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I am submitting herewith a dissertation written by Harwood David Schaffer entitled "The Assumption of Non-coerciveness and the Total Food Market." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Sociology.

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The Assumption of Non-coerciveness and the Total Food Market

A Dissertation
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Degree
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Harwood David Schaffer
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Dedication

I dedicate this dissertation to my wife, Joanne Romeo-Schaffer for her support and perseverance through this long journey. I hope we will be able to enjoy the fruits of this labor for many years to come. Joanne, now it is your turn to work on another advanced degree and achieve your dreams.

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Abstract

For the last 46 years, the countries of the world have tried to reduce the number of chronically hungry people. Despite all the efforts, the numbers have barely budged from the over 850 million people who were chronically hungry in 1974 until the 2007-2009 food price crisis, when the numbers increased to over 1.02 billion. The blame for this situation has variously been put on bad governance, the lack of adequate market reforms, the market reforms that were imposed on developing nations, and globalization. Food, like other products in this globalized world, is allocated using the market system. One likely place to look for the cause of continuing hunger is at the assumptions that underlie the market system, in particular the assumption of non-coerciveness. This assumption asserts that the market transaction—in this case for food—is freely entered into by both the buyer and the seller and that either can refuse to enter into the transaction if it is not to their advantage. After looking at the traditional understanding of coerciveness in economics, this dissertation examines the logic system of economics concluding that the issue of non-coerciveness is a moral issue, and the argument of Frank Knight that the question of non-coerciveness is an issue of ethics. Using the work of Michael Keeley, this paper concludes that broadly accepted human rights is the best possible criterion for determining whether or not the aggregate food market is non-coercive. If the human right to food is abridged then it can be said that the aggregate food market is coercive and the assumption of non-coerciveness for the aggregate food market does not hold. With 1.02 billion people chronically hungry, 1/6 of humanity, it is clear that the right to food has been abridged and the aggregate food market is coercive. To overcome chronic hunger

and enforce the right to food, governments, international agencies, and non-governmental organizations are going to have to supplement markets with non-market measures. The dissertation concludes with a number of recommendations for non-market measures that can be taken to ensure that all people enjoy the right to food.

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Introduction

The 2006-2008 surge in grain and oilseed prices resulted in an increase in the estimated number of chronically hungry people in the world to 1.02 billion—approximately one-sixth of the world’s population (FAO 2009). The issue of chronic hunger has been a problem that has plagued world leaders in the post-WWII era. In 1974, world leaders gathered in Rome at the World Food Conference and pledged to eliminate hunger within 10 years (FAO 1996). The number of hungry¹ in the world at that time exceeded 850 million people (FAO 2009). Twenty-two years later world leaders gathered again in Rome at the World Food Summit, 1996. “The World Food Summit, 1996 was called in response to the continued existence of widespread undernourishment and growing concern about the capacity of agriculture to meet future needs” and issued the Rome Declaration (FAO 1996). The number of hungry at that time was 825 million. That declaration called upon the nations of the world to halve the “number of chronically undernourished people on the Earth by 2015” (FAO 1996). Since then the number of chronically undernourished people in the world has steadily increased (FAO 2009).

The question, thus, is one of explaining the persistence of chronic hunger in spite of massive amounts of food aid being given, the green revolution, market liberalization, increasing yields, and periods—1998-2001—when grains were said to be in surplus and

¹ In the same publication the Food and Agricultural Organization variously uses the terms “hungry” and “undernourished” in conjunction with the same statistics. Other terms used to describe the same condition are chronic hunger, food insufficiency, food deprivation, and undernutrition. These terms also generally refer to those who earn less than \$1.00 per day in nominal terms. In its definition of “undernourishment or chronic hunger,” FAO states “The average minimum energy requirement per person is about 1800 kilocalories per day. The exact requirement is determined by a person’s age, body size, activity level and physiological conditions such as illness, infection, pregnancy and lactation” (FAO 2009).

thus were being sold at prices well below the cost of production. The blame has been laid on poor governance, corruption, inept actions of food donor groups, the lack of full market liberalization, and market liberalization. While there is little doubt that various of these issues were a factor in countries around the world, there is also the possibility that the problem of hunger, at its root, is systemic. One place to look is at the dominant economic system, based on neoclassical economic theory (NET), because that system governs the allocation of resources like food.

At its foundational level, now dominant NET uses an axiomatic/hypothetico-deductive system (McCloskey 1985, Turner 1986, Weintraub 2002, Nelson 2001) of logic² to describe the distribution of scarce resources, which have alternate uses. In various mathematized forms (Weintraub 2002), NET also uses this system of logic to examine the workings of the economy and identify policies that optimize the politically determined objective function. Economists are quite willing to admit that the results that this reduced form/ideal type system provides depends upon the current allocation of goods and services (Knight 1929 and 1966, Samuelson and Nordhaus 1985, Rohlf 2002, Nicholson 2001).

Sociologists, on the other hand, see neoclassical economics as a variant of the theory underlying the capitalist economic system that began to take hold in fifteenth

² The axiomatic/hypothetico-deductive system that most people are familiar with is the one taught in US high school (Euclidean) geometry classes which uses undefined terms, defined terms, and assumptions to prove theorems which can then be used in conjunction with undefined terms, defined terms, and assumptions to prove other theorems. In geometry, “an undefined term is a meaning which has a meaning that is readily understood” (Foster, Cummins, and Yunker). A defined term is created using undefined terms and terms previously defined. Assumptions (variously called axioms or postulates) describe the relationships between terms and are accepted as true. Theorems are hypotheses that are proved true by means of deductive logic using undefined terms, defined terms, assumptions and theorems previously proved true.

century in Western Europe and expanded from there, building what Wallerstein (1998) calls the Capitalist World System. Some political economists (Frank 1967; Jalata 2001, 2005; Mander and Goldsmith 1976; Marx 1972; Robinson 2004; Shiva 2000; Wallerstein 1998) examine this system, the ideology behind it, and the ways it has been used to expand its hegemony and justify the allocation of resources, goods, services, and ultimately power to the benefit of the dominant class.

While recognizing the various issues raised by sociologists and the various means economists use to analyze the economy, the concern of this dissertation is a portion of the axiomatic/hypothetico-deductive system on which NET is built. In a thought system or academic discipline that uses the deductive method of analysis, the applicability of any given set of results is dependent upon the congruence between the original undefined terms, definitions, and assumptions of the system and the situation to which they are applied. If there is a lack of congruence between the assumptions and the situation to which they are applied, then the results of any analysis based on those original assumptions may be incorrect. In addition a change in a single assumption can result in significant changes in the theorems that are built using that assumption.

Economists make a number of assumptions concerning economic transactions. Among them are symmetry of information (Samuelson and Nordhaus 1985, Nicholson 2001), the presence of multiple buyers and sellers in the market so that no single actor can determine the price (Samuelson and Nordhaus 1985, Nicholson 2001), identical products (Samuelson and Nordhaus 1985, Nicholson 2001), costless entry and exit from the market on the part of sellers (Samuelson and Nordhaus 1985, Nicholson 2001),

market participants operate in their own self-interest (Samuelson and Nordhaus 1985), and are rational profit/utility maximizers (Samuelson and Nordhaus 1985), and non-coerciveness (Samuelson and Nordhaus 1985, Nicholson 2001). While recognizing that each of these assumptions and others play a part in the nature of the economic transaction, this dissertation focuses on the assumption of non-coerciveness, an assumption that ultimately influences the policies that set the framework for the distribution of agricultural products, and more particularly food, among the world's population.

The assumption of non-coerciveness asserts that the transaction that takes place between the purchaser and seller of a good or service is voluntary if both the buyer and the seller are free to engage or not engage in the transaction. This kind of transaction is considered normative for a free market where free means that coercion is not present as evidenced by the freedom to engage or not engage in the transaction. By way of contrast, robbery is a coercive (and illegal) exchange of goods.

In the modern era, the concept of voluntary exchange has its roots in Adam Smith's (1937) discussion of human nature in which he argues:

man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and show them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind, proposes to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest.

Smith 1937, 14

And so with these words he sets the stage for self-interested, voluntary exchange in which the needs of both the buyer and seller are met or no exchange takes place. Unlike some elements of exchange between lords and serfs in the earlier feudal period in England, Smith envisions an exchange without coercion.

Some 40 years ago, Milton Friedman moved further capturing the essence of the concept of voluntary, non-coercive exchange when he wrote:

The possibility of co-ordination through voluntary co-operation rests on the elementary - yet frequently denied - proposition that both parties to an economic transaction benefit from it, provided the transaction is bilaterally voluntary and informed.

Exchange can therefore bring about co-ordination *without coercion* (emphasis added). A working model of society organized through voluntary exchange is a free private enterprise exchange economy—what we have been calling competitive capitalism.

In its simplest form, such a society consists of a number of independent households—a collection of Robinson Crusoes, as it were. Each household uses the resources it controls to produce goods and services that it exchanges for goods and services produced by other households, on terms mutually acceptable to the two parties to the bargain. It is thereby enabled to satisfy its wants indirectly by producing goods and services for others, rather than directly by producing goods for its own immediate use. The incentive for adopting this indirect route is, of course, the increase made possible by the division of labor and specialization of function. Since the household always has the alternative of producing directly for itself, it need not enter into any exchange unless it benefits from it. Hence, no exchange will take place unless both parties benefit from it. Co-operation is thereby achieved without coercion.

Friedman 1962, 13

In this description Friedman identifies several characteristics of this competitive or free market capitalism:

- self-production as an alternative to exchange, and
- the ability to walk away “unless both parties benefit from it.”

When these two conditions are met, Friedman asserts “co-operation is thereby achieved without coercion,” thus the ideal form of exchanges that take place in a free market are based upon the assumption of non-coerciveness.

In seeking to identify the systemic element in the economic system that has the potential to explain the problem of persistent, chronic hunger, this dissertation argues that food as a whole is not a free market good to be solely allocated by market mechanisms, but is a coercive good that requires that requires some non-market mechanisms to ensure that every man, woman, and child has access to an adequate nutritious diet.

This study uses several mechanisms to make the case that food as a whole is not a free market good. This study begins by examining the various transaction types that—monopolies, governmental actions, and unions—economists have labeled as coercive. Following that several approaches to the question of coerciveness in economic transactions will be examined. The first approach is to seek some clarity by examining the hypothetico-deductive system that economists themselves implicitly use in their mathematized field of study. The second approach is to examine, in detail, the argument of Frank H. Knight, considered to be the father of Chicago School NET, that the answer to the question of various economic transactions are free or coercive is not to be found in the character of the exchange itself, but in ethics (Knight 1929). The dissertation then draws together the two methods of analysis by examining the argument of Michael Keeley (1987) that the question of freedom is ultimately one of ethics, and broadly accepted principles of human rights provide a mechanism by which the ethical question can be examined. Coercion is the result of an abridgement of a broadly accepted human

right. Thus the answer to the question of whether or not food as a whole is a coercive transaction ultimately rests on whether or not the right to food is a broadly accepted human right and whether or not it can be shown that this right has been abridged. After examining the right to food as a human right using comment 12 of the Committee on Economic, Social, and Cultural Rights (UNESCO 1999) this paper concludes that the right to food meets criteria set forth by Keeley (1987). Having shown that the economic transaction for aggregate food is coercive, because a broadly accepted and properly specified human right has been abridged this paper concludes that non-market interventions are needed to overcome the coerciveness of the aggregate food market and protect the right to food for the most vulnerable populations. The paper concludes with a set of policy recommendations based on the need for non-market interventions in the aggregate food market. These recommendations are organized using the responsibilities of states identified in comment 12: to respect, to protect, to fulfill (facilitate), and to fulfill (provide) (UNESCO 1999).

