

# INTRODUCTION

**Jamie Renner\***

Historically, the American legal academy has paid little attention to global hunger. The discipline of food law has focused primarily on laws and regulations implemented and enforced by the United States' Food and Drug Administration.<sup>1</sup> Agricultural law has centered on laws pertaining to domestic farming.<sup>2</sup> Poverty law has focused on a wide range of domestic laws, public programs, and justice concerns that are particularly pertinent to low-income communities, only some of which relate to food security.<sup>3</sup> Even the emerging field of "food law and policy" addresses food insecurity as just one of many food system concerns.<sup>4</sup> With exceptions mentioned below, the legal academy has not yet embraced global food security<sup>5</sup> as a subject worthy of its own discipline.

This reality is troubling, given the scale and moral significance of global food insecurity; the fact that food insecurity is, in significant part, a legal issue; and the continuing lost opportunity to train generations of attorneys to promote food security domestically and internationally.

## THE SCALE OF FOOD INSECURITY

In terms of scale, food insecurity is one of humanity's greatest challenges. The United Nations Food and Agriculture Organization defines food security as "physical and economic access to sufficient safe and nutritious food that meets . . . dietary needs and food preferences for an active and healthy life."<sup>6</sup> Globally, one in nine people is chronically

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1. See generally Baylen J. Linnekin & Emily M. Broad Leib, *Food Law & Policy: The Fertile Field's Origins and First Decade*, 2014 WIS. L. REV. 557 (2014) (discussing historical development of "Food Law," "Agricultural law," and "Food Law & Policy").

2. *Id.* at 560.

3. See generally Martha F. Davis, *The Pendulum Swings Back: Poverty Law in the Old and New Curriculum*, 34 FORDHAM URB. L.J. 1391 (2007) (discussing the development of "poverty law").

4. See generally Linnekin & Broad Leib, *supra* note 1 (discussing historical development of "Food Law," "Agricultural law" and "Food Law & Policy"); Baylen J. Linnekin et al., *The Future of Food Law & Policy: The Responsibility of Lawyers in the Academy and Beyond* (U. of Ark. Law Sch. Research Paper No. 14-22, Oct. 19, 2013), <http://ssrn.com/abstract=2342872> (discussing the academic field of "Food Law and Policy").

5. The Author considers "food security" to include nutrition security.

6. FOOD & AGRIC. ORG. OF THE UNITED NATIONS [FAO], AN INTRODUCTION TO THE BASIC CONCEPTS OF FOOD SECURITY 1 (2008), <http://www.fao.org/docrep/013/al936e/al936e00.pdf>.

undernourished, unable to meet basic dietary energy requirements.<sup>7</sup> Two in seven people suffer from micronutrient deficiencies.<sup>8</sup> Over 30% of the world's population is anemic<sup>9</sup> and 26% of the world's children are stunted, below normal height and weight as a result of malnutrition.<sup>10</sup> Ultimately, “[p]oor nutrition causes nearly half (45%) of deaths of children under five - 3.1 million children each year.”<sup>11</sup>

In the United States, 14% of households “ha[ve] difficulty at some time during the year providing enough food for all their members due to a lack of resources.”<sup>12</sup> In Vermont, 6% of households experience “very low food security,”<sup>13</sup> meaning that “the food intake of some household members [is] reduced and normal eating patterns [are] disrupted at times during the year due to limited resources.”<sup>14</sup> And in Windsor County, home to this Law Review, 6,995 residents (one in eight)—including 2,332 children under the age of 18—collectively rely on approximately \$863,573 per month in food assistance from the Federal Supplemental Nutrition Assistance Program (formerly the Food Stamp program).<sup>15</sup>

The sheer prevalence of food insecurity calls for the legal academy's attention. The intolerable nature of its causes and consequences demands it. First, globally, food insecurity is widely driven by inequality and injustice—

7. FAO, THE STATE OF FOOD INSECURITY IN THE WORLD 2015, 8 (2015), <http://www.fao.org/3/a4ef2d16-70a7-460a-a9ac-2a65a533269a/i4646e.pdf>. The Food and Agriculture Organization of the United Nations defines “undernourishment” to mean “a state, lasting for at least one year, of inability to acquire enough food, defined as a level of food intake insufficient to meet dietary energy requirements.” *Id.* at 53.

8. See MICRONUTRIENT INITIATIVE, INVESTING IN THE FUTURE: A UNITED CALL TO ACTION ON VITAMIN AND MINERAL DEFICIENCIES 1 (2009) [http://www.unitedcalltoaction.org/documents/Investing\\_in\\_the\\_future.pdf](http://www.unitedcalltoaction.org/documents/Investing_in_the_future.pdf) (“Around the world, at least two billion people live with vitamin and mineral deficiencies.”).

