives a counter-example of someone who is the victim of a kidnapping, and is being
assaulted and starved by his captors. Pogge argues that although this victim enjoys neither the right to security nor the right to subsistence, it is not plausible to hold that he thereby fails to fully enjoy his right not to be arbitrarily deprived of his nationality. Although he would choose to forgo this right in exchange for subsistence and freedom from assault, this coercive exchange is not on offer:

He’d be most willing to give up his nationality to end his ordeal. But this outcome is so evidently of no interest to his captors that it does not even occur to [him] to offer to renounce his citizenship. In this situation I see no reason to doubt that [he] continues fully to enjoy his right not to be deprived of a nationality. (p. 121)

In evaluating Shue’s claim that full enjoyment of the right to subsistence is necessary to the full enjoyment of another right, we must be careful in how we specify that other right. It is central to Shue’s argument that rights are conceived as claims that actual access to the substance of the right be socially guaranteed against standard threats, and that for this reason each right imposes positive duties to block standard threats to the substance of the right, as well as negative duties. (The right against torture, for example, is not just a right not to be tortured but is a right that one enjoys freedom from torture to a reasonable degree of security). Therefore, the right that is the focus of Pogge’s counter-example ought, I suggest, to be specified as the right that one actually enjoys a nationality to a reasonable degree of security (to which I will refer, for the sake of brevity, as the right to a nationality), rather than as the solely negative right not to be arbitrarily deprived of one’s nationality.

The key question in evaluating Shue’s argument is whether enjoying the right to subsistence is a standard threat to the enjoyment of this right to a nationality. It could be the case that although the kidnap victim in Pogge’s example happens not to be subject to being coerced into forgoing the substance of this right in exchange for subsistence, such coercive exchanges are nevertheless a sufficiently common threat for those who do not enjoy the right to subsistence that these individuals cannot be held to fully enjoy the right to a nationality. We might then argue, in defense of Shue, that those who do not enjoy the right to subsistence are in fact vulnerable to being coerced into forgoing their right to a nationality in exchange for subsistence. We might argue, for example, that the destitute are vulnerable to coercive exchanges in which they sell their passports (which generally involves selling the legal identity affirmed in the passport, and forgoing the rights it accords) in exchange for subsistence. However, Pogge could plausibly reply that these exchanges are not sufficiently common to constitute a standard threat to the right to a nationality.

What Pogge’s general argument forcefully highlights is that in order for coercive contracts to constitute a threat to the enjoyment of a right, the contracts have to be on offer, and that in order for them to be on offer, they must, clearly, be of interest to the coercer. Whether or not this is the case is an empirical question, and it can be plausibly argued that in the case of some rights, coercive contracts in which the destitute agree to forgo these rights in exchange for subsistence are
not sufficiently common to constitute standard threats to the enjoyment of these rights. If such contracts are seldom of interest to would-be coercers, the link between not enjoying the right to subsistence and being highly vulnerable to this kind of coercion is severed. Regarding Shue’s original example of the torture contracts to which those who do not enjoy the right to subsistence are vulnerable, if empirical circumstances were such that these contracts were rarely of interest to would-be coercers then these contracts would not plausibly constitute a standard threat to the enjoyment of the right against torture. In our world, cruelty is a sufficiently common motive that the destitute are highly vulnerable to these kinds of coercive contracts.\(^5\) However, in the case of other rights, such as the right to a nationality, coercive contracts in which the destitute individual forgoes exercising the right in exchange for subsistence are plausibly not of sufficiently common interest to potential coercers to constitute a standard threat to the enjoyment of the right.

In the final section, I will sketch a development of Shue’s argument that can offer a reply to this objection. As I will argue, the fundamental threat that not fully enjoying the right to subsistence poses to the enjoyment of other rights lies not with vulnerability to coercion \textit{per se} but with what underlies that vulnerability.

\section*{5. A Development of Shue’s Argument}

At the core of the relationship between the right to subsistence and all other rights, I suggest, is that on an objective ranking of interests, the interest in subsistence is so important that, first, lacking subsistence is unsustainable, and, second, the right-holders’ interest in subsistence is likely to outweigh their interest in the substances of any other right. It follows from this that whenever there is a conflict between right-holders’ having access to subsistence, and their exercising another right, they are liable to be driven not to exercise that other right, because doing so involves a cost that is unsustainable.