Traditional Understanding of Coerciveness in Neo-Classical Economic Theory

In NET, coerciveness and freedom are understood to be antonyms of which freedom is to be preferred and is the hallmark of a positive-market-exchange economic system (Friedman 1953). While declaring itself to be value free, NET evaluates various actions in terms of their contribution toward maximizing economic growth while utilizing resources with the greatest economic efficiency (Samuelson and Nordhaus 1985, Nicholson 2001) thus “helping to ensure that a greater ‘opportunity cost’ is not thereby lost” (Nelson 2001, 69). Because the ideal-type market system that is at the core of NET consists of multiple participants none of whom can affect price (Samuelson and Nordhaus 1985, Nicholson 2001), coercion is seen in terms of actors in this theoretical marketplace who can influence price. Traditionally, the primary coercive actors that NET has focused on are governmental bodies, monopolies, and trade unions (Samuelson and Nordhaus 1985, Nicholson 2001).

NET holds that governmental bodies can influence price through a variety of mechanisms that shift the supply, demand, or cost curves from their perfectly competitive or unfettered market locations leading to an economically inefficient use of resources. From the perspective of NET, government action attempts to substitute rules, regulations, taxes, and other non-market incentives for the discipline of the marketplace.

One clear example of this is the federal farm program that for many years operated a supply management program for program crops, most notably corn, cotton, rice and wheat. When crops prices dropped below a target level—the non-recourse loan

rate—the government through the Commodity Credit Corporation would become the default grain purchaser, holding the crops in a reserve and not releasing them until the price reached a higher release price. In later years, the program also allowed farmers to hold grain in a Farmer Owned Reserve, allowing farmers to capture the higher release price. To avoid an unmanageable level of reserve stocks, the Federal government through the United States Department of Agriculture (USDA) used a variety of programs over time to pay or induce farmers to reduce the acreage under production and thus the potential for adding to the reserves. Major criticisms of the program included the charge that 1) the government was paying farmers not to farm, farmers were farming the program instead of responding to market signals, 2) input suppliers of chemicals, seeds, machinery, and services as well as the processors, marketers, and transporters of farm crop production were being adversely impacted when the government induced farmers to reduce the acreage under production, 3) consumers were being forced to pay an above the market price for foods produced from these farm products, 4) exports of program crops were adversely affected by higher prices giving advantage to producers in other countries, and 5) and the public was being forced to pay higher taxes to support this program. In 1995 and 1996 these criticisms came to a head during the legislative process of adopting a new farm bill. For a variety of reasons sufficient legislative support was achieved to make a radical change in farm programs in the attempt to make it more market oriented. In 1996 a new farm bill was adopted that effectively eliminated floor prices and gave farmers the freedom to adjust their crop production without having to be concerned about protecting farm program benefits. Gone were CCC reserves under the

assumption that the commercials would hold sufficient reserves to meet increases in demand or shortfalls in production. These criticisms and changes were driven in a large part by economists trained in NET who believed that the market could more efficiently guide farm production decisions than bureaucrats at the USDA.

Other areas in which government regulations are seen to be both coercive and inferior to market forces include a wide variety of environmental regulations— for example: carbon emissions and global warming, the prophylactic use of antibiotics in the production of meat animals, the management of odors and effluent from large scale animal production operations, and mountain top removal as a part of coal mining operations. Each of these cases involves the creation of externalities that are not fully captured in the production cost equation. Participants in these industries argue against the imposition of regulations on their industry on the basis that they are coercive and create economic inefficiencies and instead support market-based solutions that they contend will achieve the stated goals in an economically efficient manner.

Following the 2008 collapse of the US economy due in part by excessive speculation and risk taking by major financial firms whose operations have been increasingly deregulated over the prior 25 years, calls for increased regulation of the financial services industry have been heard. Consistent with NET, opponents of re-regulation have argued that market participants have learned their lesson and that while some minimal rule changing may be necessary a larger scale re-regulation of the financial services industry and the products they sell would lead to less capital availability and lower economic growth levels.

Monopolies³ have long been seen as market actors who have the ability to reduce freedom in the marketplace (Smith 1937). In discussing those who live by profit, Smith writes:

The interest of the dealers, however, in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow-citizens. (Smith 1937, 250)

As Smith sees it, it is always in the interest of those who live by profit to narrow the competition so that they can charge monopoly prices. From Smith's perspective the amount charged above the free market price is a tax upon the populace.

Monopolies are able to do reduce freedom in the marketplace because they have the ability to affect the price of the item(s) that they sell (Samuelson and Nordhaus 1985, Nicholson 2001). In general monopolies are in industries that have economies of scale—they face downward-sloping demand curves—(Samuelson and Nordhaus 1985, Nicholson 2001), need large scale markets for brand establishment and marketing, need to spread risk, or are in a market with significant barriers to entry (Samuelson and Nordhaus 1985). These barriers to entry can include cost of setting up a competing firm as well legal barriers which generally include patents, protective tariffs and quotas, and other favorable legislation which protects their markets (Samuelson and Nordhaus 1985,

³ This discussion of monopolies (singular firms in a given market that have the economic power to affect the price of products they sell) also applies to monopsonies (singular firms in a given market that have the power to affect the price of products they purchase). To a lesser extent the discussion also has relevance for oligopolies (a small number of firms in a given market that have the economic power to affect the price of the products they sell, though to a lesser degree than monopolists) and oligopsonies (a small number of firms in a given market that have the economic power to affect the price of the products they purchase, though to a lesser degree than oligopolists).

Nicholson 2001). Firms often attempt to create a monopoly-like situation through product differentiation—Ford vs. General Motors vs. Toyotas vs. Maserati—which creates a distinct market in which they can exercise some degree of control over price.

Patents provide legal barriers that provide the patent holder with a monopoly situation for a given number of years. This monopoly status is provided in exchange for an advance in knowledge. It is argued that the lure of monopoly profits provides incentive for people to invest time and money in the invention process which has the potential to benefit society (Samuelson and Nordhaus 1985, Nicholson 2001).

In the United States, the two major approaches to dealing with the economic problems that result from monopolistic or oligopolistic firms are regulation and antitrust policies (Samuelson and Nordhaus 1985). Direct regulation of a monopolistic industry is most often implemented in relation to natural monopolies which will be discussed later. Outside of natural monopolies, regulation can involve price fixing by the government. This is most often done in wartime and in the case of an economic emergency (Samuelson and Nordhaus 1985). Nixon attempted to use price controls to manage inflation in the 1970s (Samuelson and Nordhaus 2001).

The second approach most often used in response to monopolistic or more often oligopolistic behavior is the establishment of anti-trust policies. These attempts to curb anticompetitive practices include the prohibition of price fixing by firms, arrangements to agree to market shares to be enjoyed by each firm, predatory pricing to eliminate competitors, and exclusionary activities (Samuelson and Nordhaus 1985).

Some economic activities lend themselves to natural monopolies, often due to the cost of establishing the delivery infrastructure. This is the case in public utilities like, natural gas, electricity, and telephone service. In each the duplication of infrastructure—pipes, wires, and transmission stations—by competing firms would result in higher prices for consumers. As a result, states establish an agency to regulate these public utilities setting, prices, rules of access, and standards of service (Samuelson and Nordhaus 1985). As technologies change the nature of the infrastructure, the need for governmental oversight may decrease allowing firms to more openly compete with what has previously been a publicly regulated monopoly. The telephone industry is a good example of this with the development of microwave transmission and cell phone towers. Even then some regulation may continue to guarantee access to services by consumers and parts of the infrastructure by competing firms. In the case of the electrical transmission industry, it was thought that by guaranteeing access to the grid, competing firms could deliver electricity to consumers in a process known as retail wheeling. After the activities of Enron and the brownouts in California (Bacon 2001), the deregulation of the electrical transmission industry has proceeded with more caution.

The transportation industry was regulated when railroads formed a natural monopoly—most small towns and rural areas were often served by a single railroad and thus shippers of agricultural products faced higher prices to get their product to market than those shipping products from markets served by two or more railroads. With the development of the trucking and airline industries, regulations were developed for them

as well (Samuelson and Nordhaus 1985). Many of the activities of the trucking and airline industries were deregulated in the 1980s.

The issue of coerciveness with regard to labor is two sided. James A. Miller made the classical argument that trade-unionism is coercive by looking at the Chicago building-trades conflict (1901). On the other hand, Robert Lee Hale held that labor employment markets, themselves, were coercive by forcing people to rent their labor to employers in order to survive (1923). NET has taken the first argument seriously while ignoring the second.

The argument for the coerciveness of labor unions focuses both on the worker's relationship with the employer as well as the impact of unions upon others in the labor market (Miller 1901, Samuelson and Nordhaus 1985). The development of labor unions was resisted by employer who contended that they were a "conspiracy in the restraint of trade" (Samuelson and Nordhaus 1985, 637) and interfered with the employer's right to hire whomever they wanted at a wage and conditions to be negotiated directly between the two parties (worker and employer). Labor unions were viewed as an illegal combination and a limitation on the rights of the employer to determine the use of their property—e.g. factory, office building, railroad—in any way that they wanted including the working conditions and how much they choose to pay those who worked on that property. When the Sherman Anti-Trust Act was adopted in 1890, the focus was on business activities including monopolies, cartels and trusts. But, in practice, the Sherman Anti-Trust Act was often used to break up labor unions, treating them as illegal cartels (Samuelson and Nordhaus 1985). It was not until the Railway Labor Act of 1926 and the

Wagner act of 1935 that labor unions were fully exempt from the provisions of the Sherman Anti-Trust Act and given the freedom to organize workers in the US (Samuelson and Nordhaus 1985 , Spector 2006).

Despite their legality, labor unions have been seen as coercive of employers because they can force terms on the employer that the employer would not agree to if it were dealing with each worker as an individual (Miller 1901, Samuelson and Nordhaus 1985). These contract terms can include wages, benefits, work conditions, job classifications, seniority rights, rules concerning work stoppage, and grievance procedures for workers, among others (Miller 1901, Samuelson and Nordhaus 1985). The result often increases labor costs and restricts the activities of the employer.

Labor unions are also viewed as coercive of individual employees, interfering with their freedom of association, forcing non-union “employees covered by a collective bargaining agreement containing a union security clause, as a condition of employment, to pay an agency fee equal to normal union dues (and where applicable, initiation fees)” (CWA 2010, 7), restricting non-union employees from working on some job sites, limiting the scope of work they can perform, setting a minimum wage at which they can be employed even if they are willing to work for less, and determining the conditions and hours of employment (Miller 1901). In these issues, the collective decisions of the union takes precedence over individual preferences, forcing the dissenters to acquiesce to the will of the majority or seek employment in a non-union environment (Miller 1901). Depending upon the craft of the employee, it may be difficult to find nearby alternate employment if the union is strong in the area (Miller 1901).

Robert Lee Hale uses the occasion of his review of Thomas Nixon Carver's *Principles of National Economy* to argue that despite the assertions of mainstream economists, with regard to the non-coercive nature of economic exchange in a *laissez-faire* system, the economic system is dependent upon various levels of coercion to make it work (1923). Carver's theoretical position, laid out in his *Principle of National Economy*⁴, was that of neoclassical orthodoxy assigning a limited role for government and assuming that the competitive nature of the exchange system would guard against coercion, thus protecting the individual from coercion by either the government or other individuals (Hale 1923, Samuels 1984). Hale was an institutionalist economist who rejected the individualized utility maximizing homo economicus of neoclassical economists in favor of a socialized economic actor operating within a historically and politically shaped system.

