

Kevin C. McAdam

*Boston College and Kent State University
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The Study Abroad Research Context

My interest in global water issues began in 2001, when I spent part of that summer in Lokitaung, Kenya working on an irrigation project in the north of the country as a volunteer with the Missionary Community of Saint Paul the Apostle. The project helped a local Turkunan community transition from traditional nomadism to self-sustained agriculturalism. During my time in Lokitaung, I witnessed firsthand several of the problems associated with acute water scarcity, including the detrimental effects of a severe water shortage on the daily lives of those struggling to subsist.

I revisited the topic in the spring of 2003, while participating in Kent State University's semester-long program in Geneva, Switzerland. While there, I interned at the International Centre for Trade and Sustainable Development (ICTSD) and took classes on international trade and international organizations from leading experts in the field, including Patrick Low, the Director of the Development and Economic Research Division of the World Trade Organization (WTO). My internship overlapped several topics I was studying in the classroom, and I became particularly interested in issues surrounding the protection of human rights and the formulation of international law in the context of development. Consequently, I co-authored a term paper with two fellow students on the Right to Development. The United Nations Commission on Human Rights was meeting in Geneva while we were there, and so we were able to research the topic thoroughly and first-hand. The Human Rights Library of Geneva's Graduate Institute of International Studies provided further primary resources. I focused my contribution to paper on issue of water scarcity, as situated within the framework of the Right to Development, concentrating on multinational corporate ownership of water resources and the WTO's trade-related role in water availability.

Using that paper as the basis for my senior thesis at Boston College, I continued researching and writing over the summer and during the ensuing academic year. I was able to draw upon my experiences in Kenya and in Switzerland. The contacts I had made in Geneva, such as my professors in the Kent State program and my supervisors and co-workers at ICTSD, were particularly helpful. Thus, my paper, while researched and written in Boston, was born in the academic and social cradle of these two experiences abroad.

The Human Right to Water — Market Allocations and Subsistence in a World of Scarcity

“Our ignorance about water has been as deep as the ocean.”¹

I n t r o d u c t i o n

More than one billion people do not have access to an adequate water supply. In Gambia and Haiti, people live on less than 4 liters of water per day.² By contrast, most toilets in the West use several times that amount of water for a single flush. Billions of people lack access to basic sanitation, the primary cause of two diseases linked to water and water contamination: cholera and dysentery.³ These deadly water-related diseases claim close to 10 million victims each year, primarily young children and the elderly.⁴ Certain areas of our world are running out of fresh water at an alarming rate. According to a recent survey by *The Economist*, agriculture accounts for the largest proportion of water usage, soaking up as much as 90% of available water in some developing countries.⁵ The global distribution of water is making it increasingly difficult for poor people to access it, and movements to commodify water and privatize the industries that provide it exacerbate this situation, trapping the poorest in a cycle of water poverty.

Much research has been done on the problem of water scarcity. However the link between scarcity and water as a human right is rarely articulated, even the current index of the website of the United Nations High Commissioner for Human Rights has no entry for water.”⁶ This paper proposes a human right to water. It then considers the consequent obligations the right to water imposes on those who control water resources, such as governments, water corporations, and international lending institutions.

W a t e r : A v a i l a b i l i t y , A c c e s s a n d S c a r c i t y

Water accounts for about 70% of the Earth’s surface, so it seems baffling even to speak of water scarcity. Closer examination quickly reveals the reasons for water scarcity. More than 97% of the Earth’s water is seawater, and most of the other 3% is found in glaciers, icecaps, and in aquifers that are too deep to be tapped. The small amount of accessible water available — about 40,000

cubic kilometers, or less than 0.08% of total water — is moved from the sea to the land every year through a process of evaporation and rainfall commonly known as the Earth's natural water cycle.⁷ The amount available ought to be more than enough to meet human needs. Water expert Peter Gleick estimates that humans need 50 liters of water per day (for sanitation, cooking and drinking) to maintain a sufficient standard of living.⁸ Gleick's figure is realistic but holds several implications that must be carefully examined.

First, being able to access 50 liters of water each day would be less of a problem than it is if water were evenly dispersed on our planet. Unfortunately, this is far from the truth; places like Australia and the Middle East have too little water, while countries like Canada and Ireland have more than they can possibly use.⁹ Along with the uneven geographic distribution of usable water, almost every country in which water scarcity is particularly acute can be classified as developing or least-developed. Thus, not only do these countries lack water itself, they also lack the financial means to acquire it. Both of these problems obstruct economic development.

