The Day After Tomorrow: Climate Mitigation, The Harm Principle and Legitimate Legal Coercion

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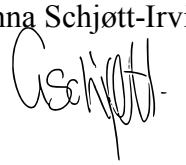

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Abstract

In my thesis, I seek to answer the question of my problem formulation which is: *Which forms of legal coercion are justified in order to ensure a reduction in the use of animal agriculture with the objective to mitigate climate change and the consequences hereof?* To answer this question, I apply Joel Feinberg's Harm Principle to the problem, and argue that if the practice of animal agriculture harms others in a substantial and relevant way, then legal coercion may be put in place in order to mitigate climate change. I use the term legal coercion (instead of state coercion or another specific entity) because global warming is a global issue which calls for a global solution, and not only solutions from one country or state. I also apply a broader definition of what harm entails, with the help from Simester and von Hirsch and their concepts on non-standard harm. I discuss how animal agriculture is a non-standard harm, and that it can be viewed under the harm principle thus legitimising legal coercion. I also introduce legal moralism as an opponent to the Harm Principle, with the objective to strengthen my primary theory. I discuss the difference between different farmers (Old McDonald and Farmer Faisil respectively) and their contribution to global warming, and how legal coercion can be different according to where in the world they are situated. I discuss different forms of legal coercion, starting with the most coercive legislative measures moving towards the least legislative measures. To answer my thesis statement, I find that the forms of legal coercion which are justified in order to ensure climate mitigation through animal agriculture must, first, be proportionate with the harm animal agriculture causes. That is to say: no actor must be harmed in a different manner through this coercion. Second, not all farmers can be treated in the same way, in respect to coercion, being that there is a geographical, economic or societal difference which affects their contribution to global warming. My third and final point, is that climate change and the mitigation hereof is an intricate subject which many different factors why play important roles and many different interests must also be considered. However, animal agriculture causes a substantial harm, which must be prevented, and this can be done through legal coercion which prevents Old McDonald in both contributing further to the problem and coerces him into implementing mitigation strategies. Legal coercion can also be implemented in order to help Farmer Faisil optimise his farm, thus not contributing further to climate change.

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Chapter 1: Introduction

Around the year 11,000 BC humans began to transition from relying on a hunter-gatherer lifestyle towards cultivating crops and keeping livestock for food (Driver, 2016). Since then, the cultivation of crops and livestock – also known as agriculture - has been developed and optimized to fit the population and the demand for a diet with various selections of animal produce. Through the ages – and especially through the past decades, animal agriculture has gone through an industrial development in order to keep up with the growing population and high demand for animal produce. This development within animal agriculture has an enormous impact on the climate. Some conservative numbers suggest that animal agriculture accounts for fifteen percent of the annual global greenhouse gas emissions – however, the newest numbers claim animal agriculture to be responsible for at least 87 percent of greenhouse gas emissions (Giliver, 2021). Global warming is an intricate subject, with many different contributing factors. In this thesis, I have chosen to focus on a single contributing factor of global warming, namely animal agriculture, and how it is possible through legal coercion and legislative measures to restrict the use of animal agriculture, with the objective to mitigate global warming thus preventing harm to the global population. The extent of the use of animal agriculture that is experienced today, especially in Western society, has a steep price to pay, as these emissions result in severe climate change. Animal agriculture contributes to climate change in many different ways, but one of the most profound emitters is cattle - to put this in perspective, if cattle were their own nation, they would be the world's third largest emitter of greenhouse gasses (Ibid.).

I will discuss which forms of legal coercion would be morally justified to impose upon citizens, with the objective in mitigating[1] climate change, or global warming (I use the terms to denote the same meaning and will use them interchangeably throughout this thesis). More specifically, I will discuss this topic with a point of departure in the Harm Principle and with the objective of preventing harm to others through legal coercion. My thesis statement will therefore be: *Which forms of legal coercion are justified in order to ensure a reduction in the use of animal agriculture with the objective to mitigate climate change and the consequences hereof?* I take a broad perspective on climate mitigation worldwide, and do not focus specifically on one country or area. I do this because a broader perspective on this topic encompasses the nature of this complex issue, which affects if not all, then

[1] Climate *mitigation* involves 1) reducing the emission of greenhouse gases or 2) creating greenhouse gas sinks (which absorb greenhouse gases), or both (Caney, 2020). Climate a*daptation* involves making changes to people's context in order for them to cope better with a world undergoing climatic changes, i.e. adapting to new circumstances without necessarily working towards minimizing the problem (Ibid.).

almost every single living person today, as well as future generations. I argue that the threat of global warming and the harm that it subsequently causes justifies some forms of legal coercion in order to ensure a reduction of the use of animal agriculture. The objective is to explore to which degree coercion may be implemented in order to mitigate global warming and offer legislative proposal to this. It is possible to coerce in many different ways – bear in mind that coercion may not necessarily be seen in the context of the criminal law, as it is a possibility to coerce by restricting certain behaviours through different legislative measures. To be able to discuss this, I divide my thesis into chapters; in chapter two I lay forth the theoretical point of departure which will be useful in later chapters, namely the Harm Principle by Joel Feinberg found in *The Moral Limits of the Criminal Law Volume 1: Harm to Others* (1987), where he discusses criminal law. In chapter three I discuss climate change and how animal agriculture constitutes as harm, in chapter four I offer an opposing theory to the Harm Principle, namely legal moralism by Michael S. Moore. In chapter five I lay forth concrete proposals of legislative measures from the most coercive measure to the least and discuss the applicability of these. Lastly, I summarize my findings and end my thesis with a few closing remarks. An important point that must be made before diving further into this thesis, is that I argue *only* from a harm prevention point. That is to say: this is not an argument concerning animal welfare nor is it an argument for health or paternalism – it is an argument for the prevention of harm some cause through animal agriculture upon others.

Chapter 2: The Theoretical Standing Point

The objective of this chapter is to lay out a theoretical foundation for the discussion of the rest of my thesis and is essential for the understanding of the chapters to come. This chapter has great importance for my thesis statement, together with the meaning and purpose of the concepts that play an essential role throughout. The objective is to prevent any and all misunderstandings in respect to the forthcoming discussion of climate change and how climate change can be viewed as a harm under the Harm Principle. I begin with a short rendition as to why the state chooses to criminalize certain behaviour. Then I go on to Joel Feinberg and his Harm Principle. I further explore different notions of harm with help from A. P. Simester and A. von Hirsch, together with how and why standard notions of harm cannot be applied in this thesis. I explore some of the elements which can be used in assessing harms, along with why liberty must be safeguarded.

2.1 Why do we criminalize certain behaviour?

An important question to address which lays down the groundwork for this thesis, is the question of why some behaviours are criminalized, and why the state sometimes interferes in citizens liberty to do so. I will therefore address this question in the following section and give possible reasons for restricting citizens liberty by criminalizing certain behaviour. It can be said that the state sets basic rules of engagement, or terms of interaction, among citizens (Simester & von Hirsch, 2014, p.). They further describe it as being a defining role of the state to facilitate peaceable co-existence among citizens, alongside safeguarding the basic means by which citizens can live good lives (Ibid.). The state must always justify why it chooses to limit some actions because, through legal restriction of some conduct, the state exercises a form of coercion, and the state must therefore justify this action (Thaysen, 2019). When the state criminalizes certain conduct, it prohibits its citizens from participating in the proscribed conduct and penalises the citizens if they choose to do so anyway, committing the state to inflict deliberate harm and the stigmatisation of punishment upon the citizens (Ibid.). The state must therefore morally justify its actions in such instances, and the punishment must be proportionate with the offense committed. If the state is to coerce its citizens, it ought to be done through laws that fit correspondingly to the rule of law (Ibid.). Punishment embodies by its nature an element of blame or censure; it is not obvious that citizen X may properly be condemned for her non-harmful action, just because that action happens to be linked, through chains of complex social interaction, to the subsequent injurious behaviour of some separate and autonomous person, Y (this point will be further elaborated upon section 3.3). It seems unjust to impose penal censure on a citizen, at least where she has little or no ability to control the potential harmful choices of Y, and where X has not sought to assist or encourage those choices (Simester & von Hirsch 2014, p. 47). When the state chooses an act of censure it is a significant action to notice (Simester & von Hirsch, 2014, p. 47). The criminal law's authority and judgement of what wrongful conduct entails is decided on behalf of the people it rules (Ibid.). It provides a public valuation of a conduct, criteria for criminal liability and the punishment a transgressor should receive (Ibid.). By criminalising certain behaviour, the state creates a boundary between what is viewed as acceptable behaviour and what is not acceptable behaviour. This must be legitimately justified in order to safeguard citizens liberty. By setting certain rules of engagement among citizens and describing the role of the state and how it may "[…] facilitate peaceable co-existence among citizens, and to safeguard the basic means by which citizens can live good lives" (Ibid., p. 17) the state can protect its citizens against unduly harms and promote liberty among its citizens. It is for these reasons; the state may implement laws in order to coerce its citizens into abstaining from certain behaviour. It should be noted that within philosophical circles, it is

navigated between the notion of being free from something, and the freedom to do something. The best rendition of this account may stem from Isaiah Berlin from *Two Concepts of Liberty* (1969). Berlin writes, "I am normally said to be free to the degree to which no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others." (1969, pp. 15-16). But surely there must be regulations in place, depicting the boundaries of acting unobstructed by others. Berlin addresses this (as will I later in this thesis) with his two notions of liberty, namely negative and positive liberty respectively. Negative in this context is to be understood as the absence of something, so the absence of constraints, interferences or obstacles from others, whereas positive should be understood as the presence of something like control, self-realisation or self-determination (Carter, 2016). Berlins rendition of negative liberty seeks to answer to the question "What is the area within which the subject - a person or group of persons - is or should be left to do or be what he is able to do or, be, without interference by other persons?" (1969, p. 15). His notion of positive liberty seeks to answer the question "What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?" (Ibid.). In this thesis, I seek to answer of negative liberty.

2.2 Joel Feinberg and The Harm Principle

This section is dedicated to 1) laying forth Joel Feinberg's Harm Principle, and 2) defining what constitutes as a harm, in order to apply this definition later on in my thesis, in the context of animal agriculture and the way in which it causes harm. Feinberg's theory of harm stems from John Stuart Mills Harm Principle found in his work *On Liberty* (1859). By far and large, Mills Harm Principle may be the most well-known liberty limiting principle there is, inspired by Jeremy Bentham and Utilitarianism[2]. Mill writes, that the purpose of his essay was:

> "[...] to assert one very simple principle, as entitled to govern absolutely the dealing of society with the individual in the way of compulsion and control [...]That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill, 1956, p. 13).

[2] Bentham's famous view on humans being ruled by two overriding notions namely pleasure and pain. He held that humans seek pleasure and the avoidance of pain, these two nations govern in all actions; what we do, what we say, and what we think (Bentham, 1789). Further, he taught the principle of utility as the standard of right action on the part of governments and individuals (Driver, 2014).

Simply put, Mills essay sought to answer the question of what the limitations on the collective authority over the individual should be (Mill, 1956). Furthermore, the principle covers governmental authority even though the main objective is to set justifiable boundaries for interference by the "[...] collective opinion of society [...]" in private affairs, and that this is justified if it prevents harm to others (Ibid.). Contrariwise, Feinberg's theory only covers the criminal law. Mill claims unwaveringly that the *only* thing that legitimizes legal coercion is if an action causes harm to others – this seems like a strong and narrow principle, without much leeway in any direction, and due to this it can therefore be subject to criticism[3]. Feinberg sought to justify a broad Millian understanding of the limits of the law (Stanton-Ife, 2006). Feinberg offers a different definition of the Harm Principle, albeit a gentler version of Mills: "It is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) and there is probably no other means that is equally effective at no greater cost to other values" (Feinberg, 1987, p. 26). With this, Feinberg claims that harm is a good reason for the state to implement coercion upon its citizens to prevent said harm. Aside from the Harm Principle, Feinberg introduces the offence principle in his multi volume work, as another good reason for the state to coerce. These two principles are, according to Feinberg, the sole (good) reasons for state coercion (Feinberg, 1987). That is to say that there is a duality between these principles and if neither the Harm Principle, nor the offense principle are asserted in the context, then there can be no legitimate coercion. Feinberg understands a harmful action as one which is a setback to a person's interests *and* a wrong, "[...] only setbacks of interests that are wrongs, and wrongs that are setbacks to interests, are to count as harms in the appropriate sense." (Feinberg, 1987, p. 36). My interests can be setback by losing a football match, but the opposing team have not done anything wrongful by winning, and this is therefore not a harm, in the sense of the Harm Principle. Alternatively, setbacks to my interests can be wrongfully harmed if someone were to harm vital components to my life, such as safe housing and access to food and water. Feinberg is opposed to both legal moralism (Feinberg 1984, p. 27; Feinberg 1990) and legal paternalism (Feinberg 1984, pp. 26-27, Feinberg 1986) respectively, as being good enough reasons for state coercion. Legal moralism as M. S. Moore depicts it in his *Liberty's Constraints on What Should be Made Criminal* (2014) will be discussed in section 4 as an opponent to the Harm Principle.

[3]See G. E. Moore *Principia Ethica* - Moore argued that Mill was too ambiguous and that his application of the naturalistic fallacy was naïve (1903).

2.3 Feinberg, Simester & von Hirsch and Harm

Feinberg's work can be treated as a question regarding the moral limits of individual liberty whilst understanding the term 'liberty' as the absence of legal coercion (Feinberg, 1987). This thesis explores what – if anything - can legitimize such legislation, specifically how the Harm Principle can legitimate legal coercion in respect to minimizing the harm climate change causes. Feinberg works towards finding normative principles which are capable of guiding the criminal law. His work is a proponent of liberalism, meaning that if the state restricts individual liberty in any way, it must be fittingly justified as preventing a considerable harm to others. If the state does not prevent a harm to others than the actor herself, it may be considered morally impermissible. Further, Feinberg writes, the criminal law is capable of stigmatizing people who are subjected to it, and confining them irrevocably, meaning that any state coercion must be more needed to prevent harm to others than the harm done to the prosecuted person's liberty (Feinberg, 1987, p. 4). Lastly, Feinberg concerns himself with the moral permissibility of restrictions on our freedom by the criminal law (Feinberg, 1987, p. 3). Contrariwise, Mill's discussion of the Harm Principle found in *On Liberty* (1859) concerns itself with the restrictions of liberty by society in general. Philosopher James Edwards renders a fair explanation as to why we should adhere to Feinberg's Harm Principle. Edwards sets forth different forms a Harm Principle can take, one of which is the form Joel Feinberg's Harm Principle takes, which is as follows: "y is neither a necessary nor a sufficient condition of the permissibility of x but is a necessary part of a sufficient condition of the permissibility of x" (Edwards, 2015, p. 255). According to Edwards, a principle which takes this form is permissive because x is not *only* permissible if y – it can be permissible due to another condition and is therefore a broader principle compared to e.g. Mill's Harm Principle (Ibid.). So, legal coercion can be permissible both if the Harm Principle is at play, but also if a different principle is detected. This principle form does not simply deny that y is a condition of a particular type, it makes an affirmative claim regarding the relevance of y in respect to the permissibility of x (Ibid.). Feinberg's take on the Harm Principle classifies as an 'INUS condition' (Ibid.). With this, it is meant that the conditions the principle is built upon are regarded as "[...] insufficient but necessary part of an unnecessary but sufficient set" (thus 'INUS') (Ibid.). Simpler put, this means Feinberg's Harm Principle is a necessary (but not sufficient, meaning that we may need more information other than what is given) part of an unnecessary but sufficient condition. Feinberg's principle presupposes and favours liberty, which must be refuted if legal coercion is to be permissible. Feinberg's Harm Principle claims that "[...] the need to prevent harm (private or public) to parties other than the actor is always an appropriate reason for legal coercion." (Ibid., p. 11), giving a condition

for coercion to be permissible. There are, however, other conditions which also are to be met (Edwards, 2015, p. 256). Feinberg acknowledges that there is neither a necessary nor a sufficient condition of permissible coercive regulation (Feinberg, 1987). Despite this, there are satisfactory conditions sufficient to making legal coercion permissible – these are however not ones of Feinberg's Harm Principle, but instead of his offense principle (Ibid.). Edwards writes that, the Harm Principle is a necessary part of other sets of conditions which is satisfactory in making coercion permissible (Ibid.). Feinberg's Harm Principle is what Edwards calls a positive: this means when a principle has this form, y provides a reason to x, and y is a necessary condition of the permissibility of x (Ibid., p. 257). In summa, Feinberg's Harm Principle is both positive and permissive – simply put: the conditions for Feinberg's Harm Principle state that the prevention of harm is a reason for legal coercion, *but* legal coercion can also be permissible without this being in play (instead the offence principle can be asserted) (Ibid.). Feinberg's Harm Principle provides a positive, non-conclusive reason to prohibit actions which cause harm (Simester & von Hirsch, 2011, p. 35)[4].

A large part of the attractiveness of the Harm Principle stems from it having the ability to be applied to immediate harms, where the standard normative constraints – those concerning liberty and the imputation of fault are satisfied, according to Simester & von Hirsch (2014, pp. 53-54). When the Harm Principle is applied to such ordinary victimizing conduct, it has the ability to limit the states punitive power and ordinary citizens' liberty of action is to a small degree limited and restricted by the prohibition of violent behaviour, thievery or assault. This can also be asserted to prohibitions that concern themselves with more immediate risks of harm, such as the prohibition of driving under the influence – this prohibition still leaves open the possibility of many other permitted choices such as getting a ride home instead of driving, drinking at a pub nearby or staying at home (Ibid.). When the standard harm analysis is extended to cover remote harms matters change, according to Simester and von Hirsch because:

> "[…] all sorts of seemingly innocent things we do may ultimately have deleterious consequences. It is not easy to identify conduct that confidently can be said to be without substantial risk of injury in the long run. As a result, the Harm Principle— unless suitably modified or supplemented— can lose much of its liberty safeguarding role" (Ibid.).

[4] The book *Crimes, Harms, and Wrongs* offers a philosophical analysis of the nature and ethical limits of criminalisation (Simester & von Hirsch, 2014). It explores the scope of harm-based prohibitions, proscriptions of offensive behaviour, as well as 'paternalistic' prohibitions with the objective of preventing self-harm, developing guiding principles for these various grounds of state prohibition (Ibid.). Both Simester and von Hirsch have written extensively within the field (Ibid.).