Hale starts with Carver's view that one of the roles of government is the protection of the property rights of individuals and uses the issue of property rights to show that "the law of property secure[s] for the owners of factories their labor" (Hale 1923, 473). He then develops a logical syllogism to make his argument that because workers must eat, they must work for one employer or another in order to obtain money

⁴ Though there is a distinct lack of discussion of the issue of coerciveness in contemporary economic literature, in 2003 Dalia Tusk, in asserting that "organizations, associations, and corporations [act] as [the] loci both of individual self-government and of coercive power cloaked by liberal legal thought as free contractual arrangements between individuals" (1881,) draws on Hale's 1923 article describing it as "the classic critique of the distinction between public and private power." This evaluation is borne out by the use of Hale's paper by Ronald Chen and Jon Hanson in their 2004 article in the *Michigan Law Review* titled "The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law" and Paul M. Schwartz in his 2004 article in the *Harvard Law Review*, Property, Privacy, and Personal Data.

(an exchange of work for some of the employer's property: money) or starve. Hale then argues:

Suppose, now, the worker were to refuse to yield to the coercion of any employer, but were to choose instead to remain under the legal duty to abstain from the use of any of the money which anyone owns. He must eat. While there is no law against eating in the abstract, there is a law which forbids him to eat any of the food which actually exists in the community—and that law is the law of property. It can be lifted as to any specific food at the discretion of its owner, but if the owners unanimously refuse to lift the prohibition, the non-owner will starve unless he can himself produce food. And there is every likelihood that the owners will be unanimous in refusing, if he has no money. There is no law to compel them to part with their food for nothing. Unless, then, the non-owner can produce his own food, the law compels him to starve if he has no wages, and compels him to go without wages unless he obeys the behests of some employer. It is the law that coerces him into wage-work under penalty of starvation—unless he can produce food. Can he? (Hale 1923, 472-473)

Hale then uses the same style of logic to show that unless they already have money or own land it is the law of property that forbids them from producing food on land they don't own. He also uses the same argument to show that they can't sell goods they make in the absence of the ownership of the means of production. Thus, Hale argues, "It is the law of property which coerces people into working for factory owners" (473).

As has been shown, the argument for the non-coercive nature of labor rests on the alternative of producing one's own food. The economic argument is that if people can meet their various wants and needs with self-production then they are not coerced in any way in engaging in a market transaction (Hale 1923, Samuelson and Nordhaus 1985). While that argument has a certain cachet when made by economists, the reality beginning in the late 19th century Africa was quite different. At the Berlin Conference (1884-1885), the interior of Africa was partitioned among seven European powers—England, France, Germany, Portugal, Spain, Italy, and Belgium (Jalata 2005. Davidson 1994). With the establishment of this agreement they could invade the interior of Africa without also

going to war against each other (Davidson 1994). The colonies that were established were expected to be net revenue producers, increasing the wealth of the European power that controlled it. For the most part the colonies were seen as cheap sources of raw materials and expatriate controlled companies sprung up to provide those resources. One of the challenges they faced was obtaining adequate labor to work in the colonial industries (Davidson 1994). The local residents were disinclined to work for wages because they were able to provide for their needs by continuing in the pastoral and agriculturalist patterns they had established long before the advent of colonial rule. The colonial governments had two tools that they could use to provide a supply of labor to the expatriate owned enterprise (Davidson 1994). The first involved brute force. They went into the villages and selected the number of able bodied men that they needed and forced them, at the point of a gun, to go work in the colonial enterprise. Those who resisted were tortured and killed as an example to the rest. This means of providing labor was inefficient and provided a low quality of labor (Davidson 1994). The second means of providing labor was economic in nature. The colonial government established a tax that had to be paid for in currency which could only be obtained by working for the colonial enterprise—currency was not made available for use in the traditional markets where most items were bartered (Davidson 1994). Thus, even though the local residents could provide for all their needs without engaging in wage work, they were coerced into such work in order to pay the tax (Davidson 1994). The Robin Crusoe theory economists use to establish the voluntary nature of economic transactions fell down in the colonies where

taxation was used to ensure an adequate and steady supply of labor for the expatriate owned colonial enterprises.

Bowie in “Fair Markets” (1988) in writing about business ethics notes that non-coerciveness is often defined in terms of equality of bargaining power. Later on in his article he also notes that inequality of knowledge in stock trading (insider trading) is also coercive. Bowie’s discussion of coerciveness in the marketplace is one of the most extensive of the last quarter century as he wrestles with the “minimalist strategy in business ethics that maintains ‘if it’s legal, it’s moral’” (89). At one point in his article Bowie defines unfairness under the law in terms of “transactions [that] are either coercive or involve inequality of bargaining position’ (90). Later on, Bowie discusses unfairness of an economic transaction in terms of inequality of information. While at one level Bowie writes about coercion, inequality of power, and inequality of knowledge, at another he deals with them in such a way that would suggest that inequality of power and inequality of knowledge are elements of coercion. In doing so he adds some measure of substance to the term coercion. For Bowie, coercion is a matter of agency in which actor A forces actor B to engage in an act that B does not want to engage in and is not in B’s perceived best interest. Bowie summarizes the issue of the nature of the marketplace writing, “Economists are fond of pointing out that the benefits of exchange be noncoercive and that parties to the exchange have perfect knowledge” (97).

He comes close to the argument examined in this paper when he asks two questions:

Suppose you discover the cure for AIDS and demand compensation of \$1 million per AIDS victim. Is your demand for that compensation coercive? It certainly is.

Suppose you own the only unpolluted well during a catastrophe and you demand payments of \$200 per gallon. Is that demand coercive? It seems so. (Bowie 1988, 97)

Cohen (1990) in writing on coercion in tender offers for stocks argues that stock owners feel compelled to act fearing a less desirable result if they do not act and the company is taken over and the value of their stock is less. This follows on Bowie's discussion of fair markets.

In each case—monopolies, governmental action, and unions—the determination rests upon the behavior of the principal actors in the economic transaction and the way that this behavior results in outcomes at variance with those achieved under individualized free market conditions. The greater the variance from the allocations of scarce resources provided under free market conditions, the greater the degree of coercion. That means, for instance, that oligopolies are seen to be less coercive than monopolies.

When it comes to food, the subject of examination is not the actors in the transaction but the object of the transaction itself—aggregate food. In this case a comparison with the results of the outcome achieved under free market conditions means nothing because it is the free market conditions themselves that are being questioned. That forces one to look at the meaning of freedom in the context of the ideal-type economic transaction and its opposite coercion. Frank Knight, “the most orthodox of orthodox economists,” (Kern 1997) provides a forceful examination of the question of freedom with regard to the ideal-type economic transaction. But before looking at Knight, the logical underpinnings of the argument will be examined.

Coerciveness as an Issue of Logic

In a thought system or academic discipline that uses the deductive method of analysis, the applicability of any given set of results is dependent upon the congruence between the original undefined terms, definitions, and assumptions of the system and the situation to which they are applied. If there is a lack of congruence between the assumptions and the situation to which they are applied, then the results of any analysis based on those original assumptions may be incorrect. In addition a change in a single assumption can result in significant changes in the theorems that are built using that assumption.

Economists make a number of assumptions concerning economic transactions under a free enterprise, full competition system of markets. Among them are symmetry of information (Samuelson and Nordhaus 1985, Nicholson 2001), the presence of multiple buyers and sellers in the market so that no single actor can determine the price (Samuelson and Nordhaus 1985, Nicholson 2001), identical products (Samuelson and Nordhaus 1985, Nicholson 2001), costless entry and exit from the market on the part of sellers (Samuelson and Nordhaus 1985, Nicholson 2001), market participants operate in their own self-interest (Samuelson and Nordhaus 1985), and are rational profit/utility maximizers (Samuelson and Nordhaus 1985), and non-coerciveness (Samuelson and Nordhaus 1985, Nicholson 2001). While recognizing that each of these assumptions and others play a part in the nature of the economic transaction, this dissertation focuses on the assumption of non-coerciveness, an assumption that ultimately influences the policies

that set the framework for the distribution of agricultural products, and more particularly food, among the world's population.

The assumption of non-coerciveness asserts that the transaction that takes place between the purchaser and seller of a good or service is voluntary if both the buyer and the seller are free to engage or not engage in the transaction. This kind of transaction is considered normative for a free market where free means that coercion is not present as evidenced by the freedom to engage or not engage in the transaction. Like any assumption in a postulate system of logic, the assumption of non-coerciveness describes the relationship between terms that are accepted as true. Because the question of whether or not markets are coercive with regard to food involves an assumption it is not possible to use deductive logic prove whether or not food is coercive because the assumption is an antecedent to the proof itself. To then engage in a proof to attempt to determine whether or not food markets from the perspective of the consumer are coercive would be to engage in circular reasoning, a classical fallacy.

Thus it needs to be remembered that an assumption is by definition a generally accepted truth and so we have to look at the assumption itself. That there needs to be a significant degree of congruence between the idea contained in the assumption and what is observed in the world around us. It will be shown that while there is a significant degree of congruence between the assumption of non-coerciveness and the market for some goods, congruence is lacking when it comes to aggregate food markets.

For instance, a buyer in the retail gold market⁵ has the freedom to purchase from a number of dealers, or to not make a purchase at all, for whatever reason, and the impact of the decision of that single individual on the economic system is negligible. If the buyer and the seller cannot agree upon mutually acceptable conditions either one or both can walk away from the transaction. In this way economists emphasize the noncoercive nature of the free enterprise system of markets. In this case, the buyer, in all likelihood, does not have the option of self-production, but there is little consequence for the buyer as the result of this lack of self-production. The non-coerciveness of this lack of a transaction is made manifest in the ability of both parties to walk away from the sale. A person can live a whole lifetime with minimal consequences as the result of never making a purchase in the gold market.

The same is not true for food. While one can choose to purchase yams instead of white potatoes, or chicken instead of beef, one cannot choose not to purchase food in some form or other unless one has access to knowledge, land, water, seed, sunshine, climate, and time sufficient to produce an adequate amount of food. Often, even in peasant production systems, access to these production resources are limited. Food, like air and water, is a necessity of life. Without access to a sufficient amount of food on a regular basis people suffer serious health consequences or die.