Additionally, Gleick's 50 liter water minimum has been compromised by the history of mismanaging water resources. For time immemorial people have attempted to master water. President Theodore Roosevelt's chief advisor on water programs said that controlling water was "the single step remaining to be taken before Man becomes master over Nature."¹⁰ Evidence shows that humans have been trying very hard to take this step. In the United States, for example, only 2% of rivers have not been dammed. In China there are more than 22,000 dams, which divert and channel hundreds of rivers. While managing water has its benefits (power, irrigation, flood prevention, etc.), current research points to many problems caused by damming. Dams cause pollution by blocking drainage systems that carry out manmade sediment. This leads to soil erosion and shorter life-spans for reservoirs that fill up with mud. Dams interrupt the breeding cycles of certain fish, such as salmon. Ruptured dams are notorious sources of flooding.

Another example of poor water management is the rapid depletion of aquifers. These underground reservoirs are essentially nonrenewable; while groundwater does seep down to replenish supplies, it does so at a rate that is slow enough to be considered nonexistent. Water from aquifers, which is extracted from the ground through pumps or wells, is being drained at a rapid rate. In Saudi Arabia, for example, groundwater extraction accounts for 75% of water usage.¹¹ At its current rate of extraction, Saudi Arabia's groundwater will be depleted by 2050.¹² Saudi Arabia's mismanagement of groundwater by using it for agricultural irrigation when they could conserve it by importing wheat

at one-fourth the cost of producing it, is not an isolated case. From the United States to Libya to China, water-intensive crop irrigation is draining aquifers and thus creating the possibility of unsustainable agriculture in the future.

Water as a Human Right

Simply put, human rights are those which belong to all people because of their humanity. Article 1 of the *Universal Declaration of Human Rights* (UDHR) states “All human beings are born free and equal in dignity and rights.”¹³ These rights, which belong to all people equally, are an intrinsic part of humanity. This is reconfirmed by the 2000 United Nations Development Program’s *Human Development Report* which states “Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. They are universal, inalienable and indivisible.”¹⁴ According to the United Nations Development Program, human rights entitle people to make moral claims on the behavior of individuals and on the design of social arrangements.

In *The Human Right to Water*, Peter Gleick argues that “if the framers of early human rights language had foreseen that reliable provision of a resource as fundamental as clean water would be so problematic,” then it is not far-fetched “to suggest that the basic rights documents would have more explicitly included a right to water.”¹⁵ Gleick maintains that logic seems to suggest that those who drafted the the UDHR “considered water to be implicitly included as one of the ‘component elements’ — as fundamental as air.”¹⁶

Yet, human rights must be applied in a world which is marked by scarcity. What happens when there are not enough resources or sufficiently stable institutions to help fulfill the rights of all people? Who should go without, and what, exactly, must they sacrifice? Are there certain rights that must be met before others can be? Quite simply, there are certain economic conditions that are absolutely essential to the fulfillment of human rights, such as “unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care.”¹⁷ These basic human needs, to which all people have a right and which are essential for survival, can be classified as those needs that, at a minimum level, provide for subsistence. A right to subsistence necessarily must precede the attainment of other rights.

In his book, *Basic Rights*, Henry Shue states, “Any person who is already deprived of subsistence and is helpless to provide it for himself or herself will from that time never enjoy any human right, unless some other persons fulfill the duty to aid the helpless one.”¹⁸ Water clearly falls within the rubric of

subsistence rights. Without a minimum amount of water, human beings cannot survive for very long. Also, the existence and attainment of other rights depends in part on the ability to access water. For example, the right to food cannot be fulfilled without the availability of water for cooking, and the right to adequate shelter provides little benefit if the very reason for its existence (namely, to protect from the elements) is undermined by a more paralyzing problem such as dehydration. As a subsistence right, water is necessary in and of itself to human beings, and, also, as a medium through which other rights can be enjoyed.

At a November 22, 2002, meeting of the United Nations Committee on Economic, Social and Cultural Rights, Dr. Jean Ziegler, Special Rapporteur on the Right to Food at the Commission on Human Rights, said that water is “liquid food” and is necessary for all human beings.¹⁹ Dr. Ziegler’s statement creates a crucial link between water and food and alludes to the interrelated nature of subsistence rights. The general comment drafted at the end of the Committee’s session states, “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”²⁰

What then, exactly, does it mean for there to be a basic right to water? A right to water must correspond to the basic needs for which a person requires water; that is, people have a right to an amount of water that will allow them to subsist. As stated in 1997 by the UN Commission on Sustainable Development in their *Comprehensive Assessment of the Freshwater Resources of the World*, “All people require access to adequate amounts of clean water, for such basic needs as drinking, sanitation and hygiene.”²¹

The right to water is recognized, by name, in several treaties and declarations. The Convention on the Elimination of All Forms of Discrimination Against Women (article 4, paragraph 2, h), the Convention on the Rights of the Child (article 24, paragraph 2, c), the Geneva Convention relative to the Treatment of Prisoners of War, of 1949 (articles 20, 26, 29, and 46), and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949 (articles 85, 89, and 127), all cite the basic need for water and provide a legal basis for the right to water.