9. *Nutrition: Micronutrient Deficiencies*, WORLD HEALTH ORGANIZATION, <http://www.who.int/nutrition/topics/ida/en/> (last visited Feb. 19, 2016).

10. FAO, THE STATE OF FOOD AND AGRICULTURE 3 (2013), <http://www.fao.org/docrep/018/i3300e/i3300e.pdf>.

11. *Hunger Statistics*, WORLD FOOD PROGRAMME, <https://www.wfp.org/hunger/stats> (last visited Mar. 13, 2016).

12. ALISHA COLEMAN-JENSEN, U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2014 v (2015), <http://www.ers.usda.gov/media/1896841/err194.pdf>.

13. *Id.* at 20.

14. *Id.* at v.

15. *3SquaresVT Households, Recipients & Benefits By Vermont County for August 2015*, VT. DEPT. FOR CHILDREN & FAMILIES (Sept. 24, 2015), <http://dcf.vermont.gov/sites/DCF/files/ESD/Docs/3SQVT-County.pdf>. See also *QuickFacts: Windsor County, Vermont*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/50027,00> (last visited Mar. 15, 2016) (estimating 2014 population as 56,014).

from gender discrimination<sup>16</sup> and the disregard of indigenous peoples' livelihoods<sup>17</sup> to "international political and economic arrangements that systematically benefit the wealthy and disenfranchise the poor."<sup>18</sup> Second, the consequences of food insecurity are severe—from personal physical and psychological suffering, disempowerment, and indignity to social, economic, and political unrest and upheaval.<sup>19</sup>

In discussing the field of "poverty law," Stephen Wizner wrote: "Most people believe that poverty is a natural, pre-legal condition of society, but the maldistribution of income and wealth is not a phenomenon unrelated to law. 'To believe that poverty is based only on individual failure ignores the legal structures that create and perpetuate income imbalances.'"<sup>20</sup> Likewise, food insecurity is not necessarily a "natural, pre-legal condition of society."<sup>21</sup> Nor is it the result of poverty alone. Rather, domestically and globally, a vast network of laws and policies contribute to its creation, perpetuation, and alleviation.

#### GLOBAL FOOD SECURITY IS A LEGAL ISSUE

To begin, food security and the rule of law are intimately intertwined. Without justice and stability in the creation, administration, and enforcement of law, societies are vulnerable to food insecurity and hunger.<sup>22</sup> Today, for

16. ASIAN DEV. BANK, GENDER EQUALITY AND FOOD SECURITY - WOMEN'S EMPOWERMENT AS A TOOL AGAINST HUNGER 1–5 (2013), <http://www.fao.org/wairdocs/ar259e/ar259e.pdf> (exploring the connection between gender equality and food security).

17. See, e.g., Smita Narula, *The Global Land Rush: Markets, Rights, and the Politics of Food*, 49 STAN. J. INT'L L. 101 (2013) (discussing the interconnection between foreign land investments and food security for indigenous populations).

18. Carmen G. Gonzalez, *World Poverty and Food Insecurity*, 3 PENN. ST. J.L. & INT'L AFF. 56, 56, 59 (2015) (discussing the relationship between international political and economic systems and food insecurity).

19. Inez Perez, *Climate Change and Rising Food Prices Heightened Arab Spring*, SCI. AM. (Mar. 4, 2013), <http://www.scientificamerican.com/article/climate-change-and-rising-food-prices-heightened-arab-spring/>.

20. Stephen Wizner, *Book Review: Poverty Law, Policy, and Practice*, 22 GEO. J. POVERTY L. & POL'Y 441, 444 (2015) (quoting LUCY WILLIAMS ET AL., LAW AND POVERTY: THE LEGAL SYSTEM AND POVERTY REDUCTION 1 (2003)) (reviewing JULIET M. BRODIE ET AL., POVERTY LAW, POLICY, AND PRACTICE (2014)).

21. *Id.*

22. U.S. AGENCY FOR INT'L DEV., INTEGRATING RULE OF LAW AND GLOBAL DEVELOPMENT: FOOD SECURITY, CLIMATE CHANGE, AND PUBLIC HEALTH 5–23 (2013) <https://www.usaid.gov/sites/default/files/documents/1866/IntegratingRuleofLawandGlobalDevelopment.pdf> (discussing food security and the rule of law); see also FAO, VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY 9 (2005), <ftp://ftp.fao.org/docrep/fao/009/y7937e/y7937e00.pdf> (promoting rule of law to support food security).

example, poor governance, corruption, conflict, and war undermine food security around the world.<sup>23</sup>

Further, each country's laws and policies govern, or have the potential to govern, the intertwining systems that influence peoples' food security and the fairness with which these systems operate. (Bear in mind, here, that 70% of the world's food insecure live in rural areas and 80% of rural households rely to some extent on farming to support their livelihoods.<sup>24</sup>) For example, laws and policies govern our ability to access, retain, and use land for subsistence or cash crop farming. Likewise, they regulate our ability to access and use clean water. They govern the manner in which we labor to grow food or earn wages to purchase it. They regulate the inputs, outputs and methods of agricultural production. They provide incentives, research funding, and technical assistance (extension) for specific methods of farming, some of which are more economically and environmentally sustainable (and therefore more supportive of food security) than others.

Indeed, laws and policies govern the ways in which we interact with the environment as a whole, including through our agricultural lands and fisheries. They regulate our use of natural resources and energy, affecting land use, land prices, and food prices. Similarly, they govern how we contribute to, adapt to, and mitigate climate change, a phenomenon driven by and undermining our efforts to grow food (and maintain food inputs). Notably, those who contribute the most to climate change are not necessarily those whose livelihoods and food security are most impacted by it.

Laws and policies also create and govern tax systems. In turn, they establish and maintain public infrastructure and public programs that support food security, including clean water and improved sanitation, roads to markets, electricity for heat and cooking, agricultural research and extension programs, education, food and nutrition assistance programs, healthcare

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23. See generally Florence Ngozi Uchendu & Thaddeus Olatunbosun Abolarin, *Corrupt Practices Negatively Influenced Food Security and Live Expectancy in Developing Countries*, 20 PAN AFR. MED. J. 110 (2015), <http://www.panafrican-med-journal.com/content/article/20/110/full/#.VsFZXvkrKM9> (analyzing the link between corruption and food security); Henk-Jan Brinkman & Cullen S. Hendrix, *Food Insecurity and Violent Conflict: Causes, Consequences, and Addressing the Challenges* (World Food Programme, Occasional Paper No. 24, 2011), <http://documents.wfp.org/stellent/groups/public/documents/newsroom/wfp238358.pdf> (exploring the connections between food security and conflict); Anne Barnard & Hwaida Saad, *In Syrian Town Cut Off from the World, Glimpses of Deprivation*, N.Y. TIMES (Jan. 14, 2016), [http://www.nytimes.com/2016/01/15/world/middleeast/madaya-syria.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&\\_r=1](http://www.nytimes.com/2016/01/15/world/middleeast/madaya-syria.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=1) (discussing starvation as a result of conflict in Syria).

24. INT'L FUND FOR AGRIC. DEV., RURAL POVERTY REPORT 2011, at 16, 46, 54 (2011) <http://www.ifad.org/rpr2011/report/e/rpr2011.pdf>.

programs and insurance, and international humanitarian aid, including food assistance.

Laws and policies also regulate our ownership, investment, and trade in food, commodities, and land, impacting their availability and prices. They govern intellectual property rights to plant biotechnology and the concentration of ownership within the commercial seed industry. They regulate commodity and future markets, as well as derivatives and index funds tied to commodities and agricultural lands. They also govern international trade, influencing the viability of emerging agricultural markets and the economic livelihoods of the smallholder farmers who labor within them. And they regulate, or have the potential to regulate, foreign investment in so-called “developing countries” agricultural lands, sometimes at the peril of indigenous populations who live and farm on them.

Foundationally, laws and policies influence what “food security” means, as well as what it means to be human in a given society. That is, they determine how governments define, measure, and analyze “food security” and “hunger,” and therefore influence state efforts to address these phenomena. Additionally, they form the framework in which we exist as peoples capable of being marginalized or outright oppressed (and therefore destabilized, in terms of food security) by governments and private actors based on our gender, religion, ethnic group, race, language, age, income, and land-holding status, among other factors.

Ultimately, laws and policies shape the boundaries of our food sovereignty—our ability to define and control our own food and agriculture systems, and, in turn, our own food and nutrition security. Relatedly, though not nearly exhaustively, through international human rights agreements, constitutions, and legislative frameworks, laws and policies provide for the Right to Food itself—the subject of this series of articles.

#### CAREER OPPORTUNITIES AWAIT

In failing to treat global food security as its own (interdisciplinary) discipline, the legal academy is missing the opportunity to inspire and train advocates to enter this arena, and falling short of its potential to drive change on this locally and globally significant front. Indeed, given the vast constellation of laws and policies that bear on food security domestically and internationally, there are innumerable advocacy and career opportunities for interested attorneys.

For example, attorneys can promote food security as federal and state legislators and counsel to federal and state legislative committees, or as members of federal or state agencies responsible for regulating food,

agriculture, commodities, trade, anticompetitive behavior (in agribusiness industries<sup>25</sup>), health, food and nutrition assistance programs, education, the environment, energy, financial markets, and international aid.

Attorneys interested in promoting food security domestically and globally may also serve as advocates for human rights, women's rights, and children's rights. They may work at local, state, and national nonprofits focused on food security-related concerns, from legal aid to the Meals on Wheels Association of America to Oxfam America. They may pursue careers at international nongovernmental organizations that advocate for food security, like Oxfam International, World Vision, Save the Children, CARE International, the Red Cross, and the Red Crescent, as well as at multilateral institutions that influence food security and global development agendas, such as the United Nations Food and Agriculture Organization, World Food Programme, UNICEF, the World Health Organization, the International Fund for Agricultural Development, the World Trade Organization, the World Bank, and the International Monetary Fund.

Attorneys are needed at food and agriculture corporations to promote corporate social responsibility; philanthropies to support food security initiatives; law firms to advance law, policy, and market initiatives dedicated to improving the food system; in academia to teach food security and its complex dimensions; and in media and other advocacy outlets to explore and report on global food security matters.

The sooner the legal academy holistically embraces global food security as a discipline worth teaching (and, implicitly, hunger as a problem worth addressing), the sooner it will begin graduating advocates prepared to join ongoing efforts, and initiate new efforts, to advance food security at home and abroad.

#### WINDS OF CHANGE

Fortunately, change is on the horizon. In recent years, law schools have begun addressing global food security in a number of ways—through courses, law clinics, journals, and conferences, among other fora.<sup>26</sup> Though

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25. See DIANA L. MOSS, *TRANSGENIC SEED PLATFORMS: COMPETITION BETWEEN A ROCK AND A HARD PLACE?* (2009) (discussing technological innovation, legal protections, and market competition in the commercial seed industry); Ian Berry & David Kesmodel, *U.S. Closes Antitrust Investigation Into Seed Industry, Monsanto*, WALL ST. J. (Nov. 16, 2012), <http://www.wsj.com/articles/SB10001424127887324735104578123631878019070> (describing a Justice Department inquiry into biotechnology corporation Monsanto's possible anticompetitive practices).

26. See generally KIM KESSLER & EMILY CHEN, *FOOD EQUITY, SOCIAL JUSTICE, AND THE ROLE OF LAW SCHOOLS: A CALL TO ACTION* (2015), <http://law.ucla.edu/centers/social-policy/resnick-program->

very few law schools other than Vermont Law School<sup>27</sup> offer courses exclusively dedicated to systemically examining the laws and policies that bear on global food security, several offer courses and clinical opportunities that focus on food security and food justice concerns to varying degrees.<sup>28</sup> These law schools, and Vermont Law School, deserve celebration for commencing exploration into the complex legal landscape of hunger.

#### THE THEME: THE RIGHT TO FOOD

In that vein, this Law Review deserves celebration as well. As far as this author is aware, this is one of the first American law journals dedicated in theme to “The Right to Food.” Given the identified need for the legal academy to examine and teach food security as an interdisciplinary law and policy issue, this theme is particularly apropos. First and foremost, as discussed below, the Right to Food is conceptually unique precisely because it grounds food security in legal rights, not fortune or charity. Second, the Right to Food contemplates environmental sustainability, as broader considerations of global food security must as well. Finally, the mere notion of the Right to Food challenges assumptions and raises key questions about the role of law and policy—and, in turn, the legal academy and attorneys—in promoting food security generally.

#### GROUNDING FOOD SECURITY IN RIGHTS

As Nadia Lambek and Priscilla Claeys describe in their article, *Institutionalizing a Fully Realized Right to Food: Progress, Limitations and Lessons Learned from Emerging Alternative Policy Models*, the Right to Food is a human right.<sup>29</sup> Specifically, it is the right

to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the

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for-food-law-and-policy/publications/food-equity-social-justice-and-the-role-of-law-schools/ (surveying law school programming dedicated to “food equity”).

27. In 2014, the author designed and taught “Global Food Security” at Vermont Law School, one of the first *Juris Doctor* courses nationally to examine global food and nutrition security as an interdisciplinary legal issue. To date, the course continues to be taught to J.D., L.L.M., and Masters students residually and through distance learning.

28. See generally KESSLER & CHEN, *supra* note 26 (surveying law school programming dedicated to “food equity”).

29. Nadia Lambek & Priscilla Claeys, *Institutionalizing a Fully Realized Right to Food: Progress, Limitations and Lessons Learned from Emerging Alternative Policy Models*, 40 VT. L. REV. 743, 743 (2016).

cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>30</sup>

The Right to Food originates in the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and a cluster of other international agreements.<sup>31</sup> States have adopted it—at least in part—through constitutions, framework legislation, judicial decisions, policies, and programs.<sup>32</sup>

Notably, the Right to Food contemplates the right to feed oneself, not just the right to be fed by the state. To that end,

it requires that the State not directly engage in, and prevent third parties from engaging in, actions that inhibit the ability of people and communities to meet their own food needs. The right to food . . . requires that States provide access to food when individuals and communities are unable to meet their own food needs.<sup>33</sup>

Accordingly, as Lambek and Claeys explain, to implement the Right to Food, a government must “take an active and holistic approach to the food system and not simply to alleviating hunger.”<sup>34</sup>

#### GROUNDING FOOD SECURITY RIGHTS IN ENVIRONMENTAL SUSTAINABILITY

Further, as Anastasia Telesetsky explores in her article, *Fulfilling the Human Right to Food and a Healthy Environment: Is It Time for an Agroecological and Aquaecological Revolution?*, the Right to Food must contemplate environmental sustainability in order to provide food security in the long run.<sup>35</sup> Indeed, as Telesetsky notes, the Second United Nations Special Rapporteur on the Right to Food offered a redefinition of the Right to Food that explicitly incorporates sustainability.<sup>36</sup> This new definition states that “[t]he right to food is the right of every individual, alone or in

30. Jean Ziegler (Special Rapporteur on the Right to Food), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development*, at para. 17, U.N. Doc. A/HRC/7/5 (Jan. 10, 2008).

31. Lambek & Claeys, *supra* note 29, at 747–48.

32. *Id.* at 751–52.

33. *Id.* at 747.

34. *Id.*

35. Anastasia Telesetsky, *Fulfilling the Human Right to Food and a Healthy Environment: Is It Time for an Agroecological and Aquaecological Revolution?*, 40 VT. L. REV. 791, 791 (2016).

36. *Id.* at 799–800.

community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable *food that is produced and consumed sustainably, preserving access to food for future generations.*<sup>37</sup> In her article, Telesetsky argues that the Right to Food and the Right to a Healthy Environment should be interpreted as interdependent.<sup>38</sup>

#### CONFRONTING LIMITATIONS AND ASSUMPTIONS

Of course, the numerous States that have implemented the Right to Food have generally only implemented the Right in part, and generally not in the transformative ways the Right envisions.<sup>39</sup> Accordingly, in parallel with the Right to Food movement, as Lambek and Claeys discuss, people around the world are recapturing or transforming food system governance through alternative means, including food sovereignty movements, food networks, food policy councils, and civil society participation in the development and negotiation of international rights.<sup>40</sup>

In step with this reality, this journal raises broader questions for the legal academy in the context of developing global food security curricula: what is the current role of law and policy in influencing food security domestically and internationally and, looking forward, what should it be? Likewise, what are the potential roles for attorneys in addressing food insecurity? And, given its interdisciplinary nature, how should “global food security” be taught in law schools?

In asking these crucial questions, the American legal academy should address assumptions and biases about food security and law. For example, like the Right to Food itself, the notion of developing a discipline around the intersection of food security and law may, for some, seem insurmountable. It is worth pausing to wonder why this is so, and whether the causes of that sentiment are not the very conditions that advocates should seek to change, including a cultural aversion to the very idea of human rights; the reality of the “corporate capture of food governance”<sup>41</sup>; the many forms of distance between academics, policymakers, and populations experiencing severe food insecurity; a lack of understanding regarding the relationship between laws and policies and food security; hesitance by academics to teach subjects that

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37. Olivier De Schutter (Special Rapporteur on the Right to Food), *Final Report: The Transformative Potential of the Right to Food*, at para. 2, U.N. Doc. A/HRC/25/57 (Jan. 24, 2014) (emphasis added).

38. Telesetsky, *supra* note 35, at 802.

39. Lambek & Claeys, *supra* note 29, at 752–53.

40. *Id.* at 775–86.

41. *Id.* at 745.

defy clean specialization; or, among other things, a lack of funding for the development of new legal fields and faculty.

By embracing the theme of the Right to Food, and by addressing its environmental context and limitations, this journal admirably encourages this needed contemplation and dialogue.