In a fully competitive food market an individual buyer will have the opportunity to purchase from any number of sellers, none of which have sufficient market share to

⁵ This argument is not meant to minimize the reality that a significant amount of gold available to the retail market has been obtained over millennia through conquest, plunder, and forced, underpaid, or slave labor.

determine the price. The buyer also has the opportunity to choose from a wide variety of substitutes in selecting the desirable mix of grains, meats, vegetables, etc. But even if all of those market conditions are met, the purchase of food is a coercive act. If the price of food is too high, the purchaser cannot voluntarily stay out of the market and wait for the price to drop before reentering the marketplace. The purchaser of food is in a different position from the purchaser of gold. When a potential purchaser of gold or any other nonessential product is forced out of the market because of lack of adequate financial resources, the consequences are negligible. After all, the use of price as a means of rationing out scarce resources is a fundamental tenet of mainstream economic thought (Samuelson and Nordhaus 1985, Nicholson 2001). In this case it rations a scarce resource, gold, among alternate uses. However, when a potential purchaser of food is forced out of the food market because of the lack of adequate financial resources, the consequences are disastrous. Without an adequate intake of food on a regular basis, the potential food purchaser will die. It is the event of the birth of each human being that sets in motion the sequence of minimum nutritional needs that must be met on a regular basis throughout its lifetime. Unlike other markets, in the absence of that person and or its household having “the alternative of producing for itself” (Friedman 1962, 13), stepping outside the aggregate food market is not an alternative.⁶

⁶ By way of illustration, it can be noted that neoclassical economic theory as it is presented in the classroom teaches students that on the demand side the price of a product is a function of quantity demanded and that with normally priced goods the slope is negative—the greater the price the lower the quantity demanded. In aggregate food markets, the question now becomes, “What is the quantity of aggregate food demand a function of? Is it price?” This author would argue that the absolute quantity of aggregate food demand required, from a health and nutritional perspective, is 2,700 calories a day times the total population of the world. That would suggest that for the first 2,700 calories per person per day the demand curve with respect to price is absolutely vertical—it is price inelastic. Effective demand may

One of the arguments that has become common as a result of the demand for corn to produce ethanol is food vs. fuel, and particularly that ethanol demand for corn will lead to some people going hungry so that other people can drive their SUVs—ethanol demanders will outbid food demanders. Is that not the same problem that can be seen with corn-fed poultry, pork, and beef? Are not the animal protein producers outbidding those poor people who live on a grain based diet for corn and other grains?

Friedman (1962) can assume that, in the absence of the buyer's purchase of food in the marketplace, the buyer can engage in self-production. But in most cases this is not feasible for many people. In addition, unlike with gold, staying out of the aggregate food market for an extended (or even brief) period of time is not a viable option. Whether one is rich or poor, aggregate food is a coercive market. Unlike many other product sector markets, one is forced to participate in the aggregate food market on a regular basis. It does not make any difference whether prices are high or low, one must regularly participate in the aggregate food market in order to meet one's nutritional needs. For those who must purchase their food in the marketplace and have limited monetary resources, they may find themselves unable to compete with cattle producers, ethanol plants, or high fructose corn syrup plants in the purchase of a sufficient amount of food to meet the nutritional needs of them and their families. Thus, it can readily be argued that there is a lack of congruence between the assumption of non-coerciveness when it comes to aggregate food purchases and the situation that faces people each and every day—food

have a slight slope to it as some people are priced out of the aggregate food market. In addition, above 2700 calories per person per day, aggregate food demand may be more elastic. The difference between absolute demand and effective demand in economics is a recognition of the reality that price is used to exclude people from the aggregate food market.

market participants cannot walk away without suffering from potentially dire consequences.

At the same time, it must be recognized that what is at stake is more than pointing out a flaw in a system of logic. This issue has a human dimension because purchasers of aggregate food cannot walk away without suffering significant consequences. Being excluded from the aggregate food market because one does not have the price of entry has serious consequences in terms of full human physical and mental development of those excluded. In the end, the determination of whether or not there is significant congruence between the assumption of non-coerciveness and aggregate food markets comes down to an ethical determination of the acceptability of the consequences of the operation of aggregate food markets where people are denied access to food, not because the food is not available, but because they lack the money to participate in the market at all. Is stunted human physical and mental development an acceptable moral outcome of NET's free markets at the operational level? The answer to that question requires an examination of the moral question.

Freedom as an Issue of Ethics

Frank H. Knight, an economist at the University of Chicago and the teacher of many in the first generation Chicago School neoclassical economists, published “Freedom as Fact and Criterion” in 1929 as “reflections by an economist on utilitarianism and ethics” (129). The utilitarianism he describes is at the core of NET in holding that “good is individual, and the individual is the ultimate judge of it; what is good is that the individual shall get what he wants” (Knight 1929, 30). This avoids the ethical question of the decisions over what to produce and how to distribute that which is produced. All decision making is the sum of individual decisions to maximize their individual utility with the “goal of political action...[becoming] the essentialized ideal of *freedom*⁷, i.e., the ‘greatest good’ will be realized through ‘maximum freedom” (Knight 1929, 130). Knight then argues that though the individual decision making is not necessarily “very good...it is *better* than that of an outside agency of control, practically speaking a political bureaucracy” (Knight 1929, 131). He then writes that Spencer “gave the freedom theory its classical, quantitative expression as the right of each to the maximum freedom compatible with equal freedom for all others” (Knight 1929, 131). Knight characterizes the effects of this understanding of freedom as resulting in a situation in which “the field of group control is restricted to the prevention of relations other than those of competitive free exchange, specifically the protection of property and enforcement of contract” (Knight 1929, 132).

⁷ Emphasis in the original.

Having thus defined the nature of the utilitarian economic system he wants to examine, Knight declares that “our purpose here is to show that the very notion of freedom as ‘criterion’ is illusory” (Knight 1929, 132). The result of such a theory he argues is to justify the current set of power and economic relationships. He comes to the conclusion that “advocates [of utilitarianism] overlook the fact that freedom to perform an act is meaningless unless the subject is in possession of the requisite means of action, and that the practical question is one of power rather than formal freedom” (Knight 1929, 133). Knight looks further at the issue of power, relating it to the “stock of values originally possessed” (Knight 1929, 133). Thus, the power one possesses in the exchange relationship is dependent upon the existing distribution of the stock of goods in society. The greater the imbalance in the stock of goods between two people involved in an exchange, the greater is the likelihood that the freedom of the one with a smaller stock of goods is compromised. By accepting the existing distribution as the starting point, NET economists “justif[y] the *status quo*. The result rests on an ethical judgment, and on an ethically indefensible one. Its ethic is in the first place the right to keep what one has. But it does not stop there...it also sets up the right to use what one has without limit” (Knight 1929, 133-134).

One of the ways economists seek to avoid this ethical dilemma is to make a distinction between science and ethics and then declare that they are simply “devoted to the description and explanation of things as they are in an actually existing social order” (Knight 1929, 134). Knight then declares that he is interested in examining the ethical question by “glanc[ing] at the workings of the system of ‘free’ exchange at the source of

individual incomes” (Knight 1929, 135). He does this by successively examining the ethical implications of the economic power wielded by an individual as the result of 1) activities in the present, 2) activities in the immediate past, and 3) economic power built up over a longer period of time.

After looking at the stream of total production, the claim of the owners of the means of production to what is produced, and the monetization of everything,⁸ Knight asserts that income that results from the current activity of individuals is based on the quantity of service provided and the scarcity one’s skill or condition relative to demand. He argues that the quantitative difference in the amount of service provided by different individuals is “relatively insignificant” (Knight 1929, 136). In essence: everyone has the same 24 hours in a day and differences in output is insignificant as a factor in determining income when compared to differences in power, and when it comes to differences in power “it is mainly the scarcity that counts” (Knight 1929, 136). He then asks and answers.

How far does the principle of freedom go in justifying the differences between incomes? It goes just as far as people really are free, that is, as far as the rendering of (a) a larger amount of a given service, (b) a service more in demand or (c) a scarcer service, is a matter of voluntary choice. That is not far, and it calls for no argument that actual differences rest to an overwhelming extent on differences in power. The evaluation of the separate contributions of individuals to the social total is overwhelmingly a matter of force and not of right, and the inequalities tend overwhelmingly to reduce and not to increase “total satisfactions,” (Knight 1929, 137)

Having examined factors in the present that determine differences in power and thus the degree of “freedom” one enjoys, Knight turns to the relatively immediate past asserting that “the amount and kind of economic power possessed by any person ‘now’

⁸ The monetization of everything allows for the comparison of things that are qualitatively different like land, capital, and various forms of labor, creating a scale of relative equivalence.

depends largely on the amount and kind he possessed ‘last year’” (Knight 1929, 138). And furthermore because the goal of the economic system is to accumulate wealth, those who have it in the past use what they have to increase their wealth and thus power relative to other individuals in society.

In looking at activities further in the past that have an effect upon one’s current economic power—and thus the degree of one’s *freedom* in an economic exchange—Knight introduces two additional concepts: inheritance and uncertainty. One’s current wealth and power is dependent not only upon what one earns in the present, but also upon the accident of what one does or not inherit from one’s family. As Knight sees it, “It is not easy to see how any ethical significance can be attached to the receipt of income from inherited wealth (or training, social position, etc.) on grounds of ‘equal freedom’ or any sort of personal desert” (Knight 1929, 138).

The second concept is uncertainty, the focus of Knight’s doctoral dissertation and first book, *Risk, Uncertainty, and Profit*. In discussing uncertainty, he points out that “the results of productive operations over long periods of time are highly unpredictable.” Thus the maintenance of one’s wealth, whether earned or inherited, is “in no small degree a matter of *luck*” (Knight 1929, 138).

Knight then brings his discussion of the accumulation of economic power in the present, the immediate past, and the more distant past by reviewing the three factors of production recognized by conventional economists: land, labor, and capital. He then drives his point home by making a play on words of a familiar Biblical quotation writing, “From an ethical point of view it would be more significant to analyze income into three

sources of free choice or effort, inheritance, and luck. And the greatest of these is luck!⁹” (Knight 1929, 139).

While utilitarianism or its contemporary manifestation, NET, is built upon the character of the exchange process itself (economic freedom or its synonym, non-coerciveness), Knight asserts that this kind of freedom

simply takes us nowhere in the solution of the problem of economic justice. Everything depends, not on the character of exchange, but on what individuals bring to the exchange, and this is ultimately a matter of fact and not of ethics. Historically viewed, the significance of the doctrine is to justify inequality, and the project is a failure. (Knight 1929, 139)

Having declared that building of a “social order based on free exchange” (Knight 1929, 139) a failure, Knight asserts that the distribution of economic resources according to a combination of effort and need would result in a process “in harmony with ordinary moral common-sense if the latter [common-sense] breaks away from mere convention [utilitarianism] and becomes reasonably critical” (Knight 1929, 139). More than anything else it is the lack of critical thinking that is at the heart of the failure of NET.

Not content to limit himself to analyzing freedom and coercion from the perspective of income, Knight moves into an examination of these two concepts from a psychological perspective arguing “that the coercive quality rests on an ethical condemnation, rather than the ethical condemnation on a factually established unfreedom; or perhaps it is more accurate to say that they are merely different names for the same thing” (Knight 1929, 139). People do not feel coercion when the limitations put on them are perceived to be either fair or reasonable, so people do not feel that their freedom

⁹ In I Corinthians 13:13, the Apostle Paul writes, “And now faith, hope, and love abide, these three; and the greatest of these is love.” (NRSV, National Council of Churches).

is limited by the requirement that they drive on the right side of the road. With a bit of humor, Knight writes, “we simply do not have the feeling of coercion except in connection with one of ethical disapprobation. There is psychological truth in the famous story of the cowboy coroner who brought in a verdict of suicide by doubting the superiority of four deuces to a full-house” (Knight 1929, 140). From a psychological perspective, Knight sees freedom as being derived from moral approval and thus not an objective standard (Knight 1929).

In talking about freedom and coercion, Knight writes, “our suggestion is that the fallacy comes in seeking an objective standard, or one which does not finally rest on a judgment of ethical approval and disapproval” (Knight 1929, 142). At the same time Knight understands the lure of an objective standard admitting that “the writer of the present argument feels the bias toward physical-mechanistic thought as strongly as anyone does or can.” (Knight 1929, 146). Despite his personal predilections, he writes,

The argument of the body of this paper has shown that an appeal to maximum freedom as a "standard" involves a fallacy. The result is dogmatic acceptance of an existing distribution of power, which is an ethical proposition, a value-judgment in disguise, and an ethically indefensible one. Moreover, it involves logical contradictions. Freedom means freedom to use power, and the only possible limitation on the use of power is intrinsically ethical. (Knight 1929, 144)

Knight reprises the essence of this article 37 years later in the same journal in “Abstract Economics as Absolute Ethics.” In both articles, Knight leads us to an understanding that the distinction between freedom and coercion cannot be found in the characteristics of the exchange relationship. Ultimately, the distinction is ethical in nature.