Implementation of the Right to Water

Ethically, logically and legally, the human right to water must be analyzed in light of why so many people do have access to a subsistence amount of water. Human rights covenants and declarations are an important part of the struggle to insure universal access to water, but they are not enough.

While nature plays a role in water allocation, that explanation alone denies the important role human intervention plays in water allocation. Scarcity goes beyond the ability of people to make use of their natural resources. A combination of many factors precludes people from obtaining the resources they need to subsist. These include, among others, political conditions, the degree of peace and stability in a country, its public health conditions, the strength of its institutions, access to technology, and foreign investment policies. One factor, political economy, or the market, reveals much about the state of water scarcity and water rights. The concept of “the market” is used here to mean the incentives and actions of those institutions which, in an international context, are in powerful economic positions. These institutions include national governments of wealthy nations, global water corporations, and international lending institutions.

These actors have a large influence on the way markets function, especially when their interests coincide. It is in the self-interest of these market-actors to advocate the privatization of water markets and, consequently, they are less likely to frame access to water in the language of human rights. The result is that powerful market-actors are undermining democratic progress and limiting the prospects for the evolution of human development. However, private property arrangements that value the protection of human rights more than economic objectives do exist.

One argument for the privatization of water markets is based on economic theory. This point of view suggests that higher prices for water will lead to better planning and the best possible appropriation of this resource. Many people claim that water scarcity is a result of the misuse of water and that the primary reason water is not mindfully used is that the price humans pay for it is far too low. Following this line of reasoning, if people are forced to place a greater value on water because of a price increase, they will be less likely to waste it. Currently, for most people water is free or priced very low. Federal, state, or local governments subsidize the price of domestic water consumption and, thus, the price people pay for water is far below what it otherwise would be in a free market, where the price of water would adequately reflect the cost of its provision.

Those who favor higher prices state that a low price ignores the expensive tasks of collecting, purifying, storing, and delivering water. They point out that while water is a free gift of nature, its provision is not. They also point to examples like the one of Saudi Arabia’s wheat production to show that water is frequently wasted on such unnecessary uses since wheat is available for importation. An example such as this, they maintain, demonstrates that

water needs to be priced to reflect its true cost, and because markets adjust price to the point where consumers' utility equals producers' cost, the market should be the mechanism used to determine price. Allowing the market to set the price for water opens the door to the involvement of the private sector.

Supporters of private enterprise point to pre-funded government activities and highlight the fact that because payments for these activities are not based on their quality or efficiency, the government has no economic incentive to please the people it serves. Certainly there are political, social, and moral considerations that any government must take into account when providing a service, but without being substantially accountable to any one person or any singly-defined group of people, there simply is not enough incentive to provide a high-quality, efficient service. Moreover, since government services are spread out over the entire population, even a substantial inefficiency may hardly be noticeable in the aggregate.

Private companies, on the other hand, are accountable to their patrons and shareholders, and must respond to their needs and preferences. Thus free market advocates generally favor the existence of private enterprises. In relation to the water industry, supporters of privatization see no reason why this sector of the market should be treated any differently than other sectors. Yet, if access to water is a human right, should its provision be left to the "free hand" of the market? What does it mean to subject human rights to the market and its laws of supply and demand? How is the market currently dealing with subjects of human rights, such as water? Are markets exacerbating poverty and contributing to water scarcity? Are private enterprises helping the poor access the water they need in order to survive, or are they damaging the lives of poor people by putting profit concerns ahead of the rights of their consumers?

In "Utilities Privatization and the Poor: Lessons and Evidence from Latin America," Estache, Gomez-Lobo, and Leipziger note the general stigma regarding the effects of privatization on the poor: "The perception that privatization policies hurt the poor, is widespread in the popular press and is an important factor determining the political sensitivity of the reform agenda."²² There seems to be two related reasons for the bad press on privatization.

First, privatization and economic growth are closely linked. In the past fifty years, since privatization became an international development mantra, several developing countries, most notably Taiwan, Hong Kong, Singapore, and South Korea, have adopted privatization strategies and have sustained positive growth. Yet other countries, from Kyrgyzstan to Kenya to El Salvador,

have not achieved the same sought-after results following privatization. Consequently, many people blame privatization, even though other policies may play a larger role in a lack of economic growth.