When the Harm Principle is applied to individual victimizing conduct, responsibility and fault is easily depicted – if I intentionally punch you and as a result of this you are injured, I am to be blamed and held accountable for this action. The state may thus prohibit such actions. Feinberg writes:

> "When the state creates a legal statute prohibiting its citizens from doing X on pain of punishment, then the citizens are no longer "at liberty" to do X. The credible threat of punishment working directly on the citizens' motives makes X seem substantially less eligible than before for their deliberate doing. We can think of every possible act as so related to a penal code that it must either be (1) required (a duty), (2) merely permitted (one we are "at liberty" to do or forbear doing), or (3) prohibited (a crime). Where coercive law stops, there liberty begins. The citizen's zone of liberty, therefore, corresponds to the second class, since (1) and (3) are alike in directing coercive threats at him. When we are required to do X (a duty), we are prohibited, under pain of penalty, from omitting to do X; when we are prohibited from doing Y we are required, under threat of penalty, to omit doing Y. The goal of this work then is to trace the contours of the zone in which the citizen has a moral claim to be at liberty, that is, free of legal coercion" (Ibid., P.)

This means that when the state legislates in a way that prohibits its citizens from acting in a certain way by threatening them with punishment if they do not comply, they are no longer free to act in this way. All actions relate themselves to the penal code: (1) a citizen can be required by duty to act in a certain way, and is therefore prohibited under the threat of penalty to omit from this action, (2) a citizen is permitted to act in a certain way, and is therefore free to act in a certain way, or refrain from acting in a certain way, (3) a citizen is prohibited in acting in a certain way, making it a criminal offense if a citizen nevertheless elects to do so. A person is only as free as coercive law allows her to be: freedom lies only outside the spectrum of coercive law. Harm can occur when people are affected by the prospect, rather than the actuality, of a wrongful action. A reason as to why the state sometimes intervenes to prevent public nuisance, for example, is not that the relevant action is harmful, but rather that avoiding it causes great inconvenience. In such cases, the constraint imposed by the Harm Principle is satisfied not by the nuisance itself but by the precautions required to forestall it. It is no objection under the Harm Principle that a harmless action was criminalized, nor even that an action with no tendency to cause harm was criminalized. It is enough to meet the demands of the Harm Principle, if the action were not criminalized, it would be harmful. The objective of Feinberg's work - as is mine - is to map out the areas where the citizens have a moral claim to be free from state

coercion. My objective differentiates itself to some extent though: I use Feinberg to further investigate how the state can coerce its citizens with the aspiration to prevent the harm global warming causes, and still respect citizens' individual liberty, hopefully maximising freedom for all through careful legislative matters. The objective of Feinberg's work was to answer the question of which types of conduct the state can rightly criminalise. To do so, it is presupposed that there is a distinction between criminal law that is legitimized through valid moral principles and criminal law that is justified as being the aforementioned *and* being useful (e.g. being economically useful). In order for an interference in liberty to be legitimate – that is to say, in order for legal coercion to be legitimate it must have a good reason for doing so according to Feinberg.

All forms of legislative matters limit liberty in some way or another. Liberty limiting legislation comes in an array of different forms of controversy and the degree of which extent liberty is limited is also widespread. Some of the least controversial forms of legislation are ones classified as crimes that are crimes against the person, i.e. those which entail murder, rape, assault, battery and other actions of this manner – that is to say, crimes that are for obvious reasons both wrong and harmful actions caused by one person against another. Crimes against property, such as burglary and offences involving fraud are also very non-controversial, because the common denominator of crimes of such calibre, is that they produce direct harm towards individual people or groups of people and are caused by a person or group of people which can be directly held accountable for their actions. Such crimes are rather clear cut and have an unquestionable place in the penal system – but there are however crimes that have the same valid spot in the penal system but are less clear cut and affect fewer specific people or groups (Ibid.). These harms are said to cause harm to the public, society, the state, and the climate or environment (Ibid.). They can be offences such as smuggling, tax evasion or violating anti-pollution ordinances, and can be labelled public (as opposed to private, like the aforementioned crimes), according to Feinberg (Ibid.). Feinberg asserts that it is legitimate for the state to prohibit conduct that causes serious private harm or creates an unreasonable risk of harm alongside harm to important public institutions or practices (Ibid.). For it to be morally justified that the state interferes with citizens behaviour, it must be reasonably necessary to prevent harm, or to prevent the unreasonable risk of harm to others, other than the person causing the harm (Ibid.). For state intervention to be reasonably necessary, the action must be necessary *and* effective in order to prevent the harm (Ibid.). That is to say, that there must be a proportionality between the legislation put in place to prevent the harm, and the harm caused. Further, coercion must be the last option standing in order to

prevent the harm. An example of legislation being both reasonable in respect to the proportionality between the legislative matter and the harm and being effective in preventing harm could be legislation preventing driving under the influence. The need to prevent private or public harms to citizens other than the actor herself is always an appropriate reason for state coercion (Ibid.).

> In short, state interference with a citizen's behaviour tends to be morally justified when it is reasonably necessary (that is, when there are reasonable grounds for taking it to be necessary as well as effective) to prevent harm or the unreasonable risk of harm to parties other than the person interfered with. More concisely, the need to prevent harm (private or public) to parties other than the actor is always an appropriate reason for legal coercion. (Feinberg, 1987, p. 11).

Here, Feinberg emphasizes the importance of state interference being necessary, effective and the need to prevent harm caused by other persons or parties is always an appropriate reason for doing so. This means that morally justified state intervention occurs when there is a reasonably necessary reason for intervening in citizens behaviour, in order to prevent a harm or prevent an unreasonable risk of harm, and that the intervention is both necessary and effective. This is not a paternalistic principle, meaning that the harm prevention is always appropriate when applied to situations where the harm occurs, and it occurs to parties other than the actor. Any and all state restrictions of individual liberty must be adequately justified as a considerable harm or offense to others, and where any legal coercion that does not prevent harm or serious offense to others is morally impermissible.

Further, Feinberg writes: "It is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) and there is probably no other means that is equally effective at no greater cost to other values" (Feinberg, 1987, p. 26). This means that for the state to interfere with its citizens liberty, it must be due to legislation being an effective way of reducing harm inflicted upon others. Feinberg argues that harm can be defined as "[...] wrongful setbacks to interests[...]" (Ibid., p. 36). That is to say: one's interests can be set back in many different ways, I could get hired for a job someone else had also applied for, and even though her interests have been set back, I have not harmed her, because my action was not also a wrong. There is however an issue with the clarity in this definition of harm. As stated, harm is defined as being wrongful setbacks to a person's interests – but what classifies as an interest? There is a threat of this definition becoming over inclusive, thus resulting in a criminalization of all conduct, which is not the liberal agenda. I can be interested in

many things; a good job and a stable family life, a Ferrari, clean drinking water and access to medical care and so on. Without having a proper definition of what *interests* entail and a person or a group of people hinder me in all the things above, they could then be incarcerated, or legislation should be put in place to hinder obstacles keeping me from attaining these interests. However, it does not seem intuitive that me, a student without the finances to buy a Ferrari, can incarcerate a person or group of people not allowing me to do so, because they are setting back my interests. However, if a person or a group of people hinder me in accessibility to clean drinking water the matter is somewhat different. Here, the aspect of wrongfulness is important to bear in mind – it is not wrongful of anyone to not let me buy a Ferrari to the same degree as it would be wrongful not to let me have access to clean drinking water. This is because clean drinking water, unlike a Ferrari, is a fecund liberty. This means that I can use my liberty to access clean drinking water, to open up for other liberties – at most the Ferrari would open up the possibility to make heads turn when I pull up at the supermarket to buy my groceries[5]. I can be set back others interests, by e.g. cheating on my partner, and I can also setback my own interests by e.g. gambling - these actions can be harmful but are not wrong. Feinberg states that "[…] only setbacks of interests that are wrongs, and wrongs that are setbacks to interest, are to count as harms in the appropriate sense" (Ibid., p. 36). A harm is therefore a wrongful setback of a person's interests and in order for the state to coerce against such an action two parameters must be accounted for. The first is that the action is wrongful, and second is that the outcome of said action actually sets back a person's interests. Now, one must ask: What constitutes something as being wrongful and what counts as a setback of interests? A widely discussed example is same-sex marriage. Some argue that legislation should be put in place to prohibit marriage between two people of the same sex, because it would prevent harm. An argument against same-sex marriage is as follows:

> […] DOMA (Defense of Marriage Act) was enacted because of a conservative harm argument about the potential injuries that same-sex marriages may cause to traditional marriage and the family. DOMA itself reflects the proliferation of harm arguments and the turn to harm by social conservatives. The statute, after all, was called the defence of marriage act: Congress (and President Bill Clinton) were defending traditional marriage from the potential harm that same-sex unions could have on heterosexual marriage and on the traditional family (Harcourt, 2013, p. 3).

[5] This does have a high coolness factor, but it is nowhere near as important as clean water and a safe environment to grow up in.

Here it is argued that same-sex marriage should not be allowed because it can harm the traditional family construction. It is argued that due to a form of remote harm, same-sex marriage should not be legal. However, if it is true, then the notion of Non-standard and remote harm deteriorates. In this context, the legal moralist would argue that the prohibition of same-sex marriage is sound, because it mirrors a prohibition on immoral actions (Harcourt, 2013, p. 3). Feinberg on the other hand, or anyone adhering to the Harm Principle, would argue that same-sex marriage can only be prohibited if such an action does in fact cause harm to others (it should also be discussed if only the marriages that actually cause harm to others should be prohibited, as not to put everyone in the same booth. This could also be asserted on any and all marriages that cause harm to others). If same-sex marriage does not cause harm to others, then it should not be prohibited, according to the Harm Principle. However, Harcourt writes that, being that such a legislation is built upon the claim of non-trivial harm the Harm Principle does not function as a limiting principle in respect to arguing against the prohibition of same-sex marriage (Ibid.). Because those arguing against same-sex marriage have applied the Harm Principle to their argument, it is difficult to use the Harm Principle to argue against them. A way around this is to claim an even greater harm to others which is caused if same-sex marriage was prohibited (Ibid.). Here one can speak of the proportionality between different harms and criminalization. The divorcing of a spouse, or the legality of same-sex marriage could fall under the notion of the standard use of harm (thus the standard Harm Principle), but the standard use of harm may not be able to legitimise legal coercion in respect to the case at hand. The standard Harm Principle may fall apart when confronted with the notion of remote harm. It can be argued, as Harcourt does in his paper titled *The Collapse of the Harm Principle* (1999) that the standard Harm Principle does not provide criteria as how to evaluate harms other than standard cases of harm proposed by Mill. A problem which arises with Mills Harm Principle, and therefore standard harm is that it came be interpreted relatively widely, and it thus becomes over inclusive, because broadly speaking, anything can cause a harm – or potentially cause a harm. An example of this is the harm same-sex marriage can cause. Some argue that same-sex marriage can cause harm and must therefore be prohibited. By studying The United States Supreme Court's decision regarding same-sex marriage and challenge DOMA it becomes clear that the Harm Principle lacks depth in respect to Non-standard harm. DOMA defined marriage as the legal union of a man and a woman – this excludes any legal union of persons of the same sex (Harcourt, 2013, p. 2). If DOMA decrees a moral objection to same-sex marriages, it can be viewed as a federal legal prohibition on such marriages (Ibid., p. 3). That is to say: in such instances, a legal enforcement of morals is in place (Ibid.). Due to conservative harm argument

concerning potential injuries that same-sex marriages may cause to traditional marriage and the family, and the immorality of it some argue that same-sex marriage should not be legalized (Ibid.). This seems like a far-fetched argument, and like the Harm Principle is stretched rather thin. If we are to consider the argument stating same-sex marriages can cause a potential injury to traditional marriage and family life, so does: war, many jobs where a spouse has to travel, poor judgement in respect to choosing a spouse, alcoholism and so on. If these actions all cause harm, then following this line of argument, they should not be legal. Even if they do cause harm, they are not morally wrong (as Feinberg's Harm Principle states) and may therefore be legal. Feinberg articulates, "One's interests, then, taken as a miscellaneous collection, consist of all those things in which one has a stake, whereas one's interest in the singular, one's personal interest or self-interest, consists in the harmonious advancement of all one's interests in the plural." (Ibid., p. 34). In order for something to be a harm, it must both setback a person's interests and be a wrong. In order for the Harm Principle to be able to legitimise criminal law, the definition of what harm entails must neither be too inclusive nor too exclusive, and it is therefore not an adequate justification for criminal law to state that it only prevents wrongs (like the legal moralist would claim) - it must be a wrong that also set back our interests in a harmful way. If coercion only prevented wrongs, it could entail criminalization of minor wrongs, such as infidelity or lying to a friend. What is more, setbacks to interests that are not also wrongs do not constitute a harm, as it is possible to voluntarily choose to setback one's own interests, an example of this being gambling. Additionally, it is possible to harm another citizen's interests because they are in conflict with one's own interests, such as divorcing a spouse. Such an action will often be a very severe setback to their interests. If 'setbacks to interests' are unconditional this would imply that the example of divorcing a spouse could legitimately be criminalized. Even if same-sex marriage *does* cause harm, it would be so remote that many other actions would also fall under this category. Due to this, Harcourt argues the collapse of the standard Harm Principle and there is therefore need for a revised version. This section was intended to lay forth the groundwork for the understanding of Joel Feinberg's Harm Principle, and the boundaries of this theory. The following section will elaborate on a revised version of the Harm Principle and the definition of harm which can be applied to the case at hand, namely the harm cause by animal agriculture.

2.2 Don't Cry Before You're Hurt: Defining Harm in a Non-Standard Context

This section is dedicated to the exploration of different harms, as depicted in Simester & Von Hirsch's *Crime, Harms and Wrongs: On the Principles of Criminalisation* where they reconnoitre a

philosophical analysis of the nature and ethical limits of criminalisation (2011). Especially Part II: Harm, Chapter 4: Remote Harms: The Need for an Extended Harm Principle, is important in this discussion. This thesis has the objective of uncovering the question of which actions the state can morally justify in order to prevent harm, and it is especially important to fully grasp what is meant by harm, and how different understandings of this can affect the outcome of the Harm Principle. If an actor's action has any sort of negative or undesirable impact upon a person, it may count as a harm which means that the Harm Principle becomes over inclusive and fail in sufficiently protecting individual liberty, why a broader understanding of harm is essential. Some understandings of harm may have limitations, which is why an in-depth discussion of harm is needed. I will first give an account of standard harms, and thereafter move on to an account of Non-standard harms, and how the Harm Principle ties in with these accounts.

The conventional use of the Harm Principle is often applied to immediate harms, where standard normative constraints such as those concerning liberty, and the imputation of fault are readily appeased (Simester & Von Hirsch, 2011, p. 53-54). An example of this could be if I punched an old lady on the street because I felt like it (and not because she was a gun-wielding lunatic shooting at passers-by – this would prevent further harm) which would fall under the Harm Principle. In this example, my liberty to stretch out my arm and punch the lady is overridden by her liberty not to be harmed by others. Further, the imputation of fault is obvious in this example. When it comes to "[...] ordinary victimizing conduct […]" the standard use of the Harm Principle is of great assistance in limiting penalization from the state (Ibid., p. 54). Citizens' freedom of action is not significantly restricted if the state prohibits either violence, nor thievery because such a prohibition creates or upholds freedom for others (Ibid.). Ordinary victimising conduct, such as the immediate harm of punching an old lady – or anyone - for no apparent reason is the easier form of harm to understand, compared to a harm that is neither immediate nor direct, or where it is clear whom causes the harm. The Harm Principle can be divided into different categories that denote different modes of harm. Maybe the most commonly known form of the Harm Principle, is the form which involves primary harm (Simester & Von Hirsch, 2011, p. 44). The primary forms of harm are what is called wrong generating harms, and often involve damaging physical integrity or property (Ibid.). In cases such as these, the wrong is grounded in the harm (Ibid.) This means that if A harms B's integrity or property, A's action is prima facie a wrong because A harmed B, and nothing more needs to be known. It does

not necessarily mean that A's action is an object for criminalisation, but it is nonetheless a wrong because the wrong to B arises from being harmed (Ibid.).

The straightforward cases of harm which are candidates for prohibition due to the Harm Principle, involve a primary harm, where the harm is directly caused to someone, or where the occurrence is directly risked (Simester & Von Hirsch, 2011, p. 44). These are standard cases and include cases such as murder or assault. Even though standard cases do cause harm, it does not follow that it is justified to criminalize all cases. The Harm Principle provides a means of balancing different interests and takes the extent and the likelihood of the harm into account, by weighing this against other implications of criminalisation (Ibid., p. 45). Because there are a number of different factors that must be accounted for, some cases of harm are more intricate than the instance that B was harmed by A (and that this harm was a wrong), and that the conduct must now be criminalized - for maybe the penalization of A causes a more severe harm to A than A caused to B (e.g. due to stigmatisation of incarceration etc.). Feinberg also accounts for a number of different factors that must be taken into consideration when looking to criminalize certain behaviours, which are as follows:

A. the greater the gravity of a possible harm, the less probable its occurrence need be to justify prohibition of the conduct that threatens to produce it;
B. the greater the probability of harm, the less grave the harm need be to justify coercion;
C. the greater the magnitude of the risk of harm, itself compounded out of gravity and probability, the less reasonable it is to accept the risk;
D. the more valuable (useful) the dangerous conduct, both to the actor and to others, the more reasonable it is to take the risk of harmful consequences, and for extremely valuable conduct it is reasonable run risks up to the point of clear and present danger;
E. the more reasonable a risk of harm (the danger), the weaker is the case for prohibiting the conduct that creates it (Feinberg, 1984, p. 216)

This means that the gravity and the likelihood of the wrongful harm should be considered in respect to the social value of the action to resonate the degree of intrusion upon the citizens' lives that the criminalisation of the action would involve, as is what Simester and Von Hirsch also consider. The seriousness and the likelihood of the harm are important factors, being that the more serious and likely the harm is the more likely the criminalisation would be. On the other hand, the more valuable or the more liberty restricting the prohibition of the action is, the stronger case against criminalisation is built (Ibid., p. 45). The resolution of the balancing process which determines whether or not actions

are harmful enough to the extent that there should be implemented laws that restrict this behaviour, will oftentimes depend on references to standard cases of harm. The Harm Principle is in play in the instance of speeding on a road, because speeding, ghost driving or driving under the influence standardly cause or create a reasonable risk of harm, even if the actual risk varies in particular instances. Inevitably, the criminal law is a blunt instrument, regulating in terms of average cases and incapable of reflecting the myriad variations upon those cases that real life generates. To a large extent, it is a matter of resources, and of their efficient use—it is simply uneconomic to frame and administer laws that consider the particularities of every person's situation. Hence, criminal law tends to prohibit actions on the basis of their typical risks and consequences, leaving further refinement, if any, to the realm of exceptions. It is an offence, to drive faster on a motorway than what is prescribed in the law. This is so notwithstanding that there is no intrinsic significance to the specified speed. Nonetheless, specifying a precise limit is a convenient and enforceable means by which to regulate dangerous driving; and the limit itself is determined by reference to risks in standard cases. In summa, standard cases of harm are oftentimes actions where the harmful action can be listed directly to a person from another. Due to this, it can be difficult to fit the harm caused by animal agriculture into this definition of harm, and a further exploration of what harm can be must therefore be entertained.