Using Knight’s analysis, the question of whether or not aggregate food is a coercive exchange is not of question of the mechanics of the transaction but one of ethics.

And while Knight declares various aspects of the utilitarian concept of individualized exchange to be morally bankrupt, he does not provide any clear criteria by which he made that determination. Thus, if one is going to pursue the question of the exchange for food as a moral question, one needs to set forth some criteria by which the ethical question can be answered.

Human Rights as a Criterion for Ethical Evaluation

So far this dissertation has examined the twin issues of freedom and coercion in the economic context from two perspectives: a) looking at the logical structure of the argument that underlies NET, and b) considering Knight's analysis of the operational nature of the economic transaction.

In the first instance, this dissertation undertook an examination of the logic that undergirds the nature of the ideal type market transaction rests on the assumption of non-coerciveness. Because the question of whether or not markets are coercive with regard to food involves an assumption, it is not possible to use deductive logic prove whether or not food is coercive because the assumption is an antecedent to the proof itself. To then engage in a proof to attempt to determine whether or not food markets from the perspective of the consumer are coercive would be to engage in circular reasoning, a classical fallacy. Thus it needs to be remembered that an assumption is by definition a generally accepted truth. That is to say that there needs to be a significant degree of congruence between the idea contained in the assumption and what is observed in the world around us. The task then in that section was to determine the potential congruence between the assumption of non-coerciveness and every day experience. It was shown that in markets like gold, automobiles, and CDs, a consumer could walk away from the marketplace with little or no negative consequence, thus in these markets there is a significant degree of congruence between the non-coerciveness assumption and every day experience. In the case of aggregate food, it was noted in the introduction that despite 40 years of attempts by nations and international agencies and conferences to reduce hunger,

the number of hungry in the world has risen to over one billion people. It is estimated that one sixth of the world's population experiences hunger, many to the point it interferes with full human development, while recent reports indicate that one-eighth of the US population is on food stamps, now called SNAP (USDAFNS 2010). Unlike with gold, automobiles, and CDs, being excluded from the aggregate food market because one does not have the price of entry has serious consequences in terms of full human physical and mental development. In the end, the determination of whether or not there is significant congruence between the assumption of non-coerciveness and aggregate food markets comes down to an ethical determination of the acceptability of the consequences of the operation of aggregate food markets where people are denied access to food, not because it is not available, but because they lack the money to participate in the market at all. Is stunted human physical and mental development an acceptable moral outcome of NET's free markets at the operational level? What is required is a means to look at that moral question.

In the second instance, this dissertation examined Knight's article *Freedom as Fact and Criterion*, in which he engages in a critical examination of the fundamental assumption and assertion of utilitarianism that maximum freedom is the goal of human activity and each individual is the judge of what is good for her/him. Individualized good is achieved through individuals seeking "maximum freedom compatible with equal freedom for others" (Knight 1929, 131). This seeking of individualized good then becomes the rationale for a laissez faire economic system which in its present form is embodied in NET, of which the assumption of non-coerciveness is a part. Knight then

argues that maximum freedom is in fact useless without the power to engage in activities that bring about the sought after individualized good. And the problem is that power is pre-allocated because economists accept the initial distribution of resources as the starting point for their analysis. Thus an individual who start out with fewer goods and therefore has a lesser amount of power is automatically disadvantaged in an exchange with one who has more power, despite the other characteristics of the exchange. Thus Knight argues, “our suggestion is that the fallacy comes in seeking an objective standard [for identifying freedom], or one which does not finally rest upon a judgment of ethical approval or disapproval” (Knight 1929, 142) For Knight, then the question of freedom/coercion in economic markets is not a descriptive matter of the characteristics of the marketplace, but one of ethics. “It is simply and briefly that freedom is itself an ethical category” (Knight, 1929, 142). While Knight makes it clear that the issue of freedom/coercion is ethical, he does not provide a clear stance by which ethical approval/disapproval can be identified.

In each case, using logic and examining the characteristics of the ideal type marketplace, the question of whether or not the assumption of non-coerciveness holds with regard to food cannot be answered without recognizing that the issue is one of ethics. Michael Keeley in his 1987 article, *Freedom in Organizations*, examines the “criteria for determining whether specific transactions are free or coerced” (249). While freedom is a nearly universally accepted value that has the ability to create political cohesion, particularly in times of war or external threat, its weakness as an analytical concept is that it means different things to different people. In both WWI and WWII,

segregationist soldiers and African American soldiers fought in the name of freedom. The concept of freedom was a force that motivated both to risk their lives on foreign battlefields. When these same soldiers got back home, the segregationist soldiers expected the African Americans to stay in their place, making no connection between the concept of freedom and the subjugated role of African Americans in American society. African American soldiers, on the other hand, felt that having fought for the protection of American freedom on a foreign battlefield, they had earned the right to enjoy freedom from degrading conditions once they arrived back home. These differing concepts of freedom lead to racial tension both during the wars and back home after the soldiers were discharged.¹⁰ The concept of freedom in place at the time had the power to unite people in the face of an external threat, but lacked a commonly accepted criteria that could meet the heightened expectations and guide the behavior of soldiers and the general populace after the war.

In the economic sphere, the concept of freedom runs into the same problem. To libertarian economists, it means the absence of restraint by the government and other economic actors in the marketplace, while to many laborers in industrial plants it means governmental protection from threats and restraints by management, so they can exercise their freedom to form a union. What is lacking is a criteria that can identify which

¹⁰ Following WWI, returning black soldiers in Tulsa were not as deferential to white authority as was expected. The result was the 1921 Tulsa Race Riot that destroyed Greenwood, the most prosperous African American Community in the nation at that time. WWII saw race riots in Chicago, Harlem, and Detroit in 1943 and the Columbia Race Riot occurred following the war when “African American veterans returned home from a war fighting for freedom for others, only to be reminded that they didn’t have certain freedoms” (Tennessee4me). The riot was triggered by a fight between a white war veteran and a black war veteran over a radio repair and resulted in the arrest of over 100 blacks, the death of two and no arrests of whites.

“conditions count as genuine impediments to freedom and which constitute mere inabilities to act, choose or become” (Keeley 1987, 250). In his examination of the question of freedom/coercion, Keeley identifies three different approaches to the question: “consequentialist, descriptive, and normative” (Keeley 1987, 249).

The consequentialist approach argues that “whether an agreement is voluntary or not...depends on its consequences and how it allocates benefits among the contracting parties” (Keeley 1987, 252). Keeley notes that “the most compelling premise is that voluntary transactions should result in...longrun benefits [for] the disadvantaged party” (Keeley 1987, 253). The consequentialist approach certainly is attractive when it comes to looking at whether or not the aggregate food transaction complies with the assumption of non-coerciveness. While human biological processes require all people to eat and thus acquire food on a regular basis, the consequentialist approach would not view the food transaction as coercive for those with either the ability to produce or purchase food because the consequences for the individual is not detrimental. On the other hand for those without land and a means of earning enough money to purchase the requisite amount of food, the results can include, among other things, increased rates of infant, under 5 years of age, mortality, and maternal mortality; the lack of full physical and mental development, increased susceptibility to disease, and death. Those consequences are certainly not to the long-run benefit of the disadvantaged party.

At the same time the consequentialist approach has no means of distinguishing between the food case and seriously mentally ill persons who are forced into treatment “for their own good” when they believe that nothing is wrong with them. Clearly even

temporarily locking up mentally ill persons is a coercive act even if it allows them to get treatment and improve their mental stability. Similarly, we live in a society in which we have a social contract that involves the paying of taxes. Does the fact that one person believes in the concept of social responsibility and willingly pays the taxes due make the tax any less coercive for that person than it is for the rugged individualist who does not believe in taxes and only pays them to stay out of jail? The taxes may pay for programs that benefit society as a whole and provide services for the poor, but do those long-run benefits to the disadvantaged in society who may pay no taxes at all make the act of tax collection any less coercive?

Likewise, there were those during the housing bubble of the last decade who knowingly took out an adjustable rate mortgage (ARM) on more expensive house than they could afford in the belief that interest rates would be lower and the value of the house would be higher in the future. They were banking on this confluence of events so that they could refinance the house at a lower interest rate before the ARM was due to reset. Otherwise they could sell the house at an appreciated value and take some cash out to buy a less expensive house. When the bubble burst and interest rates reset, many found that they were unable to make the monthly payment and the house was worth less than what they paid for it. Setting aside those who were tricked into deals they could not afford and the issue of complex financial instruments of collateralized debt obligations and credit default swaps, does the negative outcome make the transaction coercive for those who looked at all of the options and consequences and knowingly took the risk? In this case is foolishness to be made synonymous to coerciveness?

The weakness of the consequentialist concept of freedom is that while it offers “a rough rule of justice...[it does not] offer a means of determining the voluntariness of a specific transaction” (Keeley 1987, 253). While the outcome is an important factor an important factor to consider in evaluating the voluntariness of a social transaction, in an of itself an examination of only the consequence can lead to a determination of coerciveness in a case in which the action was clearly voluntary and a determination of freedom in cases where people are clearly coerced into paying taxes that benefit the disadvantaged of society.

The descriptive approach that Keeley identifies is generally approached from one of two directions: describe freedom with the result that coercive is that which is not freedom or describe coerciveness and freedom in a transaction is that which is not coercive. Historically economists have preferred the first approach by describing the characteristics of a free market. It is just this approach that Knight criticized in his 1929 and 1966 articles. As has been shown, Knight criticizes the descriptive approach which defines freedom by focusing on the characteristics of the exchange relationship because it ignores the power that individuals bring to the exchange itself. Knight argues that the power an individual brings to the transaction depends, in part, on the current distribution of resources as the starting point of analysis. He takes it as an obvious fact of life that current distribution of resources among people is not equal and thus the power they bring to the exchange relationship is unequal and therefore not free. After looking at the problem from of coming up with an objective standard by which freedom can be defined, he concluded that such activity will come to naught (Knight 1929). Given the futility of

defining freedom, it becomes clear that the search for a definition of coerciveness will be equally futile because that search too is oriented toward finding an objective standard. As Knight writes, “our suggestion is that the fallacy comes in seeking an objective standard, or one which does not finally rest on a judgment of ethical approval or disapproval” (Knight 1929, 142).

Having shown that the first two approaches that have been used to specify criteria for identifying the freedom and coerciveness “produce[s] very counterintuitive judgments,” (257) Keeley moves on to a discussion of using normative concepts in this task. Generally speaking, the normative approach looks to broadly accepted social norms as a means of identifying the presence of freedom and coercion in human activities including economic ones. The normative concepts have both descriptive and consequential elements, but “they cannot be completely specified in empirical terms” (Keeley 1987, 256). With normative and consequentialist concepts, ethical judgments come into play. The question is the basis of those ethical judgments.