Second, in many developing countries market failures and poorly functioning private enterprises create an uncompetitive environment resulting in poor services. Black markets are an outgrowth of this situation. In utility industries in Latin America, for example, private enterprises have been illegally operating for decades alongside state-run utilities. These illegal services do not take place in a market characterized by perfect competition, and therefore result in a poor quality of service.

“Evidence shows that, in general, competition is good for all consumers, including the poor,” Estache, Gomez-Lobo, and Leipziger state. In this sense, competition represents a case where “efficiency considerations and welfare considerations coincide.”²³ In the instance of private water usage, the evidence from their study shows that people value the quality and reliability of the service more than the price; poor people are “usually willing to pay substantially more for a reliable service.”²⁴ Thus, even if poor people do end up paying more for a service like water, it does not necessarily imply a negative relationship. Cost increases caused by privatization may be welfare-enhancing if people value the quality of the service more than the price — as evidenced in the results of their study.²⁵

Currently, the market for water is estimated to be worth more than \$400 billion per year, and that is taking into account the fact that only around 5% of all water is in the private sector.²⁶ In the United States, for example, the private water sector creates more than \$80 billion each year in revenue.²⁷ Annual global water revenues amount to approximately 40% of the oil industry.²⁸

In the United Kingdom, water was a public service until 1989. Initially, the outcomes of privatization were rather negative. Between 1989 and 1995, while the profit margins of the private companies increased 692%, the rates charged for water were raised 106% and, at the same time, the number of British citizens whose water was disconnected increased by 50%.²⁹ While these numbers seem to cast privatization in a negative light, a comparison between England and Scotland makes privatization look relatively benign. In 1989, Scottish water was virtually identical to English water, except that it remained in public hands when Prime Minister Thatcher’s privatization program commenced. Scots initially benefited from lower prices, but 14 years later their situation does not look good. According to *The Economist’s* survey on water:

Scottish Water is less efficient than its southern peers, its service delivery is poorer and its water quality is worse; it is, in short, ten years behind. To catch up, it is having to raise water tariffs above English levels.³⁰

In this case, therefore, privatization appears to have been the correct solution.

In Cochabamba, Bolivia, however, a privatization strategy had the opposite effect. In 1999, the World Bank refused to guarantee a \$25 million loan to refinance the city's water services unless the government sold the city's public water company, Servicio Municipal del Agua Potable y Alcantarillado (SEMAPA), to a consortium led by the American construction firm Bechtel. Within a few months, water rates rose exponentially, requiring some people to spend close to half their monthly budgets on water.³¹ In January, 2000, strikes and protests against water privatization broke out in the city. The government called in military troops, enforced curfews, and imposed martial law. Several protests turned violent and a seventeen year-old boy was killed by a soldier. By April 2000, under immense pressure from the Bolivian people, the government broke its agreement with the consortium and returned control to SEMAPA. This experience shows that water privatization can be extremely dangerous and even life-threatening.

The preceding examples suggest some important points about water privatization reforms. As with all economic reforms and structural adjustments, certain groups of people tend to benefit more than others. This is especially true in the transition, or interim, period when the market is thrown out of its previous equilibrium. When the water sector was privatized in the United Kingdom, prices rose rapidly, disproportionately affecting poor people who had difficulty paying for water. In Bolivia, however, privatization proceeded too quickly, and the transition period produced unbearable results on low income people who were simply unable to pay for water and therefore protested the price increase.

In *Attacking Poverty*, the 2000/2001 World Bank "World Development Report," the authors state that those adversely impacted by market reforms include "the unskilled, the immobile, and those without access to the new market opportunities—because they lack human capital, access to land or credit, or infrastructure connecting far-flung areas."³² If the decision to privatize the water sector is potentially explosive, why would governments run the risk of doing so? One immediate answer is that governments are turning increasingly to the private sector to fix their country's fiscal problems. Privatization, governments believe, means that they no longer need to invest in a dilapidated water infrastructure.

The International Bank for Reconstruction and Development (IBRD) and the International Finance Corporation (IFC), which are both part of the World Bank, are currently very involved in water management. Four years ago in Mozambique, for example, the IBRD helped to provide a \$117 million loan to the government for debt relief and various infrastructure projects. One stipulation of the loan was for the government to privatize its water services; Bouygues-SAUR, a French multinational with operations in over 80 countries, received the contract to provide water services to about 2.5 million people in Mozambique.³³ As noted earlier, the situation in Cochabamba, Bolivia, was also affected by the World Bank loan's conditions. Faced with a crumbling water system, the Bolivian government decided to take on a \$25 million loan that mandated the privatization of its public water sector. The IFC also plays a pivotal role in privatization by providing financing to the large multinational water corporations. In the biggest privatization deal in the world, the IFC provided upwards of \$500 million to a French multinational corporation, Suez, to privatize the water industry in Buenos Aires.³⁴ In fact, the IFC has provided investment capital to Suez across the world in places such as Thailand, Ghana, and Brazil.