While it follows from this relation between the right to subsistence and other rights that the destitute are especially vulnerable to coercion, the fundamental threat that insecure access to subsistence poses to the enjoyment of other rights is independent of others’ coercive behavior itself. Because lacking subsistence is unsustainable, those who do not fully enjoy the right to subsistence are liable to be driven to accept coercive contracts in which in exchange for subsistence they agree to harmful treatment that violates their rights, that they would not have agreed to if it were not for their desperate plight. However, the underlying threat to their enjoyment of their other rights is posed by the unsustainability of lacking adequate subsistence itself, which means that the “option” of exercising another right is liable not to be one that is genuinely available when doing so conflicts with obtaining subsistence. This threat is therefore in place whenever exercising the right is liable to come into conflict with obtaining subsistence, regardless of whether or not the right-holders are experiencing coercion by other agents. If someone “chooses” not to exercise a right in order to obtain enough subsistence to
prevent his children’s dying, even if he is not subject to coercion by another agent, this “choice” is no more voluntary than if an agent were coercing him to forgo the right by actively threatening his children’s lives. In both cases, exercising the right is not a genuine option.

For those who do not enjoy the right to subsistence, this conflict between obtaining subsistence and exercising another right is a common one, even if coercive contracts are not available because they are of no interest to would-be coercers, or because the contracts have been effectively prohibited. Moreover, this is a general relation that obtains between the right to subsistence and all other rights, including such a seemingly disparate right as the right to a nationality.

An example of the way in which not enjoying the right to subsistence threatens the enjoyment of the right to a nationality is the plight of economic refugees, who are driven to flee their country to escape destitution and be able to provide their family with subsistence. Given that continuing to be unable to provide their family with adequate subsistence and jeopardizing their own or their children’s lives is not a sustainable option, their “choice” of staying in their own county is not one that is genuinely available (any more than if their own or their children’s lives were threatened through political oppression). They are thus compelled to emigrate in search of a subsistence income. And because they are likely to be illegal immigrants (given that destitution is not generally considered sufficient ground for asylum), they are liable not to enjoy the rights of nationality in the country to which they have fled. Seeking citizenship is likely to risk deportation, which would again jeopardize their access to subsistence, and so, again, would be unsustainable. Thus, even though they may not experience coercion by other agents, they are liable to be directly driven to forgo the substance of their right to a nationality by the fact that continuing to have insecure or inadequate access to subsistence is unsustainable. This threat to the enjoyment of a right to a nationality is both severe and reasonably common.

Another illustration of this relation between the right to subsistence and other rights is the right against domestic violence. Women are especially vulnerable to violations of this right, and it has long been recognized that there is a strong link between securing women’s economic independence and securing their right against domestic violence. I suggest that in fact the right against domestic violence cannot be fully enjoyed without enjoying the right to subsistence. Unless they enjoy the right to subsistence, women who are experiencing domestic violence are vulnerable to not being in a position to exercise their right against it (by leaving the relationship, for example), because they are likely to be dependent on their husbands for their own and their children’s subsistence. The cost of leaving the relationship may therefore be to jeopardize their own and perhaps their children’s access to subsistence. Since this cost is unsustainable, the “choice” of taking up their right against the violence is not a real one that is genuinely available to them.

Legal measures to protect the right, such as ensuring that legal channels are open to enable successful prosecution of violent partners, allowing domestic
violence to count as grounds for divorce, and so on, play a crucial role in protecting people against being coerced into staying in a violent relationship. Nevertheless, these measures, however extensive, cannot succeed in securing the right to a reasonable degree of security unless the right to subsistence is also secured. Until then, one important standard threat to the enjoyment of the right against domestic violence will remain: that the option of taking up the right is unsustainable, and therefore not genuinely available, because it conflicts with obtaining adequate subsistence. This is a common threat to the enjoyment of the right against domestic violence, and the threat is likely to be at least as real and severe as that posed by legal impediments to prosecuting or separating from violent partners.

I conclude that Shue’s defense of the claim that the right to subsistence is a basic right, on the most plausible interpretation of it, can withstand many of the objections that have been raised against it. Nevertheless, Pogge has identified an important weakness with the argument as it stands, that it focuses on the claim that the destitute are vulnerable to being coerced into forgoing their other rights in exchange for subsistence. As Pogge shows, such coercion is not always plausibly a standard threat to the enjoyment of any other right. However, if we consider what underlies this vulnerability to coercion, we can see that that the fundamental threat that not fully enjoying the right to subsistence poses to the enjoyment of other rights lies with the unsustainability of lacking subsistence. This is liable to drive the destitute to forgo their other rights whenever enjoying the right comes into conflict with obtaining subsistence. This threat is indeed a standard one, and can only be adequately addressed by securing the right to subsistence itself.

Notes


4By contrast, it is widely accepted that there can be a special right to subsistence, grounded in a network of existing institutional special relationships. See for example Onora O’Neill, Bounds of Justice (Cambridge: Cambridge University Press, 2000).

5For example, severely poor domestic workers and child laborers are commonly subject to sadistic abuse, and many of the women who are abused in the making of films for the most violent end of the pornography industry are severely poor prostitutes, often from Latin America.