Keeley and Knight both point out that making an equivalence between “freedom” and “good”, and “coercion” and “bad” tends to lead to unwanted counterintuitive results. Restraining one person from killing another is generally seen as a good act and yet it involves coercion. Likewise, making decisions such as riding down a dirt road on a motorcycle at 100 mph may be an exercise in freedom, but that does not make it good. What is needed is a criteria that is more subtle in evaluating the extent of freedom/coerciveness involved in a given transaction. Keeley writes that one of the approaches has been to look at “the language of individual moral rights” (Keeley 1987,

256). Coercion then results when an individual engages in an act, with respect to another individual, that is not within their right to do. Because individuals often prioritize rights differently it is still possible to have disagreements as to whether or not a given act is coercive. Keeley uses the example of minimum wage legislation:

Consider disagreements over the effect of minimum-wage legislation on freedom of contract. If an employer in the U.S. were able, legally, to hire an unskilled worker at \$1 per hour, would this transaction be coercive? Some liberals would think so, believing that a worker's consent to such a low wage must arise from desperation and be less than voluntary. Some libertarians would think otherwise. Is a similar transaction at \$3.35 per hour (the current legally-prescribed minimum) coercive? Some libertarians would think so, believing that an employer's consent to a state-imposed rate above what the parties could reach on their own must be less than voluntary. Some liberals would think otherwise. At bottom, one's stand on the issue will depend on what moral rights persons are presumed to have—and on the assumed priority of those rights. If one grants priority to property rights, the fixing of wages at \$3.35 by legislators will tend to be seen as a coercive restriction on the use of capital. If one gives priority to welfare rights, the fixing of wages at \$1 by employers (alone or jointly in markets) will tend to be seen as a coercive restriction on personal well being (Keeley 1987, 257).

While individual moral rights bring us part of the way toward identifying a criterion by which freedom can be distinguished from coercion without leading to unwanted counterintuitive results, the perception of these rights vary enough from individual to individual so as to require “some more basic moral rights” (Keeley 1987, 257).

For Keeley, broadly accepted human rights have the potential to fulfill that requirement. By using human rights as the criterion, coercion is an infringement on these human rights (Keeley 1987). In addition to their broad acceptance, these human rights need to be universally applicable and inalienable. The more specifically they are defined the more analytically useful they are. In addition they must be subject to ongoing critical analysis.

Different religious, ethnic, and national groups have defined the rights of their members in a number of different ways with the result that a discussion of rights is often a contested space. The requirement for broad acceptance of a set of human rights provides a counterbalance that guards against allowing them to simply be a reflection of the values of a dominant group. Broad acceptance alone, however does not rule out the potential for bias and the infringement of the rights of a minority by a sizeable proportion of the world's population. To overcome that problem we acknowledge that "the more plausible human rights are rights that virtually any human beings would claim for themselves, regardless of their personal tastes or motives" (Keeley 1987, 260). By framing an understanding of human rights this way, Keeley avoids the problems that occur when individuals seek to define the human rights of others—clergy for laity, men for women, whites for blacks, Nazis for Jews, Israelis for Palestinians. This reflexive principle—the rights of "the other" are the rights one claims for oneself—overcomes a major hurdle that has resulted in the problem of the asymmetric application of human rights. In the past, the presumed superiority of men over women and the provision of lesser rights for women was universally accepted by those in power, but these lesser rights would not qualify as human rights because they do not meet the criterion of reflexivity. Only by giving women the same rights that men claim for themselves can a set of rights come close to being accepted as broadly recognized human rights. By requiring reflexivity, the issue of power over others is turned on its head.

Reflexivity also ensures that the human rights being defines apply to all people inasmuch as the "other" leaves no room for exclusion—they are applicable to all people,

at all times, without regard to social status, religion, ethnic identity, or any category that can divide humanity between 'us' and 'them.' Human rights are universal and need to be applied to all persons, even those who cannot speak for themselves.

In addition to universality, human rights are inalienable (Keeley 1987). As Keeley explains:

terms like...inalienable are meant to convey that human rights are somehow *permanent* (emphasis in original) entitlements, not subject to cancellation or sale, not contingent on one's social status, role, etc. These terms need not, however, mean that human rights are absolute, that they are unlimited in application. Indeed few, if any rights could be exceptionless. One's right to life, for instance, might conflict with another's right to live, and thus even this right may be liable to limitations. (Keeley 1987, 258)

The question then becomes one of how to handle the exceptions. Certainly they cannot be utilitarian concerns. Rather the use of human rights as an ethical criteria can only be preserved if the only way a given human right can only be overridden is by another human right (Keeley 1987). Keeley uses the analogy of trumps in pinochle to make clear that human rights are like trumps, but even then some trumps can override another trump. In the case of human rights, the overriding of one human right by another, no matter how justifiable, represents a tragic outcome that must not be taken lightly. Serial killers may need to be incarcerated not only because of what they did but because they present an ongoing threat to the right to life of other citizens, nonetheless the incarceration is not a matter to be taken lightly. Though incarceration may be justified it is still an infringement on human rights; it is coercive.

To be useful, human rights need to be defined very specifically. As was shown earlier, the concept of freedom may provide for social cohesion, but without specificity, both the segregationist and the African American soldiers mean different things when

they talk about it. Appealing to “life, liberty, and the pursuit of happiness” may fire up a revolution and give a set of ideals to a nation, but they are open to a wide variety of interpretations. “We can increase our confidence in human rights by becoming...more precise in their specification” (Keeley 1987, 260).

When it comes to the central task of this dissertation—the identification of a criterion by which one can determine whether or not the aggregate food market is coercive—human rights have much to offer. They provide some specificity to the recognition both by Knight and an examination of the logical underpinnings of the assumption of non-coerciveness that the issue is not one of logic or the characteristics of the exchange, but one of ethics. Broadly accepted human rights provide the substance that can be used to look at ethical questions in general and the assumption of non-coerciveness in particular.

Before proceeding further it is necessary to engage in a bit of critical analysis. To start with it must be admitted that human rights—even broadly accepted human rights that are universal, inalienable, reflexive, and specifically described—are identified by human beings and subject to all the foibles of humanity. Some may stand the test of time, while others will fall by the wayside overly influenced by the power of conventional wisdom. Certainly the belief that blacks and other groups were a lesser form of humanity allowed many ethicists in the past to deny them the same rights that were granted to proper Europeans. Even the ‘dregs’ of European society were seen as less than human—even for Adam Smith common workers were of a different race (Smith 1937, 68)—and women were granted fewer rights still. Statisticians must always guard against omitted

variable bias; they must be on the lookout for that which they do not readily see. Similarly, ethicists must guard against that which they do not see. Certainly the poor and the hungry of the world fall into this category. Using the quote from Jesus, “For you always have the poor with you” (NRSV, Mark 14:7a), the problems of poverty has often been relegated to the ashcan. During the last fifty years, we have seen a radical change in our understanding of human rights as socially described racial groups, women, homosexuals, and ethnic and religious minorities claimed their place among the “we” who have human rights. This has happened because people have engaged in critical reflection upon various aspects of human rights and identified some of those who have been left out and fought to ensure that they are drawn in to the camp of that word “broadly.” As James Lowell wrote in his criticism of the Mexican-American War, “New occasions teach new duties, time makes ancient good uncouth, They must upward still and onward, who would keep abreast of truth” (Lowell 1845). Even Lowell’s poem, which was made into a Christian hymn, has not fully stood the test of time, for it begins “Once to every man and nation, comes the moment to decide.” From this end of the time perspective it is easy to argue that the moment to decide comes to women as well. And that is the function of critical theory and a critical view of human rights. One has to have some place to stand, and human rights is a good place. At the same time one can critically examine those rights at the same time, seeing if we fully understand their impact.

Are human rights the best place from which to examine the twin issues of coercion and freedom? Given the criteria set forth above, the answer of this author is yes.

Are they perfect? To that the answer is no, but they are the best that we have at the moment and that is where we will have to stand until we make them better.

The Right to Food

Within the context of this dissertation, the most relevant human right would be a right to food. In the presence of a right to food, the aggregate food transaction would be coercive if that basic human right were to be abridged. This section begins by looking at the development of the right to food including various international declarations that include this right and an early predecessor of that concept. To meet the criteria established in the previous section, it will be shown that this right is broadly accepted, universally applicable, inalienable, and reflexive. In addition significant work has been done to specify what is and is not included in the right to food and what concepts are used to measure the degree to which the right to food is being fulfilled. Using those tools it will be determined whether or not the right to food has been abridged and for whom and how many.

While not positing a right to food, Adam Smith, in his *Wealth of Nations*, does recognize the importance of a minimum standard of living for even the lowest level of workers when he writes:

“A man must always live by his work, and his wages must at least be sufficient to maintain him. They must even upon most occasions be somewhat more; otherwise it would be impossible for him to bring up a family, and the race of such workmen could not last beyond the first generation. Mr. Cantillon seems upon this account, to suppose that the lowest species of common labourers must every where earn at least double their own maintenance, in order that one with another they may be enabled to bring up two children; the labour of the wife, on account of her necessary attendance on the children, being supposed no more than sufficient to provide for herself. But one-half the children born, it is computed, die before the age of manhood. The poorest labourers, therefore, according to this account, must, one with another, attempt to rear at least four children, in order that two have an equal chance of living to that age. But the necessary labour of four children, it is supposed, may be nearly equal to that of one man....Thus far at least seems certain, that, in order to bring up a family, the labour of the husband and wife together must, even in the lowest species of common labor, be able to earn something more than what is precisely necessary for their own maintenance. (Smith 1937, 68)

While Smith's reasoning may not be the most noble, he repeats the argument of economist Richard Cantillon that the wages of the lowest of laborers must be at least equal to what it would cost to raise up a replacement worker in order to keep up with the demand for labor. In this passage, while Smith does not deal with the ill, the old, or those unable to find work, he does recognize that there are certain minimums the worker needs to live. Later on in his discussion of taxes, Smith makes a distinction between two different types of consumable commodities that people may have occasion to purchase: "necessaries"¹¹ and luxuries:

By necessaries I understand, not only the commodities which are indispensably necessary for the support of life, but whatever the custom of the country renders it indecent for creditable people, even of the lowest order to be without.... All other things I call luxuries. (Smith 1937, 821-822)

When Smith writes that necessaries are the "commodities which are indispensably necessary for the support of life" (Smith 1937, 821), he is acknowledging the importance of these things for daily living. Food, undoubtedly, is one of these necessaries, coming in ahead of linen shirts, leather shoes, and coal to heat their houses. Smith's distinction has become embedded in modern economics in the recognition that there is a difference in the economic characteristics of necessities and luxuries. The recognition of this difference however does not extend to considering the possibility that necessities might not conform to the assumption of non-coerciveness.

Over 170 years later in the wake of WWII, the newly formed United Nations General Assembly, on December 10, 1948, adopted the Universal Declaration of Human

¹¹ In further analysis of Adam Smith's arguments, the word necessity will be used instead of the Smith's usage: "necessary."

Rights (UNDHR) which in Article 25 (1) spells out a broad set of rights including the right to food:

Everyone has the right to a standard of living adequate for the health and well-being of himself (sic) and of his family, *including food* (emphasis added), clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (UNGA 1948)

The UNDHR Preamble recognizes that the rights included therein are “the equal and inalienable rights of all members of the human family.”

In 1966, the United Nations General Assembly strengthened the UNDHR with the adoption of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)

recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights. (UNGA 1966)

This UN resolution required ratification by member states and entered into force nearly a decade later on January 3, 1976. In article 11, the ICESCR moves beyond the declaration of food as a human right, listing a set of responsibilities that states party to the ICESCR are to take including making improvements in crop research, conservation, and the distribution of food. States are also to disseminate nutritional information and engage in the reform of “agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources” (UNGA 1966). Participating states are also “to ensure an equitable distribution of world food supplies in relation to need” (UNGA 1966).