The International Monetary Fund (IMF), through its Poverty Reduction and Growth Facility program, has greatly increased its role in water privatization as a condition for receiving debt relief. In the past three years this program has been responsible for various privatization initiatives in many of the world's poorest, and often least stable, countries. It has required privatization in: Niger for its water, telecom, electricity, and petroleum industries; water and electricity sectors in Rwanda; and sewage and water facilities in Honduras. In Nicaragua, the IMF imposed a condition requiring the government to "increase its water and sewage tariffs by 1.5 percent a month on a continuous basis for the purpose of full-cost recovery," which means that consumers pay for the "full-cost" of operation, maintenance, and capital expenditures.³⁵ These countries not only lack the infrastructure necessary to ease the structural transition to privatization, but also, they are not consolidated democracies, and therefore, the decision to privatize is almost certainly not made by the general public.

In July of 2001, the World Bank approved a \$110 million loan for Ghana on the condition that it would perform several actions, one of which was to "increase electricity and water tariffs by 96 percent and 95 percent, respectively, to cover operating costs."³⁶ According to Sara Grusky, in *Privatization Tidal Wave — IMF/World Bank Water Policies and the Price Paid by the Poor*,

the Ghanaian government doubled the average price for a bucket of water before the loan was approved in order to “comply with the Bank’s required ‘prior action’ for accessing the structural adjustment loan.”³⁷ This price, she claims, is out of reach for the average person in Ghana and, even if it reflects the true cost of water provision, really only provides benefits to the new private water company, World Bank lenders, and the political elite in Ghana who enjoy being on good terms with the major international lending institutions.

The close relationship between the IMF/World Bank lending institutions, corporate water providers and national governments is cause for concern. The potential problem with these close relationships is that the prospects for stability and growth in the developing world, which the IMF, World Bank, and developed-country governments claim they are promoting, have become increasingly tainted by the profit-driven incentives of water multinational corporations. In *Global Water Lords*, Maude Barlow and Tony Clarke state, “Big water corporations are also motivated to grow because of their wide-ranging, international links with governments, political parties, the banking industry, and international financial institutions like the World Bank and the International Monetary Fund.”³⁸ The nature of these relationships and the ultimate impact on privatization merits attention.

The French water giant Suez, for example, in many ways is a political animal. CEO Gerard Mestrallet has held numerous positions with the French government in transport, economy, and finance, and the Suez Director, Jerome Monod, was at one point chief of staff to Prime Minister Jacques Chirac. Its own board of directors includes current and former corporate executives from three large banks in France, a prior CEO of Nestle, a director of Shell, as well as a CEO of Power Corporation Canada. Additionally, by operating through its US subsidiaries, Suez has donated money for congressional campaigns and gave \$141,150 in “soft money (unsolicited) donations during the 1999-2000 election cycle.”³⁹ Suez is also a big player in the European Forum on Services — a lobbying group that pushes for the creation of new rules on privatization of public services at the WTO.

Corporations like Suez, armed as they are with their own legal, public relations, and policy divisions, are able to exercise far more political power within elected bodies than most people realize. They are “fortified by sophisticated lobbying machinery” and can, therefore, develop their own legislative agendas to influence government-endorsed laws, policies, and programs, which may help increase their profit margins.⁴⁰ Admittedly, this type of lobbying is not specific to water corporations in the majority of Western countries; indeed, most private industries lobby for their interests. What sets apart the actions

of the large water corporations is the effect they have on the lives of the poor in other countries. Lobbying is a standard operation in highly-developed democracies, and because of the systems of internal checks and balances, even the most powerful corporation, whether by accident or by willful negligence, would find it difficult to harm the population severely. Political leveraging that benefits the operations of water corporations in the developing world, however, is potentially harmful, as the institutions of these countries are not nearly as capable of dealing with market failures or corporate corruption.