The notion of standard harm should now be in place, and we can therefore move on to the subject of Non-standard harms. A standard, or conventional use of the Harm Principle does not adequately deal with the notions of remote harm or risks respectively, which is why an extended Harm Principle is needed. This section explores the notion of remote harm, because the standard harm analysis will not suffice in respect to assessing animal agriculture as a harm, as I discuss in this thesis. This is due to the standard harm analysis being far too narrow an interpretation of what harm can entail. As was seen in section 2.2, if I were only to apply the notion of standard harm to the case against animal agriculture, I would not come very far due to the limitations standard harm has. These limitations encompass the standard form of harm being too narrow in this instance, because of the sheer size of animal agriculture as an industry along with the important role it plays in creating jobs, feeding the population, the intricacy of climate change, the aspect of remoteness and the question of who harms who through the act of animal agriculture. The following section is dedicated to shedding some light on how harm can be viewed in order to answer these questions.

When speaking of remote harms, it is not always literally a spatio-temporal remoteness that matters in instances of remote harm – so where the harm is and when in time it occurs, as the following enlightens:

> If I had in secret hidden extremely dangerous explosives in a densely populated city set to explode in ten years, I should still be punished for this action. The remote risks in this sense are remote in the respect that they involve certain kinds of contingencies (Ibid., p. 57).

It can also be a geographical remoteness which is at play: even though a harm is caused geographically remote by the person causing the harm, it should still be prohibited because the remoteness of the harm does not cancel out the actual harm. Further, the notion of causal remoteness is also worth mentioning in this context. If an action goes through a line of causal actions that cause harm, they can still be worth noting as being harmful actions that must be prohibited. There is a causal remoteness between animal agriculture and climate change, all humans contribute to global warming through their dietary habits and job choice as a farmer (although some more than others), but the individual contribution may seem insignificant. However, if a significant reduction in animal agriculture was made, so that climate change was mitigated all the individual contributions would in fact be significant. There is no doubt that the relationship between animal agriculture and the harm it causes through climate change is remote, and the consequences are not visible in the same way as in the drowning child example – however, this remoteness should not cast away the possibility to hinder the harm. It is true that the harm caused by animal agriculture and the connection with global warming is complex, intricate and very difficult to understand, but the causal remoteness, and possible geographical remoteness of animal agriculture is difficult to understand, because many may not realize that they are harming others through this behaviour, or that the action is harmful now (compared to being harmful in many years' time).

The standard cases of harm, as discussed in section 2.2, can be prohibited through legal coercion due to the Harm Principle, being that A's actions directly harm B's interests: If I shoot someone, then I have directly harmed their interest and freedom in living a harmless life. There are, however, harms that are less obvious as mentioned above. An example of this, is in a situation where an action becomes harmful by abating the well-being remotely (in contrast to harming immediately) (Ibid.). An example of this could be global warming, as it can be argued that the harm it causes, is remote and often not immediate, in contrast to harming directly and immediately as a standard case of harm

would be. Consider the following example: if I sold animal produce, the action in selling the produce does not harm anyone. That is to say, me exchanging animal produce in exchange for money does not harm another person – in fact, it may even prevent a harm through perusing the ability to pay rent and buy food and so on. However, the prospect of the potential harm in how the produce is farmed, is the real harm. The exchange of animal produce and money harms no one, nor does the intake of animal produce. It is the making of the animal produce; animal agriculture and the industry behind it, transportation, feeding the animals and growing their food, are notions which cause the harm. Because the action does not directly and instantaneously cause harm (in the same way as shooting someone would), it is a remote harm. We may even first feel the consequences of animal agriculture and how it affects the climate many years or decades later. It can be difficult to base criminalisation on remote harms, even more so on those relying on criminal choices by third person parties (Ibid.). The remoteness plays an important role in assessing harm, which will hopefully become clearer now. A same-sex couple walk down the street holding hands, and a very right-wing conservative person is extremely offended by this and as a result decides to entre a gay-bar a week later going on a shooting spree killing everyone inside. The same-sex couple start this causal chain which elicits the killing spree a week later, but it would be utterly unreasonable to hold them accountable for the deaths of everyone in the gay-bar. Simester and von Hirsch explain that, what is called traditional causation doctrines in respect to the criminal law contain an important principle regarding the free intervening act of a third party (2014, p. 61). This principle "[…] ordinarily relieves the original actor of causal responsibility, on the basis that informed adults of sound mind should be treated as autonomous beings who make their own decisions about how they act, so that their free, deliberate, and informed interventions are not treated as caused by others […]" (Ibid.). This principle is based on normative considerations of responsibility and fault, meaning that an actor cannot be held accountable for questions concerning intervening choice, through the application of causation doctrines due to an entirely different context where the action is played out (Ibid.). In cases of mediating interventions, the actor is not held directly accountable for the subsequent harms she may cause (Ibid.). Instead, the action which may cause harm is prohibited due to it being a remote harm because it is thought to make a significant contribution to the likelihood of the action being a harm (Ibid.). If I act in a way, that causes harm through complex causal chains I may not be penalized for doing so. If we were to follow every actions causal chain, it would be very likely that every action would cause a harm. Boundaries regarding how far we should follow a causal chain therefore exist.

Further, secondary, reactive harms can occur when people are harmed by the potential of the action, rather than the actuality of the wrongful action (Ibid.). Simester & von Hirsch point out that the state will on occasion intervene in order to prevent a public nuisance where the action may not be harmful in the first instance, but the prevention of it ceases harm. This means that, if an action is prohibited due to this principle, it is prohibited because if the action was always permitted it would cause harm. An example of this is that, if it was not a criminal act to sell guns to people without a permit, many would probably purchase guns, and if many people owned guns it would with great probability result in more gun-related causalities. Guns do not choose to harm people, people choose to use guns to harm people (instances of accidental shots are also known of, and due to this: guns should not be owned by everyone). Further, the vulnerability, uncertainty and insecurity of no gun regulation could have a negative impact on many citizens lives. If it is assumed that (to at least some extent) a prohibition on guns would be effective in reducing gun-induced causalities, it would subsequently reduce harm (Ibid., p. 48). In this example, we can see that the action of there being no limitations on gun control can also generate a secondary crime. A gun-wielding population may lead to further crimes, such as ones of violence such as theft. Generally speaking, crimes do not often stand alone, and these "crimes within crimes" are so-called secondary crimes. It should be noted that if an action is criminalised, it will depend on the legitimacy of reactive harms, that the wrong must be established separately of such harm (Ibid.). So, the notion that the action must be a wrong is vital here, as it is not enough to state that the Harm Principle should be invoked, merely because A does not like that B acts in a certain way. The wrongfulness of B's behaviour has to be independent of A's reaction, otherwise the state would criminalise a lot of unnecessary behaviour.

It is not, however, always easy to identify harm, or potential harm. In the case of remote harm, the standard analysis of harm, if applied in the same manner, can have detrimental consequences. Simester and von Hirsch write, "It is not easy to identify conduct that confidently can be said to be without substantial risk of injury in the long run. As a result, the Harm Principle—unless suitably modified or supplemented—can lose much of its liberty safeguarding role" (Ibid.). In the instance of global warming, almost everyone agrees upon the fact that it causes harm, and that it is anthropogenic. In such a case, the notion of the imputation of harm is noteworthy: The standard harm analysis supplies the groundwork for applying the principle and assessing potential harms (Simester & von Hirsch, 2014, P. 66). Further, as Simester and von Hirsch note:

> […] estimates of the gravity and likelihood of harm tend to become progressively more indeterminate as the envisioned harm becomes more remote. […] But what about applying the Standard Harm Analysis to claims that drug possession should be proscribed because widespread drug use will tend to accelerate social decay, with its attendant increases in crime? Here, estimates of the magnitude and likelihood of the risk necessarily become quite speculative. Could not such measures, however, be disposed of straightforwardly by the Standard Harms Analysis, without need to address the admittedly more complex questions of imputation? (p. 66).

The standard harm analysis can challenge claims of questionable harms, due to the requirements in respect to both the extent and the magnitude of the prosperity of a harm (Ibid.)[6]. Furthermore, estimating the gravity and likelihood of a harm becomes more and more vague as the harm becomes more and more remote (Ibid.). If the standard harm analysis was to be applied to a more remote harm, we run the risk of the magnitude and likelihood of the risk becoming speculative rather than factual. It is still a possibility that the standard harm analysis can be applied to a remote form of harm, but another dilemma could arise in the subset of this. Simester and von Hirsch consider the following in this respect:

> It is not only the more debatable prohibitions which involve difficult-to-estimate risks; so, do seemingly more attractive areas of intervention such as those regarding the environment. It is not easy, for example, to gauge the effects of global warming. A stringent evidential standard— one barring all but reasonably certain risks— might not only call into question the marijuana prohibition, but much environmental legislation as well. Yet loosening the standard of evidence could have the reverse disadvantage, becoming too permissive of state intervention (Ibid.).

If legislators were only to rely on the standard harm analysis in respect to assessing remote risks, insufficient arguments of principle would be put forth (Ibid.). That is to say, decisionmakers and others in the position to implement said legislation would have to consider arguments regarding the pros and cons of incarceration in the economical aspect among other considerations. We know that there must be a proportionality between criminalization of an action, the action itself and sometimes criminalisation of an action is simply wrong, due to the causality between the action and the possible remote harm it causes that cannot be the actor's fault (Ibid.). By considering fair imputation, the

[6] Simester and von Hirsch write that, evidence for a harm may not be essential to the assessment of a harm.

standard harm analysis can however, change the character of this debate, as Simester and von Hirsch write:

> An opponent of (say) the marijuana prohibition would no longer need argue merely that the evidence of ultimate social harm is insufficient, that the countervailing costs (and difficulties of enforcement) are too great, or that (say) privacy concerns protect the user. He could raise the more fundamental objection, about whether the feared eventual result is the actor's proper lookout (Ibid.).

If I were to trace the causal chains of every single one of my actions for long enough, I would with a high probability cause harm with seemingly innocent actions. It is noteworthy to discuss the liberty safeguarding role that plays an important role in this, being that one of the state's roles is to enable and safeguard the basic means by which citizens can live their lives without having to consider every single action in fear of the penal system. Without an adjustment to the Harm Principle, it could cause its role as liberty protector to be lost. In respect to the involvement of more remote risks, such as climate change, which is of topic in this thesis, by holding the actor responsible for an outcome which possibly can cause harm, can be very problematic. It is custom that the action which is prohibited is a present act, A, which according to legislative judgement creates, or contributes to the creation of an unacceptable risk of some eventual harm, X (Ibid.). Additionally, "The mens rea[7] required is merely an intent to perform the present act A, and the actor need not even be aware of its eventual deleterious consequences" (Ibid.), which is problematic in the sense that the actor may intend to perform act A, without having knowledge about the harmful consequences that can come hereof. It is therefore questionable if the actor can rightly be held accountable for her actions and the consequences that can come of this.

In cases of conjunctive harm, the action causes the feared injury or harm when it is combined with the same, or similar actions by others (Ibid., p. 59). Conjunctive harms are accumulated harms, that is to say: actions that are harmful in large numbers. Simester and von Hirsch raise the questions as to why citizens should refrain from such actions that first can be considered harmful when paired with the behaviour of others. They answer that there lies an obligation of cooperation, meaning that citizens ought to work together by forging some choices for the sake of the joint interest in preventing harmful consequences (Ibid., p. 62). It is worth noticing though, that the harm caused through a

[7] Mens rea allows the criminal justice system to differentiate between someone who did not mean to commit a crime and someone who intentionally set out to commit a crime (Mens rea - a Defendant's mental state, 2019)

conjunctive harm is attributed to the actor (Ibid., p. 86). The question of how the actor must restrict her harmful conduct as well as others participating in the same harmful action, with the objective of preventing accumulated harms, depends on reasons affecting particular classes of actor, as Simester and von Hirsch write (Ibid.). Those participating in these activities as a part of their livelihood e.g. farmers practicing animal agriculture, have a causal influence on the harm. Simester and von Hirsch note that "[…] it is not obvious why a 'stronger' causal link furnishes a stronger ground for responsibility." (Ibid., p. 87). There is a duty to cooperate in order to prevent an eventual harm, or risk of harm which may naturally fall upon those who are more closely linked to the harmful action. It may be preferred only to regulate conjunctive harms through those who participate in these actions and their activities rather than regulating the general public (Ibid.). It should be considered that because many may participate in a conjunctive harm, even though only some make a large-scale contribution, that all participants may have to share the burden, being that a problem of free riding may arise if all participants are not regulated. Simester and von Hirsch point out that in the cases of conjunctive harm, a shared responsibility for the ultimate harm should fall equally on all, along with how great the burden of compliance is and how this burden can be fairly allocated (Ibid.).

A conjunctive harm is also a remote harm. This means that if I perform a conjunctive harm, it is harmful, but it does not directly inflict harm on someone, in the same way as if I punched someone in the face. There is no direct and immediate recipient to my harmful action. An action of this sorts need not be prohibited, if only *I* did it. If I was the only person in the whole world who practiced animal agriculture, the harm would be so small it would be in detectable, given that my one farm was not in fact the size of all farms we have in the world today. However, if a large part of the world made a living through animal agriculture, and the result of this was the vast majority of the world's population ate animal produce every day it would have a large impact on the global fight on climate change. This conduct is only harmful when numerous people act likewise, ergo it is a conjunctive harm. In these situations, it is not one act that makes the outcome, instead it is the culmination of many similar acts that cause the overall harm. In such a situation the prohibited action (say animal agriculture) is a token of the type of activity that cumulatively causes the harm (Ibid.). The actor (so the farmer) would not be able to draw a moral distinction between her actions and the action of others acting similarly, thus contributing to the harm that is caused (Ibid.). In the context of this thesis, the conjunctive harm would be animal agriculture. In itself, one farm - or one hundred farms causes minimal harm or injury, but the sheer mass of agricultural farms combined constitutes a large, and

substantial harm[8]. If only a few percentages of the farmers today practiced animal agriculture this would not cause as large an injury compared to what we experience today. To mitigate climate change through a substantial reduction of animal agriculture, there is an obligation to cooperate (Ibid., p. 62). Simester and von Hirsch write, "[...] we ought to work together—by each of us forgoing some choices—for the sake of our joint interest in preventing certain harmful consequences" (Ibid.). If everyone gave up every single action that contributed to global warming (thus harming others), the problem of climate mitigation would not be as dire as it is today itself. However effective it may be to give up these obligations to stop all potentially harmful actions, cannot be penalised and an actor may not be held accountable for her actions because they only become harmful when combined with the same or similar actions of others. Obvious questions arise, such as whether or not said obligations exist in the first place, and whom they extend to. A fair point Simester and Von Hirsch make, is that it is one thing to criminally sanction an actor who is one of many contributing actors, thus obligating everyone to cooperate in a scheme of legal regulation backed by criminal sanctions that is in place to minimise harmful actions (Ibid., p. 63). It is another thing to state that these obligations should be linked to the causal contributors. In cases of conjunctive harms, the conduct which is to be prohibited only causes the injury when combined with others similar actions (Ibid., p. 85). If, say, only one person threw their cigarette buds on the ground after smoking, then we would only occasionally experience a lone cigarette bud lying around – but – if everybody, or the vast majority of smokers did it, we would see significantly more lying on the ground[9]. The same goes for conjunctive harms – if only one person partakes in this conduct, then it would hardly be noticeable, but if many partake then it would be very noticeable because the culmination of many people partaking in this conduct causes the harm. Ordinarily in these cases, it is not possible to draw a distinction between one actors' behaviour (the lone smoker) and that of other people (the majority of smokers) whose actions contribute to the injury (Ibid.). The objective with this section was to show that the individuals contributing to global warming should not be viewed as a standard harm, because the contribution is too small, and the causal chain is far too long and impenetrable, which is why it was relevant to consider Non-standard harms. These considerations will be applied in chapter three and five in order to generate a discussion on the topic of animal agriculture.

[8] There is, alone in the United States an estimate of 9.2 billion farm animals raised on 2 million farms across the country (ASPC, n.d.).
[9] I use this analogy to visualize how one person contributes to a harm compared to how many people do so. I am not condemning smoking or smokers in general.

2.4 Ulterior and Welfare Interests

This section sets out to explore different types of interests which, according to Feinberg, have different levels of importance when assessing the severity of harms. In order to be able to measure the severity of harms, Feinberg introduces a scale on which the interests that are harmed or set back can be weighed and categorises interests by this (1987, p. 55). The Harm Principle provides a means of balancing different interests and takes the extent and the likelihood of the harm into account, by weighing this against other implications of criminalisation (Ibid., p. 45). In this thesis, I apply two of Feinberg's distinctions: namely Ulterior interests and Welfare interests. This distinction assists in the discussion of weighing the degree of which an interest is set back, thus determining the proportionality of the harm and the punishment. The following sections set out to explain Ulterior interests and Welfare interests respectively, and which actions may fall under each category in respect to legal coercion. Most people can recognize the thought of having an interest in something central to their life - maybe a lifelong goal of sorts; to become successful at work, to publish papers and articles and become a scientist of great honour, to create a stable and loving family or to be a talented sportsperson. These interests are Ulterior interests, and are more than what can be classified as want or desires of the moment, because they take a lifetime to create and hold an important place in a person's life in respect to living a good and fulfilled life, Feinberg writes:

> "The kind of want that creates a relatively Ulterior interest is not just a desire of the moment, like the desire to "go to the cinema to enjoy myself," which can create a "stake" only in its own satisfaction or avoidance of disappointment, but a relatively deep-rooted and stable want whose fulfilment, as we have seen, can be both reasonably hoped for and (usually) influenced by one's own efforts." (Feinberg, 1987, p. 45).

This means that Ulterior interests embrace a person's hopes and wishes for the future; goals in respect to a career, plans for how family life should be, wishes to travel and any other long-term focal aim a person could have. Ulterior interests are personal interests, and thus personally important to the holder because Ulterior interests have the capability of offering a sense of identity, happiness and direction to life. If an interest of this sort is harmed, it could be expressed through the loss of a job which one holds dearly and has created an identity through. By removing a person from their job or workspace, the sense of direction can also be removed because it has provided a deeper meaning to life, is something to strive for and develop through, and economically funds a home, food and clothing– if this is lost or harmed, the person can also risk harm. However, a person is (almost) always at liberty to get a new job, be compensated for the loss etc. which is why this is an Ulterior interest. Welfare interests

are interests that are fundamental to a person's wellbeing and will often take precedence over the aforementioned Ulterior interests. Anything fundamental to a person's wellbeing, quality of life, and the pursuit of larger life goals tie in with the concept of Welfare interests. This type of interest is a fundamental precondition to even have *interests* at all – that is to say: Welfare interests creates the possibility and foundation of striving after other interests in life. Feinberg explains Welfare interests as being:

> Essential to all of the wants on which these interests are based is their character as bare minima. Our interest in welfare, speaking quite generally, is an interest in achieving and maintaining that minimum level of physical and mental health, material resources, economic assets, and political liberty that is necessary if we are to have any chance at all of achieving our higher good or well- being, as determined by our more Ulterior goals (1987, p. 57).

With this it means that Welfare interests must be met in order for any other goals in life to be achieved. Welfare interests reflect the absolute minimum criteria for achieving anything else in life: they lay the founding bricks to a rich and fulfilled life, and if Welfare interests are harmed or not accessible in any way, a person would be unable to pursue other things in life besides existing in a goalless life. Welfare interests are thus typically instrumental to achieving Ulterior interests, because they are a necessary prerequisite to gain (what Feinberg dubs) focal aims (Ibid., p. 59). Lack of good health – or what may be more important in the scope of this thesis: liberty, hinders the pursuit of Ulterior interests. Further, it should be noted that Welfare interests reflect a minimum criterion, meaning that it is not necessitous to have maximum health or maximum liberty (if it would even be measurable) in order to pursue life goals – this means that it is not essential that I have maximum liberty in order to buy a Ferrari, other things must be in place before I can do so. Instead, an adequate level of health and liberty will do in order to pursue life goals.

2.5 The Criminal Law and Safeguarding Liberty

In order to be precise, and avoid misunderstandings, ambiguity and the likes, I will now take the time to clarify what I mean by liberty in this thesis. First, liberty and freedom will be used interchangeably throughout. There may be other definitions of the concept, but the following section will only deal with the relevant idea of liberty used in this thesis. Liberty has many different everyday uses, making it difficult to navigate within. Intuitively, liberty seems important and something that ought to be protected. For these reasons, it is often the majority's intuition that liberty is desirable. There are also

many reasons for finding this true, which have to do with the instrumental goodness of citizens' being free from state coercion, as Moore writes (Ibid., p. 186). By this, I understand it to mean that liberty is used as a means of pursuing other things in life[10]. There must exist a proper level of criminalisation, that is to say: some actions ought to be criminalised and others ought not to be, and these areas of criminalisation should be regulated. It is predominantly important to understand the criminal law, due to the inflictions it causes "[…] criminal law physically restrains people, impoverishes them, threatens and coerces them into doing what they may not want to do, and even on occasion kills them" (Moore, 2014, p. 183). Criminal sanctions do not come without a cost which is why coercion must be legitimate. There are the obvious economic costs of the criminal law such as; enforcement, the police, court fees, salaries and so on, and then there are the less obvious costs of criminalizing and penalizing certain behaviour (Ibid., p. 188.). As Moore writes, these costs involve:

> […] privacy costs in enforcement; costs in terms of disrespect for laws that predictably will be regularly ignored; opportunities for selective enforcement of laws that predictably will be underenforced; and the costs of funding organized crime by the 'crime tariff', namely, the artificial restriction of supply of the goods or services in question in the face of relatively inelastic demand (Ibid.).

Further, moral costs[11] which is to be broadly understood, should also be considered here. This could be an example of an instance where it is not possible for the actor to avoid wronging someone even when she acts in a way that is overall morally permissible (Slote, 2012). The costs are primarily concerned with behaviours vis-a-vis witnessed by the participants because they are carried on in private, motivated to the extent that criminalization minimalizes the conduct slightly, and typically only harmful to those willingly participating in the conduct (Ibid.). The mentioned costs can contribute to the value of not prohibiting certain activities and can subsequently add up to an equitable case for leaving citizens free from state coercion, according to Moore (2014, p. 188). Note that the above has a general applicability to all actions, but they are not apt to generate principles showing the limits of criminal law, at most they raise a presumption favouring liberty and opposing criminal legislation (Ibid.).Without the presumption of liberty there would be no apparent reason as for the state to interfere with citizens lives, because if liberty is not something we wish to cherish and safeguard, then legislative matters to uphold this would not be necessary to enforce.

[10] See section on welfare and Ulterior interests.
[11] A notion first introduce by English moral philosopher Bernard Williams.

Liberty is undoubtedly a fundamental proponent for leading a good life, because liberty presupposes a welfare interest which the state should avoid harming, according to the liberalism Feinberg's theory adheres to. Liberty is an imperative interest to protect and maintain in order to live a free and fulfilling life. Without liberty to pursue our other interests, we would come to lack a fundamental welfare interest, "If our personal liberties were totally destroyed by some ruthlessly efficient totalitarian state, most of us would be no more able to pursue the ultimate interests that constitute our good than if the sources of our economic income were destroyed or our health ruined. For that reason, our interest in liberty is best understood as a basic welfare interest" (Feinberg, 1987, p. 206). This means that, if the state destroyed its citizens personal freedom, it would also hinder the citizens in pursuing other interests – ergo it is of the utmost importance to protect liberty from unnecessary limitations and legal coercion. Legal coercion must therefore be reasonably justified even if it prevents harm in some instances, due to its coercive nature. The above sections have sought to explain the importance of liberty, and why it is desirable to enhance it, and protect it from coercive measures.

2.6 The Rule of Law

This section will shortly explore the Rule of Law, proposed by Joseph Raz. The rule of law, in its most literal sense means that citizens should both obey the law and be ruled by it – in its political and legal sense, it means that the government should be ruled and subject to the law (Raz, 2009, p. 212). Essentially, Raz viewed the Rule of Law as an act to minimise the danger that could follow the exercise of discretionary power in an arbitrary way (Teacher, 2013). The law can be, as has been seen both historically and in present time, used as a tool of tyranny, which is why there must be rules put in place to hinder this. It has once been said that, the "Law is the strongest link between man and freedom" (U.S. Government Publishing Office, 2001). Laws can protect individual freedom and rights. There is a broad discussion on how to interpret the meaning of the rule of law, which is not one I will go into as it has no purpose in this thesis. Instead, I will present Joseph Raz' idea of how the rule of law should be interpreted. The basic idea of this doctrine is that "[…] the making of particular laws should be guided by open and relatively stable general rules" (Ibid., p. 213). The laws must be made so that they are easy to understand, follow and be ruled by them. This provides a stable basis for both how the law should be made, and how the law should be understood. More so, it must have a sense of stability, so it does not change too often. There are two further aspects that contribute to the understanding of the rule of law. The first, is that people should be ruled by the law and obey it (Ibid.). No one - not even the lawmakers are above the law. The second, is that the law should be such that the people are able to be guided by it (Ibid.). In order for the second aspect – namely the

one stating that the law must be capable of being obeyed to be fulfilled, it preconditions that the citizen must have knowledge of the law (Ibid., p, 14). That is to say, if the law is to be obeyed it must have the capability of guiding the behaviour of its subjects (Ibid.). This means that it must be the case that the citizens must be able to find out what the law entails and act accordingly. This is an important part of the rule of law, being that it would be unreasonable and illegitimate for a state to create new secret laws, and then punish citizens for not abiding by them. Further, Raz states, all laws must be prospective, open and clear (Ibid.), because it cannot be reasonably expected that citizens can foresee what conduct may become illegal in the future. For obvious reasons, the law must also be adequately publicized and clear for citizens to access if they are to follow them. Laws must also be (relatively) stable, meaning that they should not be changed too often so that citizens can make both long- and short-term decisions from the knowledge of the law. This aspect is especially important when discussing the topic of this thesis, being that citizens' long and short-term decisions can have a large impact on other citizens. If a law conforms to the rule of law it is capable of guiding the citizens in such a way that they are able to act and plan fittingly for their future (Thaysen, 2019). The rule of law also requires respect for human dignity and promotes freedom (Ibid.). Legal coercion that restricting liberty must be justifiable – that is to say, if a legislation is unable to justify itself it is morally impermissible. By legally restricting certain conduct through legislation, the nation state does more than merely show its citizens that they ought to abstain from said conduct (Thaysen, 2019).

Chapter 3: Climate Change

This chapter sets out to outline climate change and its implications. Global warming, climate change, climate emergency, global temperature rise – the devil is known by many names, but they all denote the same meaning. Climate change - or global warming are relatively new terminology, as is the whole concept of climate change and the belief of its existence. It will be explained in this chapter how global warming can and will affect our livelihood, and why it is essential to take the subject of global warming seriously and make an effort to mitigate it. For the past years we have been experiencing more and more severe changes to the environment, due to global warming. Uncontrolled wildfires have killed many and have left even more without a home, draughts affecting livestock and agriculture, and heat waves causing an increase in hospital admissions, are just a few of the consequence's climate change brings about. It is very likely that global warming will inflict serious harm to living generations, as well as future generations. The harm that global warming causes will not only be experienced in developing countries and societies far from the ones we live in and experience

today - it will also seriously affect economically developed countries (Hawken (Ed.), 2017). That is to say: no one will go free from the consequences of global warming, unless serious measures are taken to mitigate climate change, sooner rather than later. Fortunately, scientists agree that it is possible to limit the casualties caused by global warming, by reducing greenhouse gas emissions significantly (Ibid.). This sounds simple enough, but there lies a large problem in creating initiative and action both at the level of the individual and at the level of state leaders and policy makers (Ibid.). The majority of climate scientists agree that humanity as an entity faces the threat of dire climate change, which will challenge our wellbeing, livelihood, and our future. Global warming is an effect of the rise in the emissions of greenhouse gasses. I argue that it is in everyone's best interest to mitigate global warming, and therefor also everyone's responsibility. This point will be elaborated upon in a later section.

3.1 Climate Change as Harm Constituting

It is recognised worldwide that climate change is real, and the consequences hereof are already being experience. Close to all scholars and laymen agree on this, however, the solution to this problem is difficult to agree upon, as there are many different attitudes and opinions as well as different obstacles which must be passed first. In this section I will lay forth some of the peer reviewed data presented by the Intergovernmental Panel on Climate Change (IPCC for short) with the objective of presenting no reason to doubt the claims in this thesis regarding climate change. The rise in emissions is largely attributed to human activities, and it must therefore also be human activities that should be reduced if we are to mitigate global warming within the timeframe given by the Intergovernmental Panel on Climate Change. In 2018, the IPCC presented a rapport on the impact of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emissions (IPCC, 2018: Summary for Policymakers). The rapport discusses the impacts of global warming above 1.5°C in the context of global response to the threat of climate change, sustainable development, efforts to eradicate poverty and the strengthening of the global response hereof (Ibid.). This rapport states that, "Human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C." (Ibid.). The rapport further states that global warming is *likely* to reach 1.5°C between the years 2030 and 2052 if it continues to increase at the current rate (Ibid.). In other words, if nothing is done to mitigate global warming, and we continue in a business as usual manner there is a high likelihood that we will reach and increase in global mean temperatures with 1.5°C, which is undesirable if the objective is to limit harm caused by a temperature rise. Further, due

to past and ongoing emissions estimated anthropogenic global warming is presently increasing at around 0.2°C per decade (Ibid.). This means that global warming greater than the annual average is being experienced many places around the world, thus causing further harm. There was detected a tendency in intensity and frequency of some extreme climates and weather already at a temperature rise of 0.5°C (Ibid.). The rapport states that, by limiting global warming to 1.5°C (rather that 2°C or more) it would be possible to "…reduce the number of people exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050" (Lindwall, 2018). Additionally, by withholding the 1.5°C limit, the number of people across the globe who are at risk of scarce water supplies could be fifty percent lower than at 2 °C. Not only are humans directly affected by this temperature rise, but they are also indirectly affected, e.g. through a decline in the insect population which is a critical factor for our food supply (Ibid.). The rapport concludes that by failing to act accordingly to the climate crisis at hand, and thereby missing the 1.5°C target, substantially more human lives would be lost or ruined, there would be an increase in superstorms, a larger economic strain would emerge, and more people would be driven into poverty (Ibid.). By withholding the 1.5°C limit, the number of people across the globe who are at risk of scarce water supplies could be fifty percent lower than at 2 °C. In other words, it is in our best interests to reduce the harm caused by global warming by reducing our emissions, so that the global mean temperatures stay below 1.5°C. The years from 2015 to 2019 were measured as being the warmest since 1850, according to the WMO (2020, p. 6). Further, the global mean temperatures have risen by 1°C since pre-industrial levels (Ibid.). This is an authentication to global temperatures rising at an undesirable and alarming pace. The This report further states that keeping the global temperature rise below 1.5°C, is possible, but will demand huge societal and individual change (Ibid.). These changes are challenging and testing, but nonetheless, it is important that we act accordingly to the problem we face. Global warming has already harmed many millions of people, and it will continue in doing so, if mitigation strategies are not put in place in time. Climate change will continue to affect the livelihood of millions upon millions of people. It would be in the interest of everyone affected to limit the harm global warming causes. An effective way of doing this, is by limiting the behaviour that largely contributes to global warming – as the case of this thesis: animal agriculture. It should now be clear that, if we wish to avoid the harm climate change is currently threatening us with we must act sooner rather than later. The IPCC is a reliable scientific source, which clearly states that, to limit global warming to 1.5 °C it will require unmatched to our current global structure (the energy and transport sectors, land use and food sector) at an extraordinary scope and pace unlike anything ever experienced. According to

the IPCC, this must be done both by decreasing carbon pollution by forty-five percent between 2010 and 2030, and by reaching net zero emissions by 2050 (Ibid.). I argue in this thesis that animal agriculture causes substantial harm to the global population by contributing significantly to climate change and that this harm legitimizes legal coercion. This may seem far-fetched to some, and I will therefore dedicate the following section to explaining how and why animal agriculture can be viewed as harm constituting. Due to complex causal chains it can be difficult to follow how animal agriculture causes harm in a way that can legitimise legal coercion with the objective of limiting this harm. Farming and agriculture are built up of many different aspects which each contribute to excessive amounts of greenhouse gas emissions. Possibly the most commonly used examples used in the discussion of how animal agriculture contributes to global warming, is the different gasses which are produced through farming. Two of the most important gasses to mention, are methane and nitrous oxide respectively. Methane has an effect on global warming twenty-eight times higher than carbon dioxide has, and nitrous oxide has an effect 265 times higher than carbon dioxide, according to the IPCC (Grossi, et. Al, 2019). Simply put, gas emissions stemming from animal agriculture are extremely high. The U.S Department of Agriculture states that GHG emissions stemming from livestock are innately tied to the size of livestock population (Human Society International, 2011, p. 4) – had there only been a few cases of small animal agricultures, then we had not experienced this problem. This also means that, the Bangladeshi Farmer Faisal who has two goats and a chicken emits a small percentage of the overall emissions and compared to Old McDonald in America who has three hundred cows this seems like an insignificant contribution to global warming. The individual contribution is disproportionate, and this will also be considered in the following sections.

3.2 Old McDonald Caused a Harm

This section sets out to discuss the harm farmers cause through practicing animal agriculture, and the difference there is between Old McDonald and his farm, and Farmer Faisal from Bangladesh. Animal agriculture is an enormous and still growing industry, due to the demand for animal produce heightens proportionate with the world's population growth. As animal agriculture becomes more and more industrialised, more and more climate related problems arise in lieu of it. This is due to the higher the emissions are, the larger the contribution it has to global warming. Animal agriculture contributes with an estimate of eighteen percent of the annual anthropogenic CO_2 emissions (Steinfeld, 2006). To put this in perspective, animal agriculture is within the top 5 contributors to climate change, behind burning fossil fuels and transportation (Hawken (Ed.), 2017). This is due to land-use changes

necessary to maintain and feed the animals (Steinfeld et. Al, 2006, p. 272 and pp. 85-86). An emission of around 90 million tons of CO_2 a year due to electricity and diesel fuel to uphold the animal production facilities is also a large contributing factor to global warming (Ibid., pp. 88-90). Additionally, in step with animal agriculture becoming increasingly globalized, animal produce is transported around the world (Human Society International, 2011, p. 5). This means that an estimate of forty-five million cattle, sheep and pigs are traded and transported globally each year, as well as being transported nationally (Ibid.). It is a well-known fact that a rise in gas emissions causes the greenhouse effect which, among other things, results in unstable weather, which has a large effect on agriculture, making it difficult to produce food – which is along with water, a home and medical care one of the most important basic human needs to protect. Floods and superstorms can ruin and drive communities away from their homes - as seen with the 2019 cyclone Bulbul where 2 million people were evacuated from their homes (International Federation of Red Cross and Red Crescent Societies, 2019), hundreds of thousands of homes were destroyed or damaged, and the nations agriculture was severely damaged (Daily Bangladesh, 2019).