Between the adoption of the ICESCR and its ratification, the United Nations Food and Agricultural Organization (FAO) convened the 1974 World Food Conference which set the “goal of eradicating hunger, food insecurity and malnutrition ‘within a decade’” (USDAFAS 2010). At the time, the number of undernourished persons in the world was over 850 million (FAO 2010a). Twenty-two years later, the number of undernourished persons stood at 850 million and the FAO sponsored 1996 World Food Summit set the goal of halving the number of undernourished by 2015 (FAO 2010c). By 2009, the estimate of undernourishment in the world had risen to 1.02 billion persons, the highest level since records began in 1970 (FAO 2010a).

In the years since the ratification of ICESCR, numerous international fora have mentioned or reaffirmed the right to food including: the Universal Declaration in the Eradication of Hunger and Malnutrition, 1974 (FAO-WFC 1974); Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974 (UNGA 1974); Convention on the Rights of the Child, 1990 (UNGA 1990); World Declaration on Nutrition, 1972 (FAO-ICN, 1992); Rome Declaration on World Food Security, 1996 (FAO-WFS 1996b); Plan of Action of the World Food Summit, 1996 (FAO-WFS 1996b); and the United Nations Millennium Declaration, 2000 (UNGA 2000). In addition to reaffirming the right to food, international agencies and advocacy groups have worked to specify the right to food in detail in order to make it operational and enforceable.

One of the groups working on specifying human rights including the right to food has been the Committee on Economic, Social, and Cultural Rights (CESCR) established under the Economic and Social Council of the United Nations (UNESCO 1995). The

committee has issued a set of general comments of which number 12, *The Right to Adequate Food*, was issued in 1999. General comment 12 begins by reviewing the underlying premises for the right to adequate food as it is spelled out in Article 11 of the ICESCR noting that “only a few States have provided information sufficient enough and precise enough to enable the Committee to determine the prevailing situation in the countries concerned with respect to this right [to food] and to identify obstacles to its realization” (UNESCO 1999). It then follows with a set of paragraphs that provide definitions of key terms that will provide the precision needed to identify the degree of compliance with the right to food by member states. Having made the substance of the right to food clear, General comment 12 addresses tools required for the “implementation at the national level” followed by a similar set of “international obligations” (UNESCO 1999).

General comment 12 then introduces five terms that are to be used to determine whether or not the right to food is being adhered to by states and the international community: availability, accessibility, adequacy, security, and sustainability. These terms overlap, to some extent, in their meaning because they are simply various aspects of the what is required to ensure the possibility of the implementation of the right to food.

- ❖ **Availability:** The concept of the availability of food involves issues of production and distribution. The availability of food means that there is sufficient food—physical availability at the household, community, state and/or international levels to provide food for everyone (UNESCO 1999, Kent 2002). For the majority of the hungry in the world, self-production or production within their

community is the primary means of ensuring the physical availability of food for them and their families (UNESCO 1999, Kunnemann 2000). For others in the world availability involves the distribution of food and food products to humanitarian or retail outlets within their community.

- ❖ **Accessibility:** “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and *economic access* (emphasis added) at all times to adequate food or means for its procurement” (UNESCO 1999). For those producing their own food, accessibility includes an adequate resource base and the appropriate tools and resources to engage in food production (UNESCO 1999, Kunnemann 2000). Accessibility also includes the physical ability to provide the labor needed to farm. For those not engaged in their own food production, accessibility means the ability to earn enough to participate in the retail market for food (UNESCO 1999, Kent 2002, Kunnemann 2000). Accessibility can also be provided by social security provided by family members for those too old or weak to earn a living or produce their own food. For some accessibility involves obtaining food from aid agencies (UNESCO 1999). Famine can arise in the midst of a surfeit of food as was true in Bengal in 1943, Ethiopia in 1974, and India in 2001 (Kunnemann 2000, Kent 2002). “Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of *access* (emphasis in the original) to available food, inter alia because of poverty, by large segments of the world’s population” (UNESCO 1999). Hunger is a problem of markets and the lack of market access.

- ❖ **Adequacy:** Adequacy involves issues of quantity, quality, and cultural acceptability (UNESCO 1999, Kunnemann 2002). Food needs to be available and accessible in a sufficient quantity to alleviate hunger. The quality of the food must be able to meet the appropriate nutritional requirements for full physical and mental development of each individual. Caloric sufficiency alone may alleviate hunger but still leave the individual susceptible to malnutrition. In addition the food must be free from contamination by either physical, chemical, or biological contaminants that would adversely affect those eating it (UNESCO 1999). The food made available by either market or non-market sources must be “acceptable within a given culture” (UNESCO 1999). “Adequate food is more than a package of calories and nutrients, and more than just a commodity. Adequate food is culture. Cultural and minority rights related to food have to be respected, protected and fulfilled” (Kunnemann 2000).
- ❖ **Security:** Comment 12 says food security implies “food being accessible for both present and future generations” (UNESCO 1996). One component of food security involves the holding of adequate reserves, at the household, community, state, and international levels to ensure food availability, given the vagaries of weather and other production-related problems. Adequate reserves, properly managed, reduce the need for food embargoes as was seen during the sudden increase in food prices in 2008.
- ❖ **Sustainability:** Sustainability is measured in terms of long-term availability and accessibility (UNESCO 1999). A humanitarian food relief program may meet

immediate needs but unless it involves changing conditions so that individuals, families, and communities are able either to produce their food or earn enough to ensure economic access to food over the long-term, it is not sustainable. Sustainable production practices do not deplete the soil or other natural resources, particularly water and oil.

Having defined criteria that can be used to measure progress toward the fulfillment of the right to food, Comment 12 then defines the responsibilities of states in ensuring that fulfillment.

The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfill*. In turn, the obligation to *fulfill* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfill (facilitate)* means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfill (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters. (UNESCO 1999)

The specification and the enforcement mechanisms are moving targets that are in a constant state of revision because specific means to implement the right to food are resisted by both state powers and commercial interests who benefit from the current state of affairs. It is the constant critical examination of the right to food and descriptive and enforcement mechanisms that continue to clarify the issues involved and find ways forward which will reduce the number of hungry in the world. The goal of this dissertation is to contribute to that critical analysis.

Analysis

Using Keeley's analysis, this dissertation has shown that the best criterion for distinguishing freedom from coercion can be provided neither by a descriptive nor by a consequentialist approach to the issue. Instead, it has been shown that the ethical approach, advocated by both Knight and Keeley, overcomes the inconsistencies that arise when using the two other approaches. In addition, the author of this dissertation agrees with Keeley that broadly accepted human rights provide the best criteria for providing a means by which freedom can be distinguished from coercion. To be useful, the human rights need to be broadly accepted, universal, reflexive, inalienable, clearly specified, and subject to ongoing critical analysis. With these conditions in place, coercion results from an abridgment of human rights.

The right to food has been broadly accepted in major international fora that have promulgated numerous of declarations that address the right to food, including, among others, the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. These rights of which the right to food is a part have been declared to be universal—and thus reflexive—and inalienable. In addition, the Committee on Economic, Social, and Cultural Rights through its general comments process has issued general comment 12 which both specifies the right to food in measurable terms and recognizes the need for an ongoing process of improving the specification. Thus the right to food meets the criteria for a human right whose abridgement results in coercion.

For those with the ability to produce/access their own food or have access to enough money through inheritance, work, investments, retirement, and/or transfer payments to purchase their own food, the right to food has not been abridged as long as they have access to nutritionally complete, culturally appropriate food within their own community. This last distinction is important for some inner city urban, some dispersed suburban, and some isolated rural communities where nutritionally complete food may not be available to those who lack access to transportation to and from the grocery store. For these groups the right to food is abridged in the absence of adequate transportation.

For the 1.02 billion people—approximately 1/6 of the world’s population—identified by the Food and Agricultural Organization for whom access to food has chronically been denied—because of poverty, “natural disasters, the increasing incidence of wars in some regions and the use of food as a political weapon” (UNESCO 1996)—the right to food has been abridged. As noted earlier, poverty and thus the lack of economic access to the products offered in the aggregate food market is the primary problem. Many of these people are dominated by a group that is more politically powerful and as a result have seen their land and resources expropriated for the benefit of a few. People are also forced to work for others rather than producing their own food.

The aggregate food market is protected by the zealous enforcement of property rights. As Amartya Sen writes, “market forces can be seen as operating through a system of legal relations (ownership rights, contractual obligations, legal exchanges, etc.). The law stands between food availability and food entitlement. Starvation deaths can reflect legality with a vengeance” Sen 1987, 166). “In a market economy, people who are too

poor to exercise effective demand will not have food (unless they produce food for themselves, or receive food through transfers)” (Kunnemann 2000). At the heart of the market economy is the assumption of non-coerciveness and for 800 million to 1.02 billion people the market for food is coercive because their right to food has been abridged. They lack the price of entry into the market because the amount of money that they can acquire is insufficient to provide them and their family with the supply of food necessary for their full physical and mental development. Other users outbid them for the available supply of aggregate food items.

Using a normative standard based on one of the broadly accepted human rights, the right to food, it can be said that the assumption of non-coerciveness with regard to aggregate food does not hold for those without access to food, even though at the same time holding for those who do have access. It should be noted that with the run-up in commodity prices in the 2007-2009 period, some 200 million people have been added to the total of those whose right to food has been abridged because they lack the price of entry into the market system. The line between those for whom aggregate food is a coercive market and those for whom it is not is variable, depending upon circumstances.

Thus, it has been shown that for a significant portion of the world’s population the assumption of non-coerciveness for aggregate food does not hold. It turns out that for those who have read *The Wealth of Nations* this should not be a particularly surprising result. In justifying self-interest, Adam Smith writes, “by pursuing his own interest he frequently promotes that of society more effectually than when he really does intend to promote it” (Smith 1937, 423). Frequently, that is for up to 5/6 of society, the pursuit of

self-interest under the assumption of non-coerciveness works reasonably well in providing for their aggregate food needs. For the rest, it does not and for them the aggregate food supply is coercive. Unfortunately, the aggregate supply and demand equations used by economists and shown obeisance by politicians do not take into account the subtlety contained in Smith's text. The result is a set of national and international economic policies that allow 1.02 billion people to be at least partially excluded from the aggregate food market because they lack the price of entry; they do not provide effective demand. As Sen says, "Starvation deaths can reflect [the] legality [of the marketplace] with a vengeance" (Sen 1987, 166).

It is important to note that NET operates on the basis that the assumption of non-coerciveness holds as long as the mechanics of the economic transaction between meets various criteria. But, it is not enough for the assumption to hold for the aggregate food transactions for 5/6 of the world's. If it does not hold for all aggregate food transactions, then it must be said that the assumption of non-coerciveness does not hold in the case of aggregate food and policies need to be implemented to ensure that the right to food is not abridged. These policies need to ensure the availability, accessibility, adequacy, security, and sustainability of the food supply is protected for all people, but especially for the most vulnerable populations.

Policy Implications

The fact that the aggregate food market is coercive means that the normal market mechanisms, in and of themselves, do not ensure that all persons can access an adequate quantity and quality of food to meet their needs. Therefore non-market mechanisms used by themselves and/or in conjunction with market mechanisms need to be used to guarantee that the right to food is not abridged. In the United States a number of non-market mechanisms are used in order to reduce hunger. Since its establishment in the 1930s, Social Security (SS) has provided monthly payments to persons over a pre-determined age (which presently varies from 62 with reduced benefits to 67) to supplement their retirement income. In addition, the Social Security Administration provides survivors benefits, disability benefits (USSSA 2010a) and Supplemental Security Income (SSI) for “disabled adults and children who have limited income and resources” (USSSA 2010b). Social Security Benefits are funded by a payroll tax while SSI benefits are paid for out of general tax revenues. The United States Department of Agriculture provides Supplemental Nutrition Assistance Plan (SNAP) benefits, previously known as Food Stamps, that allow persons to access a certain value of food items each month (USDA-FNS 2010). There is an income qualification for this program. In addition, low income families are eligible to Temporary Aid for Needy Families (TANF) which is administered by the U. S. Department of Health and Human Services (USDHHS) and funded out of general revenues (USDHHS-ACF 2010). Programs that touch a large portion of the population are Women, Infants, and Children (WIC) that provides for prenatal and neonatal nutrition and the school breakfast and lunch programs.