The Suez example, mirrored by other similar situations in the world's largest multinational water corporations, raises a serious question about the theoretical nature of democracy and the way in which it actually functions in a world of super-power corporations. The pervasive political clout of multinational corporations appears to be severely undermining the nature of democratic governance, as can be deduced from the aforementioned examples of water privatization in Bolivia and Ghana. In the United Nations Development Program's 2000 "Human Development Report," its authors state:

Economic policy-making behind closed doors violates the right to political participation—and is susceptible to the corrupting influences of political power and big money. It creates a disabling environment, ripe for human rights failures. This democratic deficit is widespread in local, national and global economic policy-making—reflected in slum clearances that wantonly deprive people of housing, dams that flood houses and farms, budget allocations that favour water for middle-class suburbs rather than slums, logging that destroys the environment, and oil wells that pollute fields and rivers from which people draw livelihoods.⁴¹

The implications of this "democratic deficit" cut to the heart of the push toward privatization of water. Privatization, developed in this way, may negatively affect the human right of poor people to water. The "Human Development Report" links several avoidable travesties that are occurring in the world today with international closed-door policy making (both political and corporate in nature). These policy makers are opposed to the right to water because they benefit from treating it as simply a human need that should be subject to the economic dictates of the market. The powerful positions they occupy allow them to make important, and often overwhelmingly unpopular, decisions, which perpetuate their level of influence and undermine the nature of true democracy.

In his book, *Promoting Polyarchy*, William I. Robinson describes a low-level brand of democracy being implemented in several countries in which a

very small elite actually rules and “mass participation in decision-making is confined to leadership choice in elections carefully managed by competing elites.”⁴² While Robinson’s focus is, in many ways, about the questionable legitimacy of domestic “democratic” political institutions, it is certainly tied to the aspirations and functions of multinational corporations. He uses the term “transnational elite” to describe those who move and shape the global economy and, thus, benefit accordingly. Robinson states, “The agent of the global economy is transnational capital, organized institutionally in global corporations, in supranational economic planning agencies and political forums, and managed by a class-conscious transnational elite based in the core of the world system.”⁴³ This class is made up of CEOs of the largest corporations, government ministers, and the architects of trading and loan arrangements in the WTO, World Bank, and IMF.

The transnational elite, Robinson posits, has an economic goal and a political strategy to make sure that goal is attained. Profit is the economic aim, and the political means include “the elimination of state intervention in the economy and of the regulation by individual nation-states of the activity of capital in their territories.”⁴⁴ Whether it is the US government awarding reconstruction contracts in Iraq to Vice President Cheney’s former employer, Haliburton, or the political lobbying and subsequent accumulation of water distribution rights by the French firm Vivendi, it is not difficult to see the way in which the transnational elite benefits from being able to reorient and structure political priorities.

When governments, institutions, and the transnational elite concentrate power in the hands of multinational water corporations, it becomes virtually impossible to guarantee that minimum access and quality measures — in other words, subsistence rights to water — are taken into account. And when corporate interests and profit maximization take precedence over the rights of citizens, conceptions about the very nature of those rights are altered. Water is a human right; however, in domestic and international forums, it is not being treated as such. If water were to be regarded as a human right, then governments would, at least in theory, be responsible for guaranteeing access to an adequate amount of it. Recent international water meetings, such as the 2000 World Water Forum in The Hague, have addressed water in the context of human needs, not rights. These meetings are run by those who see a monetary value attached to separating water from the language of human rights. The 2000 Forum, for instance, was convened by the transnational elite; even though the meeting was officially cosponsored by the

United Nations and the World Bank, IMF and World Bank officials, in addition to the heads of the largest water corporations, ran the event and dictated its final outcome. These individuals opportunistically used the growing scare of a world water crisis to promote the corporate control of water. The "Vision Report," presented at the Forum by the World Water Council, addressed water as a need and stated that the price of water services should be commensurate with the cost of their provision.⁴⁵ A pricing relationship of this sort runs counter to viewing water as a human right because it allows for the very real possibility that some people will be denied access to water because they will be unable to pay for it. In areas that are water-scarce, the situation is even bleaker. Because of scarcity the cost of provision in water-restricted areas is greater than other locations. Poor people living in these areas already have great difficulty acquiring water and would find life more burdensome, if not unbearable, if the price of water reflected the cost of its provision.

In a December 6, 2002, interview on Canada Broadcast Corporation (CBC) Radio, Peter Spillett, the head of environment, quality, and sustainability for British water corporation Thames Water, candidly explained the relationship between the large water corporations and international lending institutions like the IMF and World Bank. One excerpt of the interview, in particular, speaks to the centralization of control over the world's water resources:

We talk with [the lending agencies] on a range of issues, including new forms of funding mechanisms, where we can work together to alleviate risk. If you talk about the Third World market, private companies are looking for ways they can leverage their experience and muscle with organizations like the World Bank so that their risk exposure is limited and there are ways of providing finance which satisfy both the lenders and the client. And we work quite a lot with them and through various organizations like Global Water Partnership, World Water Council, and the World Water Forum.⁴⁶

This revelation from an official of one of the largest water corporations speaks volumes about the way in which access to water is being manipulated at the international level. Heads of corporations have been able to convince members of groups like the IMF and World Bank that water is a human need. The IMF and World Bank, in turn, benefit from putting the kick-start money into water privatization and development projects. This work helps to justify their existence, and they appreciate the fact that they maintain low risk because the completion of the projects rests in the hands of the corporations.

The water multinationals benefit from the political leveraging (via forced privatization through Structural Adjustment Programs, for instance) initiated by the IMF and World Bank. Once they are working together, water corporations and the lending agencies are able to host meetings like the 2000 World Water Forum. An internationally-recognized cosponsor, such as the United Nations, is brought on board but immediately marginalized at the start of the meeting. Then, by citing evidence that poor people are willing to pay for water, they are able to codify need-based language on water in declarations like the “Vision Report,” which helps build momentum toward future privatization projects and corporate water control.

The point about people being willing to pay for water is an important one in the current debate about whether water is a right or simply a need. Several studies indicate that people would rather pay (or pay more) for water than have free (or less expensive), irregular and unreliable service: “In fact, there is mounting evidence from Willingness-to-Pay surveys undertaken in Central and South America indicating that even very poor households would prefer to pay a reasonable bill in order to have a formal connection to piped water services than maintain an informal connection.”⁴⁷

On the surface this statement makes it appear as if poor people want to pay for water and that, even if they had the option, they could afford to do so. Clearly no one wishes to pay more for something, especially when on a tight budget, but the more important point is that these surveys and the “willingness to pay” language deceptively directs attention away from the opportunity cost of paying more for water. In other words, what poor people must sacrifice because of their “willingness to pay” — a fully adequate diet; the cost of their children’s education; money for structural repairs to their homes, etc. — are totally ignored but are vitally important to the realization of a full spectrum of human rights. This broader approach to a human right to water can be witnessed in the formation and evolution of the concept of human development and in the language of the Right to Development, which will be addressed at the end of this paper.

Corporate influence is commodifying and commercializing water and affecting the normative framework through which people have traditionally valued water. This alteration feeds back into the concentration and control of water by the transnational elite. On a theoretical level, privatization includes an implicit assumption about the nature of the good or service in question: namely, that the commodification or commercialization of the good or service is justified based on its economic results. Privatization relies on the “growth

imperative,” which means that increased consumption is a prerequisite for profit and a thriving business environment. Thus, private water companies manage water resources “based on market dynamics of increasing consumption and profit maximization.”⁴⁸ Commodification, through purchasing and selling (for a profit), distances water from the function it plays in basic human rights and separates it from its fundamental role in life.

Commodifying water has developed dramatically in recent years following the growth of the bottled water industry and new developments in water trading technology. According to Maude Barlow and Tony Clarke, in their book *Blue Gold*, the bottled water industry is estimated to be worth \$22 billion per year. Since 1995, sales have grown at an exponential annual rate of over 20%. In 2000, corporations bottled around 90 billion liters of water for shipment around the globe.⁴⁹ Because the industry is so young, it is difficult to predict all the negative effects that may result from it. One potentially hazardous environmental aspect of bottled water is the enormous amount of space bottles take up in landfills. According to a study released by the World Wildlife Federation (WWF) in May 2001, the bottled water industry uses 1.5 million tons of plastic each year.⁵⁰

Following the trend of marketing water as a commodity to be bought and sold in bottled form, corporations are now expanding their practices to produce larger quantities. Some experts have suggested that it might be cheaper for countries to import water from corporations than for them to fix the problems they have with their own infrastructure or to bring in private contractors to do so. According to Jeffrey Rothfeder, “A thirsty country such as Kenya could find that it’s cheaper to [...] import [water] by boat, than to spend billions on pipes to pump in water from a polluted river only a few hundred miles away.”⁵¹ Supertankers and more advanced technology make large-scale water transfers a distinct possibility. Supertankers, though not environmentally friendly, can move massive quantities of water. In the early ‘90s, one Canadian project involved a Texas company that was willing to finance a fleet of 12 to 16 of the largest supertankers in the world to transport water from Canada to Texas around the clock.⁵² In Sitka, Alaska, according to the *Alaska Business Monthly*, “a one-million-gallon tanker could be filled every day and this would still represent less than 10 percent of the region’s current water usage.”⁵³ Experts say that Eklutna, Alaska, could export as much as 30 million gallons per day.⁵⁴ Among the most intense plans to ship water is one regarding meltwater from Greenland’s enormous glaciers. These pure chunks of ice cover over 700,000 square miles and are more than two miles thick.⁵⁵

Aquapolaris, a multinational water corporation, has already begun to transport millions of gallons of this glacial water to the world's highest bidders.

Technological advancements are greatly reducing the cost of transporting water, making it an even more feasible solution. The most important developments in this area are water bag schemes. Hauled by tugboats, these polyurethane bags can hold much more water than supertankers — up to 3 million cubic meters or 720 billion gallons. These bags were first used by Aquarius Water Transportation Co. in the U.K. Since 1997, Aquarius has been using this technology to supply several Greek Islands with water from mainland Greece. This technology is cleaner and safer than using supertankers, but it does not mitigate the problems caused by massive water extraction. Moreover, these technologies reinforce the notion that scarcity issues can be solved by commodifying water. The creators and owners of such technology fail to approach the issue of water scarcity from a human rights perspective, thereby benefiting themselves and harming those who are unable to pay.

Similar to the effects of forced privatization through Structural Adjustment Programs, water trading distorts the nature of democratic governance and state sovereignty. Trade rules have been designed to protect global water corporations, the privatization of water services, and bulk exports of fresh water. In trade terms, water is classified as a commercial good and service, and may soon be considered an investment. Global trade rules, as espoused by the WTO and the North American Free Trade Agreement (NAFTA), treat water as a tradable commodity and, therefore, according to *Most Favored Nation* and *National Treatment* provisions (GATT Articles I & III), countries cannot refrain from importing or exporting water, even when they find it in their best interest to do so.⁵⁶ Such measures can be challenged as trade-restrictive and can be brought before the Dispute Settlement Body (DSB) as a violation of WTO rules. GATT Article XX provides for some environmental exceptions; however, only one DSB case has upheld environmental concerns over those of trade.⁵⁷

NAFTA also makes it very difficult for a government to protect natural resources like water. Article 309 states that “no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party.”⁵⁸ Since water is defined as a good, it clearly falls under the scope of this provision. Additionally, NAFTA's section on investment (Chapter 11) allows for companies to sue governments if they feel that they are being obstructed from trading.⁵⁹ In 1998, Sun Belt Water Corporation sued the Canadian government for \$300 million for choosing to ban the export of

bulk water.⁶⁰ Sun Belt Water has, thus, opened the door for the establishment of judicial precedent, which would solidify the legal foundation for courts to overrule laws and regulations of other state governments. Such an outcome depends on a favorable ruling for Sun Belt Water. While it is possible that the Canadian government will win the case, empirical evidence from other trade-related courts (such as the WTO's Dispute Settlement Body) demonstrate that trade concerns are routinely favored over what, in this case, can be called "trade-restrictive, protectionist interests." Corporations clearly stand to benefit from such a development.

The world's largest water corporation, Vivendi, sits on the US Coalition of Services Industries and the European Forum on Services, which are both currently involved in negotiations at the WTO regarding the General Agreement on Trade in Services (GATS). Vivendi, and the other large water corporations, have been successful in urging the framers of the GATS to limit government service regulations as much as possible. Water as a service includes such activities as wastewater treatment, sewer services, construction of water pipes, groundwater assessment, and nature and landscape protection. The GATS rules are turning these areas, vital as they are for water's many functions, over to commercial activity and the private sector, despite the often contrary wishes of people and even state governments. Because these rules are legally binding constraints, Barlow and Clarke state, "No other international agreement to date poses such a direct threat to the legislative and regulatory power of governments."⁶¹ Through the Dispute Settlement Body, the WTO can authorize Members to retaliate against protective measures. Retaliation has, in several instances, proven to be an effective implementation mechanism, and, by using it, the WTO has been able to override the laws of states; such judicial and legislative powers are unprecedented and raise serious concerns over the nature of global decision making.

In addition to treating water as a good and service, water corporations and the transnational elite have been establishing corporate investor rights so that companies can operate unconditionally in other countries and have access to each other's markets and resources. Spelled out in Bilateral Investment Treaties (BITs), these investor "rights" can "provide global water corporations with the additional economic and political clout they need to pry open markets and resources."⁶² WTO negotiations on investment have stalled several times since their inception at the 1996 Singapore meeting, but investment still remains on the agendas of several member states, though in general it is on the backburner at WTO talks. A multilateral agreement on investment at

the WTO would classify water as an investment and, as such, domestic provisions to protect water as a public service and human right could be seen to be trade barriers and, therefore, could be challenged as being trade-restrictive.

Conclusion:

The Development Framework

This paper has established the existence of a basic right to water, which means that human beings are entitled to a subsistence amount of water by virtue of their humanity. This paper has also illustrated that it is in the interest of powerful international market actors, such as global water corporations, national governments, and international lending institutions, to refrain from conceptualizing water as a human right. They benefit from privatization strategies, which raise profit margins through an increase in the price of water. Because I frame the discussion of markets in a human rights context, I am necessarily critical of market actors that prioritize economic objectives over and above the fulfillment of basic human rights. This analysis, