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The right to food, why US ratification matters

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Molly Anderson's argument that irrespective of the US refusal to ratify the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966) it is time for federal food assistance programs such as SNAP mandated through the Farm Bill to adopt a right to food and nutrition approach is foresighted and significant. As is Anne Bellow's succinct and equally powerful proposal for widening the debate to include a system's-based human rights approach to a National Food Plan. Their timely advocacy is compelling given the few influential US food policy voices speaking from a food justice perspective about the dysfunctional industrial food system and the failure of the Federal Government to ensure access to healthy food and food security for all.

From a social justice standpoint and the right to food obligations ratified in international law these arguments must also address widespread US food insecurity caused by income poverty, punitive welfare policies and unfair income distribution. As public health and social policy research shows pervasive first world food insecurity has increasingly been left to charitable food banking originating in the USA in the late 1960s; its cross border export in the early 1980s to Canada; ensuing global spread and by 2015 Big Food and Big Ag corporate capture in all OECD member states. Meanwhile the indifferent state has looked the other way as US style food charity has supplanted adequate wages and income assistance as the primary response to food insecurity.

Adopting the right to healthy and nutritious food

As Anderson rightly argues adopting a right to food framework in the USA would be a major advance in tackling stigma in the receipt of public food aid (to say nothing of charitable food handouts); overcoming the fragmentation of a plethora of food assistance programs and varying eligibility criteria (undermining the notion of universal entitlement); and reconnecting the disconnect between the federal monitoring of 'very low food insecurity'—what Janet Poppendieck (2014) has called the federal euphemism for hunger—and introducing effective policies to reduce it. After all the USDA (2017) collects robust evidence-based data regarding the prevalence of food insecurity—as does Canada—yet fails to connect the research dots to policy making directed at its structural causes—as in Canada.

Certainly, as Bellows notes, in these contentious times it will prove hugely challenging for the US government to adopt a rights-based approach, in other words first and foremost recognizing food and nutrition as a basic human need and fundamental human right. Neoliberalism is a formidable obstacle. As Anderson comments it has led 'to unprecedented levels of inequality in the USA'. Indeed how could this be otherwise given its relentless imposition of market ideology, deregulation and privatization, cutting taxes, dismantling the welfare state and the pursuit of austerity over public policy informed by economic, social and cultural rights.

As she points out the consequences are clear: a diminished middle class coupled with an enriched 1%; stagnant farm and foodworker wages; a constant rate of 14 and 15% food insecurity—widespread domestic hunger—and 'the growth of a food system that is killing us,' further compounded, as Anderson notes, by the Trump Administration's radical roll back of legislation that protects foodworker labor and the environment (p. 1). Hence her demands for prioritizing the right to healthy and nutritious food. What cuts to the heart of the matter is her observation that while the food system may be 'broken,' it is obviously 'serving the interests of some people very well.'

Abandoning the Social Contract and collective solidarity

Anderson notably calls attention to the food system's broken links to public health and environmental quality but most crucially in my view to the abandonment of the Social Contract: 'underlying all this is a broken trust in our government to protect the interests of the people—the fundamental core of the Social Contract,' thereby undermining any idea of collective solidarity.

Her argument reflects the implicit message of the UN FAO *Voluntary Guidelines* that the right to food is about 'democracy, good governance, human rights and the rule of law' (FAO-VGs, 2005), in other words ensuring public accountability for protecting the Social

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Contract. We are all 'rights holders' with the state as the 'primary duty bearer' for ensuring food security for all. Given that food is a market commodity, more profoundly it is a public good to which all have right of access.

For too long the values and national choices informing food and social policy have benefitted the rich and corporate elite at the expense of the collective health and social well-being of society, particularly the vulnerable leading precarious and often desperate lives. It needs restating that domestic hunger is at root a symptom of income poverty and a broken social safety net.

'Feeding the need,' Big Food charity and the indifferent state

Promising to fill the gap, or 'feed the need' as Andy Fisher (2017) would term it, charitable food banking is likewise testimony to the false promises of neoliberalism: the sacred mantra that economic growth, jobs and privatization will raise living standards for all with 'trickle down' enabling the underpaid, the precariously employed, the unemployed and the homeless to pay the rent and feed themselves and their families. If neoliberalism serves so well as macro-economic policy, how come in the rich world we are now dependent on Big Food corporate charity for feeding 'left-over' food to our 'left-behind' people (Riches, 2018)?

There is little evidence that donating surplus food is an effective response to the structural problems of food poverty let alone a decisive strategy for ending waste in a dysfunctional food system. While Canadian data indicate that more than 60% of the food insecure are working poor, they also show that only one in four of the food insecure uses food banks. Of those who do many still go hungry (Riches and Tarasuk, 2014). Corporate food banks, at the waste end of the industrial food supply chain, have been described as 'successful failures' (Ronson and Caraher, 2016) rejecting the Chicago-based Global Foodbanking Network's claim that food banking is a proven solution to food waste and hunger (GFN, 2013).

More problematically the corporate social responsibility expressed by Big Food's capture of charitable food banking—backstopped by a range of business partners, celebrity donors, NFL teams, the media and Big Philanthropy—is publicly perceived as practical compassion directed at alleviating hunger and expressing community solidarity. Or is it rather commercial branding and corporate social investment as a form of 'uncritical solidarity' (Pérez de Armiño, 2014)? Feeding America's board membership is one example of what has been termed 'corporate America's unholy alliance with the anti-hunger movement' (Fisher, 2017). It is well therefore to be reminded of Poppendieck's observation that food charity acts as a moral safety valve, we all feel better but the problem remains (1998). Food banking depoliticizes hunger allowing indifferent governments to look the other way.

The right to food, why ratification matters

The right to food matters because for seventy years it has been written into international law and over time ratified by 164 UN member states. Sadly the US refusal to ratify the *ICESCR* enables it to neglect its global moral, legal and political obligations progressively to realize the right to food when addressing its home grown hunger. As Bellows states 'the US has taken an "exceptionalism" approach to human rights with its own system of education and teaching disregarding the critical and practical aspects of international affairs.'

A revealing example is a comment by the executive director of the California Food Policy Advocates that 'right to food language works better in an international context than in a domestic context. Legislators in Sacramento believe that a right equals a mandate which equals money' (Fisher, 2017). Doubtless this is the case but the statement overlooks the strategic success of right to food language informing poverty reduction policies not only in countries such as Brazil, India and South Africa but its potential as an international instrument for rich world UN member states to review their progress in achieving food security for all.

This is made possible through the UN Committee on Economic, Social and Cultural Rights (CESCR) 5 year periodic review process. It invites representatives of food policy, social welfare, public health, environmental, civil liberties and human rights associations to contribute their coordinated expertise and influence on monitoring public policy directed at progressive food, public health and social policy. It is an iterative process between government, civil society and the UN's expert committee on the extent to which progress has been made concluding with recommendations as to the further realization of the right to food (Adzakpa, 2016). The process certainly needs strengthening, it is lengthy and not a legal quick fix but stands as a significant international mechanism for mainstreaming the right to food and holding governments to account.

Still, despite the lack of current US participation, it would be hypocritical for the 34 OECD countries which have ratified the *ICESCR* to take the moral high ground. All of them are now food bank nations. Their increasing embrace of neoliberalism has steadily been weakening domestic compliance with right to food obligations.

Feeding ourselves with dignity and choice

Notably the right to food can be dated back eight hundred years to the *The Charter of the Forest*, a sister declaration to *Magna Carta*, as 'the right to honey, grazing rights and rights to firewood, (which) constituted the essentials of medieval life, but translate in the 21st century to the right to adequate nutrition' (van Beuren, 2013), a historical note worth thinking about.

In today's world the right to food has concrete international legal definition. Ratification establishes obligations upon respective State Parties to ensure its progressive realization in the context of food security for all. It engages matters of availability, food production and land rights, nutrition and food safety, and is inclusive of the right to an adequate standard of living: access to food, clothing and shelter and to housing, medical care and necessary social services; and to 'the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control' (see UDHR Article 25, 1948; ICESCR Article 11, 1966; GC12, 1999; FAO-VGs 2005).

The right to food is about freedom from want and hunger. It is 'realized when every man, woman and child, alone or in community…have physical and economic access at all times to adequate food or the means for its procurement' (GC12, 1999). It is about enabling all to feed themselves and their families with choice and human dignity. Yet for too many in a globalized market economy food is the elastic item in the household budget. The daily act of eating requires having sufficient money in your pocket to

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purchase food in normal and customary ways whether in the corner store, the supermarket or the farmers market.

Justiciability

As a legal right the right to food is a justiciable claim actionable through the courts. A right is not a right unless it can be claimed. Yet it requires constitutional entrenchment. Significantly the original protocols of the *UDHR*—the *International Covenant on Civil and Political Rights* (ratified in 1992 by the USA) and the *ICESCR* in which the right to food is embedded—recognize the indivisibility of all human rights principles: universality, human dignity, autonomy, participation, accountability, empowerment, non-discrimination, transparency and the rule of law. This underlines the critical role of the State in advancing public policy informed by human rights-based approaches.

The right to food is also a natural right. As Eleanor Roosevelt is reported to have said 'a right is not something that somebody gives you; it is something that nobody can take away' (Thomas, 2013).

Government as 'primary duty bearer'

Implementing the right to food is about ensuring the capitalist economy works to the benefit of all, expressing collective solidarity. Certainly there is a moral imperative to feed hungry people but the right to food is not about the stigma of corporate food charity—nor of building bigger and better food banks. Nor is it about government doing everything for everyone. As Mary Robinson, former president of Ireland and UN High Commissioner for Human Rights has said 'the right to food is not about giving away free food to everybody' (Robinson, 2004).

It is also not about the normalization of emergency food aid for everyday use. As I write Hurricane Florence is in full force with CNN News just posting that 'Carolina food banks, already short of supplies, are in desperate need of donations' (13 September 2018). In terms of disaster relief this plea is urgent and necessary yet food banks are always running out of food and mounting food drives. Where one might ask are the public programs of emergency food assistance?

As Louise Arbour, former justice of the Supreme Court of Canada and also UN High Commissioner for Human Rights has argued, 'there will always be a place for charity but charitable responses are not an effective, principled or sustainable substitute for enforceable human rights guarantees' (2005). For which the primary responsibility lies with government.

Domestic compliance 'respect, protect, fulfill'

In terms of addressing hunger and food insecurity UN General Comment 12 makes clear government's primary duty is to monitor and ensure domestic compliance with its obligations under international law to 'respect, protect and fulfill' the right to food:

'Respect' means government not arbitrarily taking away the people's right to food by for example tolerating sub-poverty minimum wages; cutting welfare benefits or imposing harsher eligibility criteria. Donald Trump's tweeted support for 'a Farm Bill that includes more stringent work requirements in order to receive SNAP benefits' is a troubling example and as WhyHunger further comments 'this harsher work requirement would harm those workers, most of whom have low-wage jobs without benefits and need SNAP to make ends meet. Further, it would force unemployed parents to choose job training over childcare, putting children at greater risk of food insecurity, with no guarantee of employment' (WhyHunger, 2018).

'Protect' requires governments passing and enforcing laws to prevent non-State actors from violating the right to food. This is not only about ensuring healthy, nutritious and safe food but includes protecting land rights and the food sovereignty of Aboriginal peoples. Fulfill obliges governments 'to take positive actions to identify vulnerable groups and to implement policies to ensure their access to adequate food by the ability to feed themselves' (Ziegler *et al.*, 2011). In other words stimulating employment, protecting workers rights, ensuring a living wage and adequate social security benefits including affordable housing, child care and acting as the provider of last resort in terms of social protection.

'Rights talk,' holding the US government to account

As Anderson and Bellows both recognize, changing the national food policy conversation to the right to food will be difficult to say the least. Yet these times highlight the pressing need for 'rights talk' across civil society. It requires long overdue human rights advocacy that connects the policy dots between food justice, health and nutrition, the environment and social policy and between anti-hunger and civil liberties activists, academics and grassroots organizations. The spotlight must be on public accountability, ratification of the right to food and the role of the US government as the 'primary duty bearer' for ending hunger.

The debate must include but reach beyond food assistance (public and private) programs and a National Food Plan. The causes of food waste must be addressed with surplus food donations found wanting as an effective long term remedy for domestic hunger. Food insecurity is primarily a matter of affordability and social justice—a stark problem of income poverty, unfair income distribution and increasing inequality. As Anderson (2013) has herself noted 'while community based initiatives will continue to serve some portion of the US population whose right to food is violated, …it will never substitute for recognition of the right to food.' Indeed she directs attention to 'the root causes of hunger and food insecurity' declaring what is needed are 'a true living wage, employment for all who are able to work, reducing corporate influence on the US government and pernicious manipulation of food choices, and creating a mandatory social safety net for everyone.'

Yet what for Anderson is the most serious missing piece 'is a concerted effort to hold the US Government to account for the realization of the right to food for all people' (2013). As a consequence of this long standing refusal to act as the 'primary duty bearer' the Federal Government excludes itself, and *civil society* from participating in the 5 year CESCR periodic review process—and of monitoring domestic compliance with the *ICESCR* to 'respect, protect and fulfill' its obligations under international law toward achieving food security for all.

As an absentee participant the US Federal Government denies itself and civil society the benefit of this international exchange of ideas and strategies with other UN State Parties and forgoes the opportunity to contribute its ideas to essential debates regarding human rights-based approaches to ending domestic hunger in the rich world. Acknowledging this Anderson nevertheless proposes pursuing the right to food agenda also at state and municipal levels. This is critically important and necessary as a 'bottom-up' strategy to engage, inform and educate while building momentum toward formal US ratification.

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However, I am equally persuaded by Bellow's argument that a national system wide human rights framework has to be adopted for addressing pervasive food insecurity in the USA, one extending beyond a National Food Plan. US ratification of the *ICESCR* would open the door to participating in the UN review process. Symbolically and practically it would signal the Federal Government's intention to act in domestic compliance with international law and its moral, legal and political obligations to advance the right to food inclusive of all, thereby recommitting itself to collective solidarity and the Social Contract.

What is perhaps most crucial about discussing these issues from a human rights perspective is best expressed by Louise Arbour: 'the reason that "rights talk" is resisted by the powerful is precisely because it threatens (or promises) to rectify distributions of political, economic or social power that, under internationally agreed standards and values, are unjust' (Arbour, 2005). It is why US ratification of the right to food matters.

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