Beyond these and other governmental programs, there are a variety of services provided by non-governmental organizations (NGOs). These include local food banks, Second Harvest, soup kitchens, and programs that engage in outreach to the homeless. Some of these programs like SS, SSI, SNAP, and TANF provide funds or credits to individuals and families who then use these to access their food needs through the normal market mechanisms. Many of the NGOs function through non-market mechanisms, directly providing food to the hungry.

The bulk of the 1.02 billion chronically hungry people in the world live in rural areas in developing nations. Therefore one of the ways to overcome the abridgement of the right to food is to identify non-market mechanisms that if implemented have the potential in the short-to-medium-run to enable rural people to grow the food that they need. In the long-run these policies should enable these same agriculturalists to produce a surplus that they can sell to their neighbors and more distant markets.

Among developing nations, the ability to directly fund non-market mechanisms to ensure that their citizens are assured of the right to food is limited at best. As a result, the best strategy may be to enable people to produce their own food, a non-market strategy that requires lower funding levels than making direct payments to the food insecure. This is particularly true for those countries where the majority of the hungry live in rural areas. The obligations of countries, outlined in comment 12, “to *respect*, to *protect*, and to *fulfill*” (UNESCO 1996) provide an excellent framework in which to examine a set of policy implications for these countries. At the same time it needs to be noted that the policy implications involve actors beyond the state, to include international agencies,

international enterprises, and non-governmental organizations (NGOs). Given the existence of corrupt states, concerted action by the community of nations surely will be required to hold national leaders accountable for ensuring that they comply with the obligation to respect, protect, and fulfill with regard to the right to food. Those leaders who fail to fulfill this obligation should be held accountable by the International Criminal Court for violating a basic human right.

“The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access” (UNESCO 1996). For small holder agriculturalists it is important that the state respect the usufruct rights they have to the land that they farm. These farmers often do not have formal titles to the land that may have been farmed by their ancestors for generations and so protecting their property rights in a court of law can be a problematic affair even assuming that they can afford to hire a lawyer (von Braun and Meinzen-Dick 2009, Cherian 2010, Cotula, et al. 2009). An equally disturbing problem is the tendency of the rulers of failed states to reallocate land to their political supporters, members of their ethnic group (von Braun and Meinzen-Dick 2009, Cherian 2010, Cotula, et al. 2009), multinational corporations, and international investment groups.

Even more problematic is the situation of pastoralists and hunter/gatherers who do not occupy land in the same way as settled farmers (von Braun and Meinzen-Dick 2009). Pastoralists use a series of land parcels on a seasonal basis. While they may dig wells on some parcels and leave other marks of their presence, in other areas with adequate water they may simply graze their livestock before moving on to other pastureland.

Hunter/gatherers often have small settlements but hunt and gather vegetal material over a much wider area. To a farmer or an industrialist, the bulk of the land necessary to provide an adequate livelihood for pastoralists and hunter/gatherers may appear empty and available for large scale agriculture, resource extraction or industrial uses. But what appears to be empty may not be empty at all.

In order to protect long-term access to food, “food-importing countries with land and water constraints, but rich in capital, such as Gulf States.... [and] countries with large populations and food security concerns such as China, South Korea, and India are seeking opportunities to produce food overseas” (von Braun and Meinzen 2009, 1). Internationally, as many as 50 million acres have been purchased, leased, or are under negotiation. The bulk of those acres are in poor countries in Africa and “raise concerns about the impacts on poor local people, who risk losing access to and control over land on which they depend” (von Braun and Meinzen 2009, 1). The negotiations for these lands often involve the same kind of unequal power relationships that Knight wrote about. With a lack of transparency and a power imbalance, the land access of small holder agriculturalists, pastoralists, and hunter/gatherers are at risk (von Braun and Meinzen 2009).

For small holder agriculturalists, pastoralists, and hunter/gatherers their “existing access to adequate food” (UNESC 1996) is directly dependent upon access to their traditional lands. Separated from their land, these households are forced to participate in a coercive market system for food. But in the absence of alternate employment, they lack the financial resources necessary to purchase the food they need. Thus states need to

avoid taking actions that would interfere with the usufruct rights and land access rights for small holder agriculturalists, pastoralists, and hunter/gatherers (von Braun and Meinzen-Dick 2009). Because of the weakness of many of the governments involved in negotiating these deals with more stronger states of more powerful commercial interests, there is a need for international institutions to develop “a code of conduct for foreign land acquisition” (von Braun and Meinzen 2009, 3) to force the negotiating parties to respect the rights of those who are at risk.

Where land is taken by the government for legitimate purposes, it is important that the payment they receive is adequate to ensure long-term financial stability and food security (Worku 2008). In addition to money, the compensation should include job retraining and longer-term support as those displaced transition from a rural to a more urban lifestyle. The transition is often difficult because agriculture is more than a means of earning a livelihood, it is a way of life.

“For a considerable number of countries, hardly any serious expert believes that these countries will be able to implement the right to feed oneself for the rural masses in the foreseeable future without agrarian reform” (Kunnemann 2000). At the same time this is one of the most politically charged activities because it usually involves changes in the land holdings of the rich and powerful. Tax and inheritance measures could be implemented in a way that would encourage the division of large land holdings into smaller parcels capable of supporting a family.

“The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food”

(UNESCO 1996). For many developing countries the major source of economic activity rests with extractive industries—mining, petroleum, and agriculture. All three of these industries have significant externalities including the pollution of land, water, and air, while developing countries often have very weak environmental laws and those they do have are unenforced due either to enforcement capacity or corruption. In addition to the impact pollution has on the health of the nearby residents, pollution has negative consequences for agricultural production. Riverine, estuary, and coastal fisheries can be destroyed by water pollution while destroying irrigation agriculture at the same time. Over irrigation by commercial agriculture combined with heavy agricultural chemical use may leave once productive land nearly sterile and in need of long-term remediation. The dumping of mining waste destroys that land on which it rests while reducing habitat for plants and animals that can supplement the diets of local residents.

Forcing states to protect the environment and thus the ability of their residents to produce their own food may come from two directions. NGOs can organize the local and international pressure on the governments to adopt and enforce stronger environmental law. In addition they can put pressure on the expatriate firms that are engaged in the polluting activities. Another way to increase environmental protection in these countries is for the home country of the polluting firm to hold that firm accountable for engaging in activities that abridge the right to food for citizens of the country in which they operate (Kunnemann 2000).

“The obligation to *fulfill (facilitate)* means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means

to ensure their livelihood, including food security” (UNESC 1996). Public research, education, and extension are at the heart of any effort to improve the production levels of food insecure farmers. While a significant amount of agricultural research in developed countries is now being conducted by or under the aegis of multinational agribusinesses, it is important that the role of public research be strengthened in developing countries. This is true for several reasons. With public research farmers can save their own seed and share it with neighbors while the use of seeds produced by private research involves technology fees and farmers are proscribed from seed saving, resulting in increased operating costs. Private research also focuses most of their research on the five or six major crops that comprise the bulk of international agricultural commodity trade. Unique crops and localized varieties do not generate sufficient revenue for agribusiness firms to justify the cost. In addition private research is oriented toward supporting the profitability of seed and chemical companies and not toward the needs of small holder agriculturalists.

Public research will need to be facilitated by international foundations, NGOs, in addition to the support that can be provided by the country itself. The strengthening or reinstatement of a public extension service is important to help translate the benefits of public research and public varieties to individual agriculturalists. Farmers are often slow to adopt new ideas, preferring to depend upon practices with which they are familiar. In addition farmers are often reluctant to adopt new practices if those practices draw negative comments from their neighbors. Only long-term support by extension services, international agencies, and foundations will be able to enable farmers to make the necessary changes they need to make to ensure their food security.

Because food production is subject to the vagaries of weather and disease, states and international agencies need to facilitate the development of reserves that can be held at the household, community, national, and international levels. The development of household reserves can be as simple as growing some crops that store well, and implementing preservation techniques to allow various foodstuffs to be stored for a year or two. The extension service can play a significant role in enabling households to manage their own “reserves.” Farmers can develop cooperative associations that not only help farmers market surplus production, they can hold community stores that farmers can draw upon when they experience a crop failure. Reserves at the state and international levels can be instituted in a way that that provides for dispersed storage in an amount that is sufficient to be able to withstand the kind of shocks that were seen in the 1970s, 1995-1996, and 2007-2009. In each case the price shock was the result of the unavailability of adequate stores.

“Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfill (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters” (UNESCO 1996). Given the weak financial condition of many developing countries, emergency feeding programs will continue to depend upon international support and the work of NGOs. Given the ethnic tensions that are evident in many countries, it is important that this food be distributed without discrimination against any group. Host countries often hold feeding programs for the disadvantaged hostage until the NGO agrees to provide additional food for the members

of the group in power. It will take pressure by contributors to the NGOs and the nation where they are headquartered to reduce the incidence of this kind of quid pro quo activity. For the urban poor it will important to have an urban component of the extension service to help the poor develop the job and entrepreneurial skills that will enable them to feed themselves and their families. Again this requires a long-term commitment.

In some ways, comment 12 gave a pass to the Bretton Woods institutions (the World Bank and the International Monetary Fund), the United Nations, the World Trade Organization, and other international bodies. The only serious critique that comment 12 made was of “The international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis. Care should be taken...in any structural adjustment program to ensure that the right to food is protected” (UNESCO 1996).

Because aggregate food markets are coercive, food needs to be treated differently in various trade agreements, especially those negotiated through the World Trade Organization. Because food has been included along with products that are non-coercive, food issues are subject to the same rules as other products and rights, leading to decisions abridge the right to food for the world’s most vulnerable.

In addition, economists at these international institutions need to refine their models and other analytical tools so that food is not lumped into equations along with products that are non-coercive.

These policy recommendations run counter to those in circulation today where it is argued that trade liberalization, market access, widespread access to genetically modified crops, and increased production by farmers in developing countries are the answer to feeding the hungry of the world and meeting the food needs of a world population that is expected to increase by 3 billion people by 2050. Certainly 300 bushel/acre GMO corn and 75 bushel/acre soybeans have an important role to play in meeting increasing food, feed, and industrial needs for these crops over the next 40 years. But those developments and increased trade liberalization are not sufficient; some level of non-market activities is required. For those lacking the price of entry into the aggregate food market, long-term programs and policies that support self-production, job training, and some level of continued direct feeding will be needed if the world is to reverse the trend of the last 45 years and begin to steadily decrease the number of chronically hungry people.

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Vita

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In the summers of 1978 and 1980, Harwood participated in the archaeological excavation of Tel Aphek and Izbet Sartah in Israel. He excavated and studied archaeology under Moshe Kochavi and Zvika Lederman of the Institute of Archaeology, Tel Aviv University and Israel Finklestein of Bar Ilan University. He was the American Camp Manager at Tel Aphek and Izbet Sartah in 1980.

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