The discussion in this section will take its point of departure in the individual farmers contribution to climate change and Old McDonald and Farmer Faisal will be applied to represent the two extremes in the discussion. The harm that animal agriculture causes does not fall under the category of standard harm, because of the notions of the imposition of risk, imputation of fault, conjunctive harm and remote harm respectively. Firstly, when looking at gasses emitted from animal agriculture, it is clear to see that there is a correlation between the size of the farm and gasses emitted. It is however not as clear to see the correlation between gasses emitted and the consequences we experience today. This is due to the fact that there is a latent time, between when the gasses are emitted, and when the consequences are experienced. According to the UN, the world population has increased by approximately one billion inhabitants during the past 12 years (Grossi et al., 2018). Even though it is a slower growth than seen ten years ago, it still contributes meaningfully to worldwide population growth thus an increased demand for livestock. According to Gerber et al., the livestock sector requires a noteworthy amount of natural resources and is responsible for nearby 14.5% of total anthropogenic greenhouse gas emissions (2013). There is a direct link between animal agriculture and climate induced temperature rise, but due to the delay between when the harmful action takes place and when the consequence is expressed, an extended version of the Harm Principle must be applied, together with notions of Non-standard harm. A case of immediate harm, where there is no question regarding the

responsibility for causing the harm, nor is there a delay in time or space, would be an example of me hitting an old lady, purely out of spite. A standard harm, thus also the conventional way of applying the Harm Principle, is the occurrence of an immediate harm, where standard normative constraints such as those concerning liberty and the imputation of fault are readily appeased (Simester, A. P., & Von Hirsch, A., 2011, p. 53-54). The immediate harm I cause by punching an old lady for no other reason than because I felt like doing so, is easily proscribed to me and it is obvious that the consequences of the harm I cause here and now are also felt here and now. This is a plain and simple example of harm caused by me and inflicted upon another person, but it is also very unlike the subject matter of this thesis: this is not a case of one identified person inflicting direct, visible harm upon someone else, because the notion of remoteness is an important aspect to consider in this discussion. When animal agriculture in one country can (through a complex causal chain) create a superstorm in a different country, can it still be considered under the Harm Principle? Mitigating the impact animal agriculture has on global warming is dire for the health of the planet, the environment and all inhabitants (Ibid.). The question of how the Harm Principle successfully contributes to answering this issue still remains however. If the standard Harm Principle was applicable here, it would mean that every time a farm animal was fed or born (or any other agricultural conduct) someone would be harmed in the same immediate way as being punched in the face. So: a cow is born on a farm, and subsequently a person is directly affected by climate change. But, this is not the case. Instead, many different people inflict harm upon others – as well as themselves, in a very abstract and indirect manner, and due to this the standard notion of harm does not suffice because it is too narrow a definition. Standard harm encompasses cases of harm such as punching an old lady out of spite or driving recklessly through the town centre – in both cases both the actor and the victim are easily identifiable, however in the case of driving recklessly it is not certain that the driver will cause harm, but it is still so plausible that it may be prohibited by the state. In the instance of global warming, we are faced with remote harm, conjunctive harm and the imposition of risk, which are all proponents of non-standard harm. This means that Old McDonald or Farmer Faisal do not cause harms that can be traced directly back to them in the same way that it could be directly traced back to them if they went around punching people or driving recklessly around in their tractors. However, it is worth discussing the different harms the individual farmers contribute with, as it seems unreasonable to compare Old McDonald and his farm of three hundred cows against Farmer Faisil with is farm of two goats and a chicken. We know that animal agriculture emits large amounts of greenhouse gasses which (among other things) causes unstable and unpredictable weather which has a negative impact on water supplies,

land, cultivating crops, homes, etc., but we cannot say that this exact farmer with her emissions caused exactly this disaster. Arguably, with this knowledge that the harms animal agriculture cause is somewhat delayed, actions should be taken sooner rather than later so that the accumulated harm does not have detrimental consequences.

Fortunately, the notion of conjunctive harms can help with the difficulty of remoteness, being that one farmers contribution to climate change is "[…] individually wrong in virtue of its participating in the collective wrong" (Ibid., p.86). The aspect of remoteness is not to be forgotten or removed, and I will therefore discuss how it is possible to fairly impute harm despite it being remote. If the law is to be extended to include remoter harms, the inference from harm to wrong can be seen as unconvincing. If the action does not immediately harm anyone – like the case of animal agriculture contributing to climate change thus causing harm but causes a causa chain of actions that will eventually risk harmful consequences, it then becomes necessary to ask whether, and for what reasons the potential consequences are ones the farmer should be fairly held accountable for (Simester & von Hirsch, 2014, p. 60). Imputation must be established in order to fairly assess if the farmer is to be held accountable for her actions. Attributions of fair imputation can depend on matters of political and social obligation such as citizens duties (Ibid., p. 68). The action which is to be prohibited by law, must be wrongful, and in the discussion of remote harm it must be shown why the prosperity of a harm makes it wrong for an actor to act in a certain way (Ibid., p. 72). As seen in section 3.2, animal agriculture causes harm through its contribution to climate change, and this is therefore a reason to legislate in order to prevent said harm. It cannot be said that animal agriculture causes direct, standard harm to people. If it were the case, it would mean that animal agriculture causes harm in the same manner that me punching someone (for no apparent reason) causes harm. There are many differences in these two cases; there is not one single actor causing harm to another single entity, the harm is not immediate, the harm caused cannot be proscribed a specific time and place. These differences constitute the differences of standard harm and forms of Non-standard harm. If one agrees on the fact that global warming causes harm and is thus undesirable and something that ought to be mitigated, and that animal agriculture contributes to global warming (and harm), then it should also be clear that global warming causes harm – however not in the standard way. This means that other forms of the Harm Principle and notions of harm must be brought into the equation.

Factors which should be considered in respect to the notion of assessing remote harm, is the likelihood and magnitude of the risk of harm. The greater the gravity and the likelihood the stronger the case for criminalisation (Ibid., p. 55). In the case of animal agriculture, the gravity and the likelihood of this causing eventual harm is extremely high, according to the IPCC. Take note that with animal agriculture, we should look at the individual contribution more so, instead for the collective contribution, because Old McDonald and Farmer Faisil cannot be compared in respect to their emissions. This should also be considered when looking towards the solution to the problem. Next, the social value of the conduct should be considered alongside the intrusion upon actor's choices criminalisation of this conduct would involve (Ibid.). The more valuable the conduct is to actors, or the more the prohibition of the conduct would limit actor's liberty, the stronger a case against prohibition would be (Ibid.). In this instance, it would be wrong to neglect the personal value animal agriculture has. In many circumstances, farming is a long going family tradition which is bound to identity and identify as *farmers* – by criminalising farming of any sorts, would thus also indirectly criminalise the identity of being a farmer (Børsch & Israelsen, 2002). This is most defiantly something to bear in mind in this discussion, alongside the fact that it is doubtful that the farmers wish to partake in the contribution of climate change but being that animal agriculture is their livelihood and puts food on the table, they are not likely to close down their farm without either an economic initiative or a threat of violence. The last step to consider, is side-constraints that could prohibit criminalisation. A criminalisation must not infringe other rights in the pursuit of hindering a harm. In this case, unless the polluter pays principle is supplemented by other principles, it may result in infringing other rights.

We need agriculture to fulfil one of our basic needs - but not to the extent we experience animal agriculture in western society today. By reducing animal agriculture, it is possible to make a significant contribution to the mitigation of climate change. According to the UN, the world population has increased by approximately one billion inhabitants during the past 12 years (Grossi et al., 2018). Even though it is a slower growth than seen ten years ago, it still contributes meaningfully to worldwide population growth thus an increased demand for livestock. According to Gerber et al, the livestock sector requires a noteworthy amount of natural resources and is responsible for nearby 14.5% of total anthropogenic greenhouse gas emissions (2013). It is scientifically acknowledged that serious mitigation strategies aimed specifically towards this sector are required in order "[…] to limit the environmental burden from food production while ensuring a sufficient supply of food for a growing world population" (Grossi et al., 2018). If we were to collectively carry on in a business as usual

manner, in respect to animal agriculture and not change the way we feed the population, we would experience some very dire consequences. As described earlier, even though one's farm only contributes a small percentage of the overall gasses emitted because of the "[…] individually wrong in virtue of its participating in the collective wrong" (Simester & von Hirsch, 2011, p.86) it must be treated on equal terms as the other farms. However, globally speaking they may need to be made exemptions, because it does not seem fair that small farm owners in developing countries should be subject to the same laws as large industrial farming in western society should be. This seems especially unintuitive, when it is considered that one of the reasons farming and animal agriculture should be restricted, is in order to prevent harm – for example droughts or floods in developing countries that disable their farmlands. It therefore seems unintuitive that limiting developing countries agriculture to the same extent that western countries agriculture should be limited, when it is in order to prevent harm to the former farmers lands that we know are more susceptible to be damaged by climate induced changes in the weather. As we know, excessive greenhouse gas emissions caused by animal agriculture has a negative impact on the climate thus creating catastrophic changes in the weather which harms many people and their livelihood. When a farmer in a western country has a large emission of greenhouse gasses, the farmer and the countries inhabitants are to a lesser extent harmed by the consequences. This can be due to many contributing factors such as the economic capacity allowing climate adaptation, and the country's economic resources can counteract the damages, and so on. Because of this, it seems unfair that a country such as Denmark may have such a high emission, and another less of country must bear the consequences – especially when these countries have a far lower emission in respect to greenhouse gasses. However, we know that countries in developing worlds emit greenhouse gasses through agriculture (albeit small amounts compared to Western countries), and this should still be considered. But, if the largest short-term consequences of global warming affect developing countries and are caused by western countries there may be need for an exemption. It is very plausible that an alternative to animal agriculture is to be put in place instead, so that the farmers sow soya and wheat instead. Locally, this could be a good idea, and if they are helped by a third party to implement plant-based protein on their farms instead, then they may even have a larger export of this, which in the long run could contribute in helping them out of poverty. Further, developing countries do not produce meat and dairy for export to the same extent that western countries do, being that they mainly farm and produce food for themselves, and they do therefore not have transportation emissions. Further, The World Bank states that development in agriculture is one of the most powerful tools in respect to ending extreme poverty, boosting prosperity and feeding the growing population

(The World Bank, 2020). Animal agriculture is also a vital element in respect to economic growth, it raises incomes among the poor, and accounts for more than twenty-five percent of some developing countries GDP (Ibid.). Animal agriculture can contribute significantly to the eradication of poverty in developing countries (Christiaensen, et al., 2010). That is to say: not all types of animal agricultures are undesirable because they participate in reducing poverty and feeding the worldly population – but this is at risk. Animal agriculture plays an important role in the contribution to rural livelihoods and the poorer demographic (Otte & Upton, 2005). Livestock and the produce hereof make up an estimate of one third of the total value of gross agricultural output in developing countries (Bruinsma, 2003). Therefore, it does not seem entirely fair that these farmers and the countries where they live are to miss out on the opportunity for economic growth, without some sort of compensation. Through climate change crops could fail, especially in the most food-insecure regions (Ibid.). In order to prevent this, mitigation in the agricultural sector must be made and is an important factor in the solution to climate change (Ibid.).

As it has already been mentioned that there is a difficulty with the Harm Principle being too narrow, however, if the Harm Principle is to broad it may also cause problems. As Simester and von Hirsch write, "It is not easy to identify conduct that confidently can be said to be without substantial risk of injury in the long run. As a result, the Harm Principle—unless suitably modified or supplemented—can lose much of its liberty safeguarding role" (Ibid.). Due to this, we must explore notions of remote harm in respect to the harm animal agriculture causes, in order to appropriately apply the Harm Principle to this topic. In the case of global warming, the harm is easy to asses and identify, but it is difficult to place responsibility and what type of harm is relevant to assess. Here, the imputation of fault plays an important role because there is a significant difference between Old McDonald and Farmer Faisil. If the Harm Principle is to be applied to the case at hand, there must be pinpointed exactly what type of harm(s) is at play, and to which degree the farmers harm and if there is a significant difference between these harms and what this would means for the farmers respectively. In chapter two, different notions of harm were put forward, where the notions of standard harm and the standard harm analysis were ruled out, because they were insufficient in explaining the harm global warming causes. Non-standard harms are especially interesting to take note of in this instance. Recall that secondary, reactive harms can occur when people are harmed by the potential harm of the action, rather than the actuality of the wrongful action (Ibid.). This means that, as Simester & von Hirsch point out the state will on occasion intervene in certain actions in order to prevent a public nuisance

where the action may not be harmful in the first instance, but the prevention of it ceases harm. This means that, if an action is prohibited due to this principle, it is prohibited because if the action was always permitted it would cause harm – if unlimited animal agriculture was the norm, then it would indubitably cause harm in various ways. In the instance of animal agriculture: if there were no regulations on animal agriculture whatsoever, we would probably have an even larger problem on our hands, or if only a few small animal agricultures existed, we would not experience the large impact it has on the climate and it would therefore not be problematic in respect to the climate. This is however not the case, and there ought to be further regulations in place in order to prevent harm through global warming. The risk of harm in this case is large enough to apply the Harm Principle to it. It is enough to meet the demands of the Harm Principle that, if the action were not criminalized (at least to some extent), it would be harmful. It should be noted that if an action is criminalised, it will (among other things) depend on the legitimacy of reactive harms. This means that the wrong must be established separately of such harm (Ibid., p. 50), because Feinberg states that in order for legitimate legal coercion, the action must both be a wrong and a harm. However, the reactive harm is not wrong constituting, (as primary harms are (Ibid.)), which is an important aspect to keep in mind when discussing the legitimacy of criminalising certain actions. Recall Feinberg's rendition of the Harm Principle which claims that harm is a good reason for the state to implement coercion upon its citizens to prevent said harm, "It is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) and there is probably no other means that is equally effective at no greater cost to other values" (Feinberg, 1987, p. 26). If one or more of the notions of Non-standard harms can be applied to the account of climate change then, we have a good reason for implementing forms of legal coercion with the objective of limiting this harm, subsequently mitigating climate change.

The harm that animal agriculture causes is a remote harm. This is a less obvious harm, because the action becomes harmful by affecting the well-being remotely both in time and space, in contrast to the harm being immediate. It is a difficult task to attribute the responsibility of a particular harm to a concrete event. Today, Old McDonald and Farmer Faisil experience a change in weather patterns which affects their farming possibly due to water supply or failure of crops resulting in a shortage of animal feed, or unstable weather threatening their safety. However, these occurrences cannot be accredited to specific events from the past or present, due to the latent time. Instead, it is the total continuous emissions which ad up, and cause ongoing harm. To compare with an example of standard

harm: it is not like the case where I punch an old lady, immediately causing direct harm to her, animal agriculture does not immediately cause direct harm to somebody, which makes it a tricky subject to discuss. Almost everybody agrees on the fact that climate change is real, and we are already experiencing the consequences hereof today. The challenging aspect to discuss here, is the individual contribution from the farmers and the different causal chains, together with how far a causal chain should be followed before a remote harm like this, becomes too far-fetched to be a valid argument for the legitimacy of legal coercion. This is to be understood as meaning that the Harm Principle can still be applied in instances of remote harm and causal chains. Consider the following situation: Suppose animal agriculture contribute significantly to global warming, but A's farm consisting of ten chickens, five sheep and a single cow is insufficient in itself in producing this outcome (Ibid., p. 86). A's farm makes a causal contribution to global warming, thus contributing to the harm. Consider however, if her farm and the contribution it makes is neither a necessary nor a sufficient condition for the ultimate, overall harm then why should she comply to these restrictions if all the larger farms which are either necessary or sufficient conditions for the ultimate harm comply with them? The answer lies in the following. A's farm does not contribute to global warming, even if every other farm was eliminated and she continued her farm work. However, her conduct does not differ in character to the larger farms - they both assist in causing the harm global warming constitutes, there is no reason for exempting A from the responsibility of this harm (Ibid.). Further, if we are all to be just before the law, why should A then be treated any differently - even though I am a world renounced Formula 1 driver and can easily handle driving at high speeds I must still adhere to the speed limit on all roads. In summa, A has an obligation to follow the legal conduct prohibiting such actions, because her actions are equal to other actions that are conditions for harm, and hers does not differentiate itself from these. Simester and von Hirsch note that, "It is not easy to identify conduct that confidently can be said to be without substantial risk of injury in the long run. As a result, the Harm Principle—unless suitably modified or supplemented—can lose much of its liberty safeguarding role" (Ibid.). I argue therefore, that the responsibility of climate change must be attributed to a person or group of people to such a degree that it is possible to legislate with the objective of mitigating climate change. As is noted, all actions can potentially cause harm in the long run, which is why it is so important to apply the correct notions of harm.

In the case of a standard notion of harm, such as murder which results in the death of a person, the harm which is caused, unquestionably legitimises criminalisation. However, some actions that result

in harm can still be legitimate, even though the "[…] defining elements do not require a harm" (Simester & von Hirsch, 2009, p. 89). With this it is meant that citizens are protected by the law in such a way that even if the ultimate harm that justifies such crimes is remote from the crime itself, it may still be criminalised - thus being harm preventative (Ibid., p. 90). Criminalisation of a certain conduct requires an explanation as to why the conduct is merited to be criminalised through criminal law. Simester and von Hirsch write that, one important explanation regards itself as to whether or not the responsibility of the remote harms can be imputed to the actor (Ibid., p, 59). That is to say, the consequences of the conduct must both be injurious, and it must be explained why it is possible to hold the actor accountable for the consequences. In cases where the law is extended to cases of remote harm, like the instance of the harm caused by animal agriculture, the inference from the action being a harm to a wrong, becomes unconvincing according to Simester and von Hirsch (Ibid., p. 59). When the conduct is not of instantaneous harm, but instead sparks a series of actions that does eventually cause harmful consequences, it will then be necessary to ask why the potential consequences are ones the actor is to be held accountable for (Ibid.). In the case of Old McDonald with his three hundred cows, the vastness and majority of his contribution can be measured to account for a certain percentage of the overall annual emissions, and can at least to some extent, therefore be held accountable for his actions and the potential consequences hereof. With such a large farm, there would also be a large export that must be considered, as well as heating and cooling, feeding the animals and so on: so, it is not only the methane emitted by the cows which contributes, but the surrounding activities. Conversely, Farmer Faisil cannot be held accountable for the potential consequences to the same extent that Old McDonald can, due to his smaller and thus more insignificant contribution with two goats and a chicken. In order to confidently identify harm and legislate correctly in this respect, thus resulting in fair imputation, it must be discussed who can concretely be held accountable for harmful actions to the extent that specific legislation can be made on the subject. As seem in the example above, it may not be the case that all farmers can be treated in the same way in the eyes of the law, because each farmer does not contribute in the same way. Farmer Faisil's accumulated harm will – unless it grows a substantial amount – not cause the same accumulated harm as Old McDonalds will. The actor cannot draw a moral distinction between her own actions and the actions of others who also contribute to a harm, because there can be many underlying factors that can be asserted to the different contributing farmers (Ibid., p. 85). Some forms of animal agriculture can fall under the category of conjunctive harms, where the harm occurs if many participate in a certain conduct (Ibid., p. 59). Moreover, the instance of the conjunctive harm where the action causes the feared injury or harm when it is

combined with the same, or similar actions by others should also be considered in this discussion (Ibid., p. 59). Conjunctive harms are accumulated harms, meaning that they are actions which are harmful in large quantities. Farmer Faisil has a small farm, where he holds enough livestock to support his family, he would surely not contribute to global warming to the same extent as large, industrial farming does seen with the case of Old McDonald. Simester and von Hirsch make an analogy to dumping household garbage in a river, they write: "Dumping household garbage in the river is treated as a health hazard, but the conduct actually endangers health only when numerous other persons do likewise" (Ibid., p. 59). In a situation like this – or in a situation like animal agriculture, the action represents the type of conduct that cumulatively causes harm (Ibid.), and the action itself is not in fact harmful, unless many participate in it. Even then, the action itself is not harmful, but the cumulation of many participating in this conduct causes the harm. In these situations of cumulative harm, it is not possible for the actor to draw a distinction of morality between her own behaviour and that of others who contribute to the injury (Ibid.). Cases of conjunctive harms also present fewer hitches for preventative criminalisation compared to mediating interventions, according to Simester and von Hirsch (p. 85). With this, it is meant that because the accumulation of the harms, that do not differ in character from big contributors, the immediate wrong causes the collective harm, and Farmer Faisil's contribution is individually wrong in virtue of him participating in the overall collective wrong. However, Farmer Faisil's animal agriculture does differentiate itself from Old McDonalds. Farmer Faisil and Old McDonald do participate in the same conduct, being that they both raise farm animals with the objective to sell and eat. In almost all other instances, they diverge in character, scale, funding and economy. Farmer Faisil has a very small profit and sometimes no profit if he is affected by the change of weather patterns, and Old McDonald has a very large profit and does not feel the consequences of the change in weather patterns in a substantial way.

Consider the example of dumping household garbage in a river: the garbage from one single person is insufficient in itself to have a negative impact on the environment by poisoning the river (it may cause distress to animals, but that is a different argument, and not relevant to the scope of this thesis). In this case, the garbage from one single person is still a participant in bringing about a harm, because this conduct contributes causally to having a negative impact on the environment – this would also be the case for animal agriculture. In the case of Old McDonald and Farmer Faisil there seems to be an element missing when comparing these cases. The wrongness constraint must also be considered here. Both a harm must both be a setback to interests, and a wrong if legitimate legal coercion can be

applied in order to mitigate climate change. If one farmers contribution to climate change is neither a necessary nor a sufficient condition for the large-scale harm, it raises the question of why all farmers should comply to this, if it is only the mass sum that causes the harm. The harm would not be noteworthy if all, but few farmers closed their farms, but due to the token conduct being no different in character, perhaps besides from the size of the farms, and the token conduct being an instance of the type of conduct that causes an ultimate harm, the one farmer has no apparent reason to be relieved from the responsibility of that harm (Ibid.). Further, the claim of causal insufficiency does not provide an answer to the question as to why one actor should be treated differently. There may however be reasons as to why some actors in the case of animal agriculture should be treated differently; maybe some low-impact animal agriculture should be allowed in order to provide food, jobs, contribute to the economy, and so on. Being that the ultimate harm is caused due to collective activity, the immediate wrong that causes it, is a collective one (Ibid., p. 86). One farmers contribution to climate change is "[…] individually wrong in virtue of its participating in the collective wrong" (Ibid.). Again, because Farmer Faisils farm and impact on the climate is so small and insignificant compared to Old McDonalds, there should be an exemption to this. With this, I mean that some farmers should be allowed to continue unchanged with their animal agriculture while others must change their farming substantially. This is a case of free riding, and some may view this as an unfair advantage to Farmer Faisil as it allows him to benefit from others actions. However, if this benefit can help him out of poverty and is only given until he reaches a minimum standard of living it seems like a fair advantage. Farmer Faisils actions may be wrong in virtue of him participating in the collective wrong, but punishing him would seriously harm him, and when we compare this to punishing Old McDonald it becomes clear that the two cases are not quite a like. Punishment through fines would not harm Old McDonald in the same way as it would harm Farmer Faisil being that Old McDonald reportedly has a greater economic leeway. If Old McDonald was imprisoned, it would certainly rob him of the same freedom as Farmer Faisil if he were imprisoned. However, Old McDonald would probably have others on the farm to take care of his business upon imprisonment, which may not be the case for Farmer Faisil. This is not to be understood as if it is inconvenient to be imprisoned, then a person should be exempted from this, instead it is meant to show that Old McDonald and Farmer Faisils are situated in two very different circumstances, and some differences must therefore be considered. The next section will enlighten this.

3.3 Who is Responsible for Global Warming?

This section discusses the responsibility of global warming, and who should be held responsible and therefore also bear the burden of mitigation. It is important to discuss this because, as seen in the above section, there is a difference regarding who contributes to the emissions of global warming. Old McDonald and Farmer Faisil cannot be compared, due to their entirely different socio-economic situations. This then opens up the discussion of who should really be held accountable for the global warming we experience today, if the emissions causing the warming were actually emitted twenty years ago, by farmers who did not realise the consequences of their actions. This section will lead on to the later discussion of who should be subjected to the laws which may be put in place in order to mitigate climate change. There is a wide discussion of this topic in philosophical circles, and it is an extremely important factor to consider. I will therefore say a little about burden sharing responsibilities in this context. Due to the scope of this thesis, I will give a superficial rendition of three different, but important key principles within the discussion of burden sharing principles. There are three commonly used principles applied in the discussion of burden sharing responsibility in the discussion of climate justice, which are the polluter pays principle, the beneficiary pays principle, and the ability to pay principle (Caney, 2020). Henry Shue writes about the first principle, namely the polluter pays principle in his book *Climate Justice: Vulnerability and Protection* (2014). Here he argues that the burden of mitigating climate change should be proportionate with how much a person or agent has emitted (Shue, 2014, pp. 182-186). The polluter pays principle is an intuitively plausible approach to the subject matter, being that it holds the actors who contribute to global warming accountable for their harmful actions. Caney argues that it "[…] reflects a widely held principle about responsibility, namely that we can, subject to certain conditions, hold agents responsible for their actions" (Caney, 2014). However, this principle has its limitations, as Caney notes "[…] some argue that it is unfair to hold agents responsible for the harms resulting from their emission of greenhouse gases if they were excusably ignorant of the impact of their actions. They then argue that many of those who have emitted greenhouse gases in the past were excusably ignorant and so cannot be held liable." (Ibid.). The polluter pays principle has also been challenged in respect to the consideration of many past emitters may not be alive today and can therefore not be held accountable for their actions (Caney, 2014). The question of why present generations should be held accountable for past generations actions is the topic of discussion here. A collectivist approach to this argument can be taken, in that "[…] relevant agents are collective bodies like states, and so they hold that since country *X* emitted in the past

country *X* should pay now" (Ibid.). Others, such as Edward A. Page, argue from a beneficiary pays[12] standing point that the living generation today and the future generation of tomorrow benefit from the results of past generations made through their emissions, and therefore have a duty to pay (at least some of) the costs (Ibid.). A third very important challenge the polluter pays principle raises, which is especially important to take note of in this discussion, is the notion of if actors who need to partake in such polluting activities in order to enjoy a decent minimum standard of living (Ibid.). It seems unreasonable that a small local farmer situated in a developing country should pay the cost of emitting GHG, if this were to subdue them beneath a decent standard of living. From the view of the Harm Principle, this action of attempting to prevent harm would cause additional harm, and we would then end back up at square one, if this was not accounted for. If this principle pushes some people beneath a certain living standard (and if people are in fact entitled to a certain living standard), then it would be rendered wrong to force them to pay. The polluter pays principle works well as a guidance but should be supplemented by other principles. It should also be duly noted that I do not argue a case for attacking some farmers way of living, and that I argue for the best solution to the problem of climate change that both mitigates climate change sufficiently and does not harm others in the process.

The second principle I will mention shortly, is the beneficiary pays principle. Edward Page argues in *Climate Change, Justice and Future Generations* (2006), that the principle of whomever benefits from the action, must also pay for it. So, with this it is meant that agents should pay because, and to the extent that, they have benefited from the activities that involve greenhouse gas emissions (Caney, 2014). This principle may raise the question of benefitting from polluting activities is always a sufficient reason as to rendering someone responsible, thus being liable to pay for it (Ibid.). It is possible to benefit for emissions but still be poor. If the argument against applying the polluter pays principle is invoked in instances of it resulting in pushing some under a decent standard of living, then due to the same reasons some may be against the beneficiary pays principle. This leads on to the principle regarding the ability to pay, because even though some may benefit from their actions, they still may not be able to pay for their actions which must therefore be considered. The third and final principle I will put forth in this discussion, is the ability to pay principle. Caney writes that, some have argued that any burdens incurred by mitigation and adaptation should be distributed according to agents'

[12] See e.g. *Give It up for Climate Change: A Defence of the Beneficiary Pays* Principle (Page, 2012).

ability to pay (2014). Shue understands this to mean that the actor's ability to pay should be proportionate to what they should be expected to pay (2014, pp. 186-189). This principle can be criticized because it diverges the question of who pays for the problem from the question of who caused the problem or who benefitted from causing the problem (Caney, 2014). This is trivial statement, being that in reality it merely states that it is not the other two principles. In respect to this principle, where one stands in accepting it or not, comes down to the overall account of global distributive justice, as Caney writes (Ibid.). Those who find that global justice requires a more equal world propose that the costs should be borne primarily by the most advantaged and not by the world's poorest (Ibid.). This subsection has hopefully shed some light om the question of who can be held accountable for the mitigation of global warming. I find it to be reasonable to hold all present-day polluters accountable for their actions, so Old McDonald, Farmer Faisil and everyone in between these two extremes. However, I do not find that all polluters should be punished for their actions. If punishing some polluters would mean that they would succumb under a reasonable living standard due to legislative matters, I find they should be given a free pass up until they are able to fulfil decent living standards. Strategies to help these actors implement climate friendly procedures should be put in place, as not to ignore the situation and possibly lose control – this will also be discussed Chapter 5. Those who are able to pay, should do so, because it is arguably everyone who has at some point benefitted from earlier emissions. I do not argue that actors should pay, if they are harmed in this action, because my whole argument is based upon harm prevention. If the actors a harmed to a lesser degree, then the harm prevention has been successful. The idea that the farmers should not pay if they are harmed a small amount is not a good one, being that this would open up for a lot of unnecessary free riding, and potentially everyone could be harmed to some degree by having to make changes to their farms. The idea is instead that harm prevention is to be put in place, meaning that the poorer farmers such as Faisil should not pay is their living standards succumb under the reasonable living standard, and their basic living standard is further harmed. This idea is plausible for countries where farmers such as Faisil live, however not to the same extent as countries where Old McDonald lives.

Chapter 4: Legal Moralism

This section is dedicated to the concept of legal moralism of Michael S. Moore, from *Liberty's Constraints on What Should be Made Criminal* (2014). I explore legal moralism as an opponent to the Harm Principle with the objective to give another dimension on my thesis statement and contribute to the understanding of legislating in respect to preventing harm. The chapter entertains the idea of

principled restraints in respect to legislation on criminality in a democratic society, and if there are such restraints how they are expressed. I present legal moralism as an opponent to the Harm Principle which states that, the state may coerce its citizens if this coercion prevents harm to others. This definition can either be to over inclusive or to under inclusive, and as has been seen in Chapter 2 section 2.2-3.3 a specific understanding of what harm entails and when different types of harm can be applied must be in place. However, some scholars argue that the concept of harm must be moralized in order for it to be used (Holtug, 2002, p. 357). Legal moralism has often been connected with strong conservative views in support for criminal laws such as conduct relating itself to the opposition of abortion or same sex marriage. Even though there has been a shift in the underlying moral theory, and which moral views can be associated with conventional moralism, there are still accounts of moral conduct which contain wrongs (almost) nobody would think to criminalise; lying and breaking promises, infidelity and divorce, or queue-jumping and gambling. The legal moralist can explain this with stating that there is a good reason to criminalise any wrong, however, the disadvantage of doing so is so significant that there are boundaries as to what should be criminalised (Moore, 1997, pp. 661-665). Legal moralism is an opposing view to the Harm Principle and will thus provide a critical perspective on the Harm Principle which is applied in this thesis. The reader may question why legal moralism deserves a section in this thesis, and the answer to this query is simple. The purpose of this section is both to shed light on Moore's legal moralism, but also to show possible weaknesses to the primary theory applied in my thesis, namely the Harm Principle, by asserting critical judgement hereto. In present day society, we are extremely used to the law being an active part of our everyday life. Close to all our actions and decisions are based on staying on the correct side of the law, and due to the regulation of human affairs, it is worth understanding the limits of the criminal law, and for which reasons this constraint participates to such a large degree in our lives. A constraint describes the properties a legal restriction must secure in order for it to be justified. Constraints on the criminal law oftentimes stem from ways in which a problem can be addressed or relieve a case of over-criminalisation (Thaysen, 2020, p. 8). Within philosophical circles, legal moralism is widely discussed. Rape, murder and child abuse are actions that almost all intuitively agree upon ought to be prohibited and criminalised. Most also agree that because these actions seriously and wrongfully harm the victims, it is justified to criminalise the actions. However, not all agree upon whether or not wrongful harms should be all that matters when accounting for the actions that ought to be criminalised (Petersen, 2011, p. 80). Legal moralism according to Moore, is defined as: "[…] the theory that all and only moral wrongs should be prohibited by the criminal law" (Moore, 2014, p. 191). Note that not all

morally wrong actions should be criminalized (Moore, 2014). Further, "[…] legislative enactment of a legal prohibition cannot make (morally) wrong an act not morally wrong before" (Ibid., p. 192), and citizens have not wrongfully violated the law, if the law does not reflect morality – what is not morally wrong, should not be criminalized. This means that, an action does not become morally wrong simply because legal prohibition is put in place, instead illegal prohibitions are put in place because the action is morally wrong. The legal prohibition is thus justified, *because* of the wrongful conduct. Further, the justifying good of punishment for such actions determines what counts as a *good reason* to criminalize certain conduct (Thaysen, 2020, p. 10). Conversely, Feinberg's Harm Principle states that a good reason to criminalize certain conduct is that it would be effective in preventing harm to persons other than the actor (1987, p. 26), or if the offence principle is invoked. If neither of these principles are asserted, then legal coercion is not legitimate according to Feinberg. In order to overturn the presumption of liberty, it must be established what good comes of criminal law alongside of what good criminal law is seeking to achieve in communicating the prohibitions which make up the law (Moore, 2014, p. 189). This branch of legal moralism is built on a retributivist theory of punishment, meaning that (according to the retributivist) the purpose of punishment lies in the intrinsic good of retributive justice – that is wrongdoers must suffer proportionally with their wrongdoings (Moore, 1997, p. 31). Moore follows the retributivist theory of punishment, which he in turn leads to legal moralism. The retributivist believes that criminal punishment should be imposed on all and only those who deserve it (Moore, 1997). The retributivist position holds that punishment is justified because it is intrinsically good that offenders suffer the consequences of their immoral actions, which is determined by the gravity of the wrongs committed alongside the actor's responsibility for committing said crimes (Moore, 1997, p. 71). If one is to put the retributivist theory of punishment up against the Harm Principle, the question of how the Harm Principle can limit criminal law is raised. The Harm Principle in this instance changes in character, according to Moore (p. 191). The retributivists theory of punishment entails that criminal punishment must be inflicted on only, but all those whom are deserving of it (Ibid.). Two moral properties are thus invoked (wrongdoing and culpability) and the degree of punishment is determined by the seriousness of the wrong and the culpability with which is done (Ibid). Retributivism understood in this sense leads on to legal moralism to explain its theory of legislation (Ibid.). Two other aspects to the theory are assumed: first that a principle of legality is independently good of retributivism, and second the law as such does not prima facie obligate citizen obedience (Ibid., pp. 191-192). The first principle requires prospective, clear, non-contradictory, legislative rules before punishment may be induced, according to Moore (p. 191). This

principle side constrains the attainment of retributive justice, which in turn allows justice-giving punishment if the morally wrong act was legally prohibited in the first instance (Ibid). This prima facie requires that all moral wrongs must be prohibited by the criminal law (Ibid.). If not, this means that actors doing said wrongs could not receive their just deserts (Ibid.). The second principle means that legislative enactment of a legal prohibition is unable to make actions morally wrong simply through prohibition of it (Ibid., p. 192). Citizens can therefore do no wrong in violating the criminal law, unless it is reflective of an antecedent present moral wrong (Ibid.). Retributivism opposes punishment of the innocent to the same extent that it requires punishment of guilty actors, and because no actor is guilty unless she acts in a morally wrong way, retributivism bans the prohibition of actions that are not morally wrong (Ibid.). Criminal legislation must only aim to prevent or punish moral wrongs – this is also known as the moral wrong principle – and this can be done by prohibiting all and only those actions that are morally wrong (Ibid.). Criminal laws should aim towards punishment of offenders, subsequently meaning that the justification of punishment relies on what counts as a good reason to criminalize certain behaviour (Thaysen, 2020, p. 10). Punishment is justified, according to the retributivist because it is good that wrongdoers suffer proportionately with their liability and punishment serves this good if it is inflicted in respect to a wrongdoing (Ibid.). A further argument for legal moralism is what is called the conceptual argument. This argument states that some conduct is morally wrong which means that it ought not to be done, and if this is so, then there is a good reason to discourage it meaning that there is a good reason to criminalise or legally restrict this wrongful conduct in order to discourage it (Dworkin, 1999, pp. 943-944). Legal moralism is the theory that all and only moral wrongdoings are to be prohibited by the criminal law (Moore, 2014, p. 191). Moore assumes that the principle of legality and retributivism are good independently of each other, and that the principle of legality obliges prospective, clear and non-contradictory legislative rules in order for legislative rules to be applied (Ibid.). The principle of legality restricts the realization of retributive justice thus allowing punishments in this respect only to be given if the morally wrong act was prohibited through legislative matters beforehand (Ibid.). In assuming this, it is a prerequisite that all moral wrongs are to be prohibited by criminal law – if not, actors partaking in these wrongs would be unable to receive just punishment. Further, it is assumed that law in itself does not prima facie obligate citizen obedience (Ibid., p. 192). With this it is meant that legislative enactment of legal prohibition cannot turn an action morally wrong, if it were not morally wrong in the first instance (Ibid.). The principle of legality ensures that actions are not made morally wrong through legislation. The resulting effect of this is citizens only do wrong in violating the law, if it reflects an antecedent

previously existing moral wrong (Ibid.). Retributivism is against prohibiting actions that are not morally wrong, because it is against punishing the innocent to the same degree that it requires punishing the guilty, and as long as the actor is innocent if she does not act immorally (Ibid.). The legal moralist and Feinberg do not disagree about what actions are classified as moral wrongdoings. However, Feinberg claims that the legal moralist is mistaken in regard to the appropriate legal regulation of morally wrong actions (Thaysen, 2015, p.182). Comparably, Moore holds that all acts of immorality must be criminalized in virtue of their immorality. It is interesting to comparing the Harm Principle, with what Moore dubs the moral wrong principle – the principle claiming that all criminal legislation must solely be directed towards either preventing or punishing moral wrongs by exclusively prohibiting morally wrong actions (Moore, 2014, p. 192). The Harm Principle and legal moralism are incompatible; however, they are to some extent coextensive. It can be useful to compare the two principles, as they both give necessary and sufficient conditions of what justified criminal legislation is, and what all legislators should aim for: one in terms of harm to others and the other in terms of moral wrongs (Ibid., 192). There is an overlap in these principles, being that "There are wrongless harms, such as competitive injuries in capitalist economies; and there are harmless wrongs, such as cruelty to animals, abuse of a corpse, extinction of a species" (Ibid.). Each principle holds claim to both a necessary and a pro tanto condition of what justified criminal legislation desirably would be. Moore writes that it is possible that the two principles could be extensionally equivalent in respect to the laws they justify (Ibid.). This means that, if all moral wrongdoings where *also* harmful to others, and all actions that where harmful to others were *also* moral wrongdoings, then both principles would justify the same legislation, and criminalize exactly the same behaviour. This is however not the case, and at best we can find a large overlap within the two principles; many moral wrongdoings happen to be harmful, and many actions harmful to others happen to be moral wrongdoings, such as murder, rape and child abuse, these cases are both moral wrongs and harmful actions inflicted by an actor upon someone else. However, also wrongless harms exist as well as harmless wrongs. Moore and Feinberg would almost definitely agree on something else – that it is a right to be free of unjustified legal coercion and criminal legislation. For Moore, this would mean that it is a right to be free from legal coercion and criminal legislation, unless it is in place to prevent and punish moral wrongdoings. For Feinberg, it would mean that only actions defined under the Harm Principle may be criminalized by the state. Moore does, however, not continue to agree with Feinberg (more specifically the Harm Principle). Further, Feinberg states "[…] the prevention of an evil, any kind of evil at all, is *a* reason for criminal legislation […]" (1988, p. 20). Here, a confusion of Feinberg's theory can arise, because

what Feinberg states in this quote does not match up with what he otherwise claims throughout his work on the Harm Principle. This can thus be read as Feinberg accepting legal moralism to some extent, because this quote is ill-fitting with his claim that only harm or offences constitute legitimate reasons to enforce legislative measures. Feinberg also denies that preventing evils other than harms and offences is a good reason for establishing criminal prohibitions (Feinberg, 2003). He contrasts the denial of this view and dubs it "legal moralism in the broad sense", with a narrow idea of legal moralism which claims that the state may legitimately prohibit actions due to the actions being inherently morally wrong and causing neither harm or offense to any participants (Ibid.). Feinberg states that his Harm Principle (as well as his offense principle) cannot encompass the evils that the legal moralist wishes to eliminate, end subsequently holds that there could be a theoretical case to be made for legal moralism, but "[…] nongrievance evils do not have enough weight to justify an invasion of personal autonomy" (Ibid.). Feinberg agrees with Moore when Moore states "[…] the prevention of an evil, any kind of evil at all, is *a* reason for criminal legislation […]" (1988, p. 20). However, Moore adds that punishing this behaviour is also a reason for criminal legislation – so Feinberg states that criminal legislation aimed at preventing said evil is desirable, but Moore – also believing this to be true, claims that punishment of this evil is also a reason for implementing criminal legislation (Ibid., p. 200). Feinberg holds a very strong presumption of liberty, being that he believes that the value of liberty will always outweigh the goodness which can be achieved by punishing and preventing minor moral wrongs – such as infidelity (Ibid.). Feinberg does not provide an exhaustive account of what is sufficient to justifying criminalization (Thaysen, 2016, p. 34). When Feinberg includes the offence principle in his rendition of what can legitimize state coercion, it gives a good reason for criminalizing conduct such as racism and sexual harassment. This however, can prima facie, allow moralism into the theory. This is because, prejudice and misguided moral objections will inevitably cause some to have what is called *dislikend* or undesirable states of mind when they are confronted with innocent practices that no liberal thinker would wish to criminalize (Thaysen, 2020, p. 14). In turn, this means that disliked states of mind must be wrongfully shaped if they are to qualify as legitimate offense, as this excludes disliked states of mind from the consideration of the offense justification (Ibid.). Additionally, Feinberg emphases that conduct that causes serious offense may be justify criminalization (Feinberg, 1988, p. 26). A critique of the legal moralist is that they are wrong in respect to the appropriate legal regulation of morally wrong conduct, and not that the legal moralist is mistaken about what conduct is morally wrong (Feinberg, 1988). According to Feinberg and his liberty limiting principles, legal moralism is a principle that is not mutually exclusive in respect to these (Feinberg, 1984,

p. 10). In turn, it could be argued that Feinberg's definition of legal moralism could claim Moore to be a pluralist, in the sense that he then accepts the Harm Principle *and* legal moralism as acceptable liberty limiting principles (Thaysen, 2015, p. 187). Moore holds that there are no two separate principles (and he is thus not a pluralist) (Moore, 1997, pp. 647–652). However, this objection fails, due to it presupposing taxonomy of liberty-limiting principles, and the legal moralists would not accept this (Thaysen, 2015, p. 187). Because Feinberg's Harm Principle takes more factors into account, I believe this to be the better theory of the two in respect to asserting actions that may be prohibited through criminal law.

Chapter 5: Legislative proposals

This section is dedicated to the discussion of different legislative proposals in respect to mitigating climate change through the restriction of animal agriculture. In the former chapters, I argued that legal coercion with the objective of preventing harms would be legitimate for the state to impose. In this chapter, I discuss which forms of legal coercion would be proportionate with the extent of harm climate change causes. I argue that animal agriculture poses a true harm upon people, and due to this harm legal coercion is therefore legitimate. The previous chapters objectives were to pave the way for the reader by laying forth views of harm, and what aspects of harm must be in place in order to apply the Harm Principle to the case, resulting in this chapter, where concrete proposals of legislative matters will be presented. The following sections discuss different ways in which animal agriculture can be reduced, starting with the most coercive proposals, working its way towards the least coercive. The consideration of the different legislative proposals are based upon the theoretical background given in chapter 2. The proportionality between the harmful act, and the legislation will be discussed ongoingly and the chapter will end with a summarisation of the most likely legislative proposals.

An extremely important aspect to remember in this discussion is the fact that most farmers are not evil people, who do not care about global warming or the consequences of their jobs. This may be easy to forget at times, because my thesis is about the harm agriculture causes and how this can be prevented – oftentimes we connect harm with bad people. Some farmers may be bad people, but excellent farmers who do everything in their power to optimize their farms as not to have a high emission – and some farmers may ignore all rules and regulations with the objective to mitigate climate change because they do not care and can make a personal profit from not caring – but it can and must not be assumed that all farmers are bad. On the contrary, I assume that all farmers are good, but

I am at the same time aware that there will probably be some farmers who can prove me wrong. We must also bear in mind that farmers are simply doing their job – like a nurse, dentist, teacher, plumber, engineer or pilot does her job – and this job puts food on peoples table.

5. 1 Criminalization of Animal Agriculture

This section entertains the idea of criminalising animal agriculture in order to mitigate climate change thus preventing harm. This would be the absolute most restricting form of legal coercion, thus also becoming the most stigmatising, being that the criminal law can stigmatize and confine people irrevocably, thus requiring any legal coercion to be more necessary to prevent harm to others than the harm done to the prosecuted person's liberty (Feinberg, 1987, p. 4). By criminalizing animal agriculture, an absolute ban on both the trade and consumption of animal produce would thus be put in place comparable to the criminalization of drugs in some countries: "Drug prohibitions exist in most jurisdictions and have been defended in part on grounds of the long-run social harms that use of the drugs would create" (Simester & von Hirsch, 2014, p. 66). Like some argue that the legality of drugs would create long-term social harms, it may also be argued that animal agriculture may cause long-term social harms, due to its contribution to climate change. By entirely criminalizing animal agriculture, it would undoubtedly mean that a huge amount of CO_2 and other greenhouse gasses would cease to be emitted, thus mitigating climate change to a large extent. If there were no other factors to consider, this would be a desirable solution to the problem and the road towards climate mitigation would be short, and easily accessible.

There are however, a paramount of factors that must be considered and the road towards climate mitigation is unfortunately twisted and not so straightforward. Firstly, one must consider the proportionality between the act of having animal agriculture, the possible criminalization of this act and what the consequences of criminalization would bring with it. The action of having animal agriculture seems rather mundane and less of a criminal act as shooting someone would be, but nonetheless: it is a remote harm, it creates an unacceptable risk of an eventual harm, and harms indirectly and transnationally. Criminalising animal agriculture would have positive effects on the climate but also with great probability have a negative impact on society. It would be a difficult task to justify the criminalisation of animal agriculture because if people continued to farm animals, they would be imprisoned thus severely restricting their liberty and permanently reducing their status, as Feinberg writes: "The typical criminal sanction is imprisonment, which is not only a severe deprivation of liberty in

all its important dimensions, but also a brand of censure and condemnation that leaves one, in effect, in permanent disgrace. Punitive fines are less stigmatic, and therefore fall on a scale of coerciveness somewhere between punishment proper and taxation" (Feinberg, 1987, p. 24). A farmer would either be imprisoned or fined depending on the severity of the offense, but this must be proportionate with the crime. Obviously, imprisonment would be legitimate if the farmer broke the law by continuing to farm animals, if the law had been presented in a clearly understandable and accessible way. Imprisonment would not be the first sanction she would experience – first she may be fined, but if she decides not to conform to the law she may be imprisoned – this is legitimate imprisonment. However, the legislation may in fact not be legitimate in the first instance. This is because, there may be many harmful consequences brought about by criminalisation of animal agriculture. Instances of this could be: loss of jobs and thus also a loss of an income, loss of workplaces in smaller rural areas, etc. The farmers may be deprived of the Ulterior interests in this case but are not harmed (because the act of losing a job is not both a wrong and a harm), they are however not deprived of their Welfare interests. Further, some farmers - especially in developing countries are even more dependent on the income through their farms, and it therefore seems counterintuitive that they should be harmed by a ban on animal agriculture, especially being that people in developing countries are more susceptible to the harms caused by global warming. There is an unquestionable difference between the harm Old McDonald and Farmer Faisil contribute with through their farming, and this must therefore also be considered. It seems wrong that Farmer Faisil should be treated in the same way as Old McDonald in respect to legislative matters, because they both contribute in different and incomparable ways. In chapter three, section 3.3 I argue that those who are able to pay, should do so, because it is arguably everyone who has at some point benefitted from earlier emissions. If the farmer is harmed to a lesser degree, then the harm prevention has been successful. The idea that the farmers should not pay if they are harmed a small amount is not a good one, being that this would open up for a lot of unnecessary free riding, and potentially everyone could be harmed to some degree by having to make changes to their farms. Smaller farms only catering to local needs could possibly also be exempted from the ban or restriction on animal agriculture. In cases of conjunctive harms, such as the harm animal agriculture causes, it should be noted that it does not follow from shared responsibility for the ultimate harm, that the burden of criminalisation should fall equally on all participants.

The social value of the conduct should be considered alongside the intrusion upon actor's choices criminalisation of this conduct would involve (Ibid.). The more valuable the conduct is to actors, or

the more the prohibition of the conduct would limit actor's liberty, the stronger a case against prohibition would be (Ibid.). In this instance, it would be wrong to neglect the personal value animal agriculture has. In many circumstances, farming is a long going family tradition which is bound to identity – by criminalising farming of any sorts, would thus also indirectly criminalise the identity of being a farmer (Børsch & Israelsen, 2002). This is most definitely something to bear in mind in this discussion, alongside the fact that it is doubtful that the farmers wish to partake in the contribution of climate change but being that animal agriculture is the farmers livelihood and puts food on the table, they are not likely to close down their farm without either an economic initiative or a threat of violence. The last step to consider, is side-constraints that could prohibit criminalisation. A criminalisation must not infringe other important rights in the pursuit of hindering a harm. It is scientifically acknowledged that serious mitigation strategies aimed specifically towards this sector are required in order "[…] to limit the environmental burden from food production while ensuring a sufficient supply of food for a growing world population" (Grossi et al., 2018). Even though ones farm only contributes a small percentage of the overall gasses emitted because of the "[…] individually wrong in virtue of its participating in the collective wrong" (Simester & von Hirsch, 2011, p.86) it must be treated on equal terms as the other farms. However, globally speaking they may need to be made exemptions, because it does not seem fair that small farm owners in developing countries should be subject to the same laws as large industrial farming in western society should be. When a farmer in a western country has a large emission of greenhouse gasses, the farmer and the countries inhabitants are to a lesser extent harmed by the consequences. This can be due to many contributing factors such as the economic capacity allowing climate adaptation, and the country's economic resources can counteract the damages, and so on. Because of this, it seems unfair that a country may have such a high emission, and another less of country must bear the consequences – especially when these countries have a far lower emission in respect to greenhouse gasses. However, we know that countries in developing worlds emit greenhouse gasses through agriculture (albeit small amounts compared to Western countries), and this should still be considered. But, if the largest short-term consequences of global warming affect developing countries and are caused by western countries there may be need for an exemption. It is very plausible that an alternative to animal agriculture is to be put in place instead, so that the farmers sow soya and wheat instead. Locally, this could be a good idea, and if they are helped by a third party to implement plant-based protein on their farms instead, then they may even have a larger export of this, which in the long run could contribute in helping them out of poverty. Further, developing countries do not produce meat and dairy for export to the same extent that Western countries

do, being that they mainly farm and produce food for themselves, and they do therefore not have transportation emissions. Further, The World Bank states that development in agriculture is one of the most powerful tools in respect to ending extreme poverty, boosting prosperity and feeding the growing population (The World Bank, 2020). Animal agriculture is also a vital element in respect to economic growth, it raises incomes among the poor, and accounts for more than twenty-five percent of some developing countries GDP (Ibid.). Animal agriculture can contribute significantly to the eradication of poverty in developing countries (Christiaensen, et al., 2010). That is to say: not all types of animal agricultures are undesirable because they participate in reducing poverty and feeding the worldly population – but this is at risk. Animal agriculture plays an important role in the contribution to rural livelihoods and the poorer demographic (Otte & Upton, 2005). Livestock and the produce hereof make up an estimate of one third of the total value of gross agricultural output in developing countries (Bruinsma, 2003). Therefore, it does not seem entirely fair that these farmers and the countries where they live are to miss out on the opportunity for economic growth, without some sort of compensation. Through climate change crops could fail, especially in the most food-insecure regions (Ibid.). The proportionality between an entire criminalisation of animal agriculture and the overall harm seems ill-fitting. If en entire criminalisation had been the only way in which it was possible to mitigate climate change, then it may be a possible solution. However, being that it would have a large negative impact on many farmers who do not make a significant contribution to climate change through their farming, it would be unfair. It would also be difficult to assess when a farmer contributes significantly enough to climate change to fall under criminalisation. If animal agriculture was criminalised to the extent that there was a maximum size of the farm (reducing animal agriculture significantly), that the farmers could only produce a certain amount of animal produce, so no excessive produce was aloud, and they only produced exactly the amount needed, giving the farmers punitive fines for not following these restrictions could be put in order. However, there does not seem to be a proportionality between the 'crime' animal agriculture would become, and the punishment. Regardless, it seems unintuitive to criminalise animal agriculture as the first step towards climate mitigation, and it may be more of a 'last resort' solution instead. Criminalisation of animal agriculture as the first step towards climate mitigation is not favoured for a numerous of reasons: some people would question the legitimacy of this legislation and may risk punitive fines or imprisonment in order to continue farming. This could lead to the creation of an underground market for animal agriculture (like it has done with drugs), where trade could continue to some extent. This could also bring about further harms, being that there would be no regulations on antibiotics, animal

welfare, labour welfare processing of the produce etc., and constitute a health risk for both the producers and consumers. It may even result in an excessive surveillance of people, being that food is mostly consumed in the privacy of one's home and it would mean policing of private property. It also seems ridiculous that if you were stopped by the police and asked to empty your pockets and a few bacon strips and a block of cheese was found on your possession then you could risk punitive fines (if you were a first-time offender) or imprisonment. It would be an extensive and expensive act of surveillance to police in this manner, because it would include search warrants or policing for transgressors in the public space and subsequently harming personal liberty. Arguably, the liberty to consume meat is relatively unfecund, meaning that the freedom a person uses to do this action cannot be used for other things. It should however be noted that, many important social activities revolve around food and eating traditions which would be removed if animal agriculture was criminalized. The freedom to eat bacon cannot be used to do other important things, such as the freedom of movement opens up for many other possibilities. Further, if animal agriculture turned into a black-market affair and animal produce could only be found there, it would evidently mean that the state could not benefit from tax income and as a result could be less off in that aspect. This would probably have an unpredictable effect on the market, possibly having a negative impact on the population's Welfare interests due to poor economics. It is very undesirable for the state to intervene to such a large degree in the market without having any concrete knowledge of the potential harm it could inflict by doing so Hayek, 1960).

It may be a start to begin with criminalizing farms that have an emission over a certain amount per acre land, the majority of animals they have and so on, thus penalizing the transgressors. This opens up the possibility for the farmers to keep their farms but optimize on their green technology or sell their farm or part of the farm if they do not wish to invest in green technology. Further, if farmers were given an annual amount they were permitted to emit, it could be considered that smaller farms in developing countries could continue their farming without too many restrictions. However, a downside of this could be that this prevents the smaller farmers growth, because there is an incitement to have a small farm and they would be punished if they grew. Another though to entertain, is one concerning compensation for the farmer who must downsize their farm if they do not wish to suffer the consequences of the penal system. This is because the farmers have loans, mortgages and the likes invested in their farms and would be put in a very undesirable position if they could not pay these off. In this thesis, my main argument is based on harm prevention and the act of not being able to pay bills etc. due to newly implemented legislation is harmful albeit in a different way. There can be

detrimental consequences of such an action - the farmers would be economically harmed, as would the country's economy. There is also the underlying threat of potential harm that can come from closing down farms without compensation: this may result in no one wanting to take a chance and invest in a workspace because there is an underlying threat of harm – this could also be very harmful for a countries economy because no one is willing to take a risk. Lastly, the farmers are simply doing their job – and this job puts food on the table for the entire population. This should not be punished, and I would argue that they should at least be given a compensation to the degree that they are not further economically punished for doing their job. However, in cases of conjunctive harm, it does not follow from shared responsibility of the ultimate harm that the burden of criminalisation should fall equally on all (Simester & von Hirsch, 2014). It comes down to a degree of compliance and how great the burden is hereof, and – how the burden is fairly allocated according to Simester and von Hirsch (Ibid.).

Being that it is not only the responsibility of animal agriculture to mitigate climate change, it may be overshooting if it was criminalised. If we wish for a significant reduction, then animal agriculture should also be reduced – but not removed entirely. Global warming is a slow and permanent crisis, which calls for slow, and permanent solutions. Criminalization is very desirable to avoid if there are other alternative forms of legal coercion available which could have the same or similar affects. The proposal of criminalizing animal agriculture would indeed create a significant reduction of green-house gasses consequently mitigating climate change, but this is not a sufficient reason for criminal-ization *unless* the only way in which it was possible to mitigate climate change was to stop all animal agriculture it could be justified. A precondition of liberty is to be free from unnecessary legal coer-cion, and other proposals will be explored before the verdict of this proposal is given.

5.2 Restricting the Production and Sales of Animal Agriculture

This section explores the possibility of restriction animal agriculture either through the production, through the sale of animal produce, or both. Restriction would not entail a criminalization, and sub-sequently the stigmatization that follows of criminalizing certain behaviour and incarceration. This proposal would mean that the production of animal agriculture would be restricted to a degree that would give the desirable results in respect to climate mitigation. This would mean that farmers could apply for a permit to cultivate animal agriculture up to a certain size. This would need to be regulated often to fit with the population and their demands for food, take export into account and so on. This is not unlikely, and even though a lot of work would initially need to be put into this proposal, it

seems more sustainable than to criminalize the profession entirely. We have already seen this model used in fishing where fishers are granted the TAC (Total Allowable Catch) for fishing opportunities in the European Union (Samlede tilladte fiskemængder, 2016). The objective of implementing TAC was to prevent overfishing and to maintain an environmentally friendly level of industrial fishing for both the fishers and the environment. TAC has been subject to some criticism, but in any case, the idea is good (Khalilian, et. Al, 2010). Simester and von Hirsch use the notion of fishing licenses and the regulations hereof as an example of a valuable regulation put in place to safeguard against a form of conjunctive harm, which also contributes to defending the reason as to why citizens should comply to this (2014). This is due to the purpose the rule serves and how well the rule functions in respect to its purpose as well as whether or not the making of the rule is justified (Ibid.). This too could be implemented both in the European Union and globally in respect to animal agriculture. By creating an artificial ceiling lower than what the market regulates it to be now, the production could be decreased by a significant amount for each country – some may have a higher limit than others because they have a lower emission in other sectors and vice versa. The restriction, like the TAC could take the form of quotas that could be tradeable, subsequently allowing farmers to sell or buy quotas according to their needs. Anything produced above these quotas would be punishable by law. If farmers found an effective way of producing the same amount of animal produce but with a significantly lower carbon footprint, by making their farms more effective of cutting transport emission and so on, they should be allowed to do so.

This idea is already implemented, and some farmers and manufacturers already claim that they are CO_2 neutral. The Danish dairy company Arla claim to have CO_2 neutral milk by reducing their greenhouse gas emissions as much as possible and then compensating the rest of their emissions by planting trees and saving rainforests (Arla, n.d.). They explain that climate compensation is the notion of the climate impact in connection with milk production in their case, which is compensated by investing in projects that ensure a corresponding CO_2 reduction elsewhere in the world (Ibid.). This investment is called a climate credit, which means that the CO_2 or greenhouse gases that the company emits are removed from the atmosphere again elsewhere in the world (Ibid). That is to say: the company is not in itself CO_2 neutral, but it uses a different countries emissions quota to claim this. Initially this seems like a good idea, that the overall emission is controlled, but this could also potentially harm the countries where Arla (or other companies) buy extra quotas, because this hinders the countries in using their own quotas to make a further development. Animal agriculture could also be restricted through

a production tax. The farmers would undoubtedly feel the consequences of this, but they are nonetheless at liberty to adapt to the tax policies. In this scenario, farmer's Ulterior interests may be harmed because they have an interest in being a successful farmer, and it is nonetheless unfortunate that their Ulterior interests are set back or harmed. Nevertheless, this could be justified by the greater harm that is caused by their Ulterior interests upon others Welfare interests, and it would not be wrong for the state to implement a tax in respect to mitigating climate change because, as Feinberg states, a harm as setbacks to interests that are also wrongs and that mere setbacks are not harms if they are not wrongs (1987, p. 36). There would still be consequences in respect to limiting the production of animal agriculture, but it may be possible to work around these. Generally, if the state forces a farm to limit their production or shut down entirely they will be compensated to some extent – however the surrounding professions (food and equipment suppliers, transportation services etc.) are not compensated to the same degree. If the farmers are compensated by the state, the issue arises in connection to the side professions who make a living of catering to animal agriculture but are not compensated because they are not considered animal agriculture.

It could also be possible to limit animal agriculture by criminalizing sales of animal produce in supermarkets, butchers, cheese shops and the likes and only allowing them to sell half of what they sell today. This would inevitably affect the farmers, due to supply and demand: if the shops are coerced into a fifty percent reduction of all animal produce they have on their shelves and suffer the consequences of the penal code if they do not oblige (punitive fines would be preferred over incarceration), then the farmers would be affected by this reduction and would subsequently reduce their production as not to waste money, energy or resources. However, it should be considered how products that would not be classified as being animal products but contain animal products– like cake which contains eggs and milk or sweets that contain gelatine. Oftentimes, they contain a by-product which may otherwise be thrown to waste, and in that case, it may be the best option to use them, instead of wasting it. It could also be possible to replace the animal product with a different product which is not derived from an animal. A further consideration is dog and cat food which are also made up of ingredients stemming from animals – it would not seem fair to implement a plant-based diet upon one's furry companion, and a question arises if there should be an exemption for animal feed. The state could also implement a CO_2 sticker to put on all animal produce (comparable to the Danish red 'Ø' symbolizing the product is organic), meaning that the product is made under sustainable conditions, thus having a substantially lower emissions rate than other products. Further, a restriction in

the production of animal agriculture should as a minimum result in ending food waste. By ending food waste, a substantial decrease in animal produce produced would be made thus also a substantial decrease in emissions. This should be the bare minimum done in order to mitigate climate change, as food waste serves no purpose.

6.3 Taxation and Animal Agriculture

This section is dedicated to the discussion of appointing a higher sales tax on animal produce. A sales tax or a CO_2 tax is not a new idea, which is frequently discussed among politicians and decisionmakers. The Danish council of experts on climate called *Klimarådet* recommend a tax on CO_2 heavy products, if the country is to reach its climate goals of a 70 percent emission reduction before the year 2030 (Klimarådet, 2020a, p. 133). Twenty-two leading Danish economics agree on the fact that if Denmark is to have a real chance of reaching its climate goals by 2030 and 2050 respectively, a CO_2 tax should be implemented (Bahn & Gjerding, 2020). They agree that the most effective and cost-efficient way of reducing greenhouse gasses is by implementing a tax upon the emissions (Ibid.). Said tax would have a substantial effect on both the production of high emitting industries such as animal agriculture, and consumer behaviour (Ibid.). By implementing a CO_2 tax on animal agriculture, it would make these products more expensive for both the producers and the consumers. The producers - so the farmers in this case, would have to implement a low impact production upon their farms in order to make their production more cost efficient, thus mitigating climate change in the process. This tax would lower the demand for high-emitting products and create a shift towards a low-impact and thus a more climate friendly future. Feinberg writes, criminalization involves incarceration which stigmatizes transgressors, and the act of imprisonment is severely liberty-restricting. Criminalization taking the form of punitive fines is liberty-restricting to the extent that the liberty to act in a certain way is removed, even if this liberty is neither fundamental nor attached to a welfare interest. Taxation would neither remove nor restrict the availability of animal produce, nor would it criminalize or stigmatize an industry. Taxation is a familiar form of legal coercion, especially in Denmark where politicians use taxes to regulate the citizens behaviour (Ibid.). By taxing especially high emissions, it would be a cost-effective way for the state to reduce emissions, and the profit from the taxes could be used to finance green technology, research or compensate professions especially affected by such a taxation. A taxation would create an incentive for the farmers to change their production to fit accordingly to climate mitigation strategies due to the extra financial burden associated with animal agriculture. This form of legal coercion would not restrict the liberty of farmers in any relevant sense,

because their options are not limited, nor are they harmed. Due to this, taxation could be a desirable form of legal coercion if it mitigates global warming by reducing animal agriculture, either because as a whole animal agriculture is significantly reduced, or because climate friendly technologies and initiatives are put into place in order to make a significant reduction in animal agriculture. Even though tax is not liberal it is more so than incarceration would be. The extra taxation could be used to invest in green alternatives and research on the mitigation of climate change. The idea of rewarding farmers for their behaviour in respect to mitigating climate change instead of punishing them should also be entertained. This could be done through tax exemptions, rewarding farmers for making a substantial reduction in their production thus limiting their emissions rate, or by investing in green technology which also lowers their emissions substantially. This is a form of legal coercion, where incarceration is a far-off possibility, and is only liberty limiting to a small degree.

6.4 Summary of the Proposals

The above sections entertain the ideas of which forms of legal coercion would be legitimate in respect to mitigating climate change through the restriction of animal agriculture. Section 6.1 discusses the idea of criminalizing animal agriculture altogether. This proposal would, undoubtedly, be extremely successful in its task of mitigating climate change. However, it would also be disproportionate in respect to the harm animal agriculture causes and the harm criminalization would cause, being that criminalization is the utmost liberty restricting action a state can take and expose someone to. There is the detail in the direness of this case, meaning that there is a temporal aspect to consider in this discussion: we do not have an infinite amount of time to create and implement solutions to the problem of global warming and arguably it would be wise to act sooner rather than later with harsher mitigation strategies. This could for example be through punitive fines correcting behaviour that exceeds the amount of greenhouse gasses a farmer may produce, proportionate with where her farm is situated in the world and in which ways she contributes to the increasing problem global warming is. If the farmers continued to pollute excessively, the state could be in its right to imprison the farmers. Section 6.2 discussed the possibility of restricting the production and sales of animal agriculture by implementing agricultural quotas. If this proposal was implemented, it would mean that farmers would have to apply for a permit to cultivate animal agriculture up to a certain size, which fits with the amount of greenhouse gasses a country had budgeted with in order to comply with the global regulations. This would need to be regulated often to fit with the populations demands for food, export and so on. The possibility of trading agriculture quotas would be open, allowing farmers to either sell

or buy quotas according to their needs. Anything produced above these quotas would be punishable by law. If farmers found an effective way of producing the same amount of animal produce but with a significantly lower carbon footprint, by making their farms more effective of cutting transport emission and so on, they should be allowed to do so. The farmers would be at liberty to adapt to these quotas, and this proposal is not as liberty restricting as criminalization would be. This proposal also leaves the idea open for the farmers to implement and invest in greener technologies which lower their climate impact, allowing them to continue farming. Section 6.3 entertains the ideas of taxing farmers for their emissions (rather than giving them an emissions quota they must stick to; however, the two proposals could be combined). Here, all emissions are taxed equally so the farmers in this case, would have to implement a low impact production upon their farms in order to make their production more cost efficient, thus mitigating climate change in the process. This tax would lower the demand for high-emitting products and create a shift towards a low-impact and thus a more climate friendly future either by lowering the demand for these products (because the consumer would also be affected here) or by create new ways of lowering emissions significantly. Taxation as legal coercion does not restrict liberty in the same manner as criminalization would, and it does not harm anyone per se. There may be the risk that low-income families would struggle with buying food, as a taxation would result in a higher price, but some of the tax money could be earmarked to financially support low-income families affected by this. Alternatively, people struggling financially could choose to purchase low-impact food products. Taxation could be a desirable form of legal coercion if it mitigates global warming by reducing animal agriculture, either because animal agriculture is significantly reduced, or because climate friendly technologies and initiatives are put into place in order to make a significant reduction in animal agriculture. A reward system could also be put in place, rewarding farmers who have a significantly lower climate impact. Another aspect to consider, is the question of whether or not the potential harm the farmers may experience should be accounted for, and in that case how much it should be considered. As discussed in section 3.2 with the help from Caney there are different principles that can be used to decipher who should bear the burden of climate mitigation. Recall that I believe it to be reasonable to hold all present-day polluters accountable for their actions. However, I do not believe that all polluters should be punished. If punishing some polluters would mean that they would succumb under a reasonable living standard due to legislative matters, I argue that they should be given a free pass up until they are able to fulfil decent living standards. Strategies to help these actors implement climate friendly procedures should be put in place, as not to turn a blind eye to the situation. Those who are able to pay, should do so, because it

is arguably everyone who has at some point benefitted from earlier emissions. I do not argue that actors should pay, if they are harmed in this action, because the whole argument is based upon harm prevention.

Chapter 6: Closing remarks

This thesis has sought to answer the thesis statement *Which forms of legal coercion are justified in order to ensure a reduction in the use of animal agriculture with the objective to mitigate climate change and the consequences hereof?* Firstly, legal coercion must always be proportionate with the extent of the contribution of harm the individual farmers contribute with, in respect to global warming. In Chapter 2, I discuss how harm prevention can be a justifiable reason for legal coercion. If the farmers are harmed beneath their Ulterior interests then they may be exempted from the laws, regulations and restrictions put in place in order to mitigate climate change, because they (with great probability) do not contribute significantly to climate change through their agricultural practices. By setting certain rules and legislative measures which describe the state's role and how it can facilitate co-existence and safeguard basic means, which can be liberty promoting and thus prevent harm. Joel Feinberg's Harm Principle was introduced, supplemented with different definitions of harm and in which situations these can be applied, in order to justify legal coercion through the Harm Principle. I use my theoretical section to further investigate how the state can coerce its citizens with the aspiration to prevent the harm global warming causes, and still respect citizens' individual liberty, with the objective to maximise freedom for all through careful legislative matters. In Chapter 3, I outline climate change and how the consequences of climate change can be constituted as a harm. I specify this by presenting how animal agriculture is a harm, and what type of harm it can be constituted as, in order for this harm to be able to go under the Harm Principle. Legal coercion is justified in the case of mitigating global warming, because animal agriculture does in fact cause a substantial harm to others and mitigation strategies must therefore be implemented through legal coercion. Different kinds of legislative measures were discussed in accordance to the Harm Principle. Harm is an action that is both a setback to interests *and* a wrong: global warming is both. Further, an actor is only as free as coercive law allows her to be: freedom lies only outside the spectrum of coercive law, however coercion can still have a liberty safeguarding role. The objective of my thesis was to map out the areas where the citizens have a claim to be free from legal coercion but also which actions ought to be prevented in order to prevent harm. In Chapter 4, legal moralism is introduced as a contester to the Harm Principle and it is explained why the Harm Principle is preferred over legal moralism. The

objective of this section was to strengthen my theoretical standing point. Chapter 5 sets out to outline different legislative proposals which could be set in place with the objective in mitigating global warming. I start from the most restrictive proposals and work my way towards the least restrictive proposals, with the notion of liberty as a measurement of what the most attractive legislative proposal would be. The presumption of liberty is of the utmost importance to remember in this discussion, alongside the notion of not harming others in the search for a mitigation strategy – everything else considered, it seems counterintuitive to prevent harm in once place or sector, simply to cause a different harm somewhere else. I judge the permissibility of different forms of legal coercion, as seen in sections 6 to 6.4 by questioning the moral permissibility of such proposals with the help of Feinberg's Harm Principle and how harm can be defined and why the standard Harm Principle needs backup by Simester, A. P., & Von Hirschs' forms of Non-standard harm. I find that the forms of legal coercion which are justified in order to ensure climate mitigation through animal agriculture must, first, be proportionate with the harm animal agriculture causes. That is to say: no actor must be harmed in a different manner through this coercion. Second, not all farmers can be treated in the same way, in respect to coercion, being that there is a geographical, economic or societal difference which affects their contribution to global warming. My third and final point, is that climate change and the mitigation hereof is an intricate subject which many different factors why play important roles and many different interest must also be taken into account. However, animal agriculture causes a substantial harm, which must be prevented, and this can be done through legal coercion which prevents Old McDonald in both contributing further to the problem and coerces him into implementing mitigation strategies. Legal coercion can also be implemented in order to help Farmer Faisil optimise his farm, thus not contributing further to climate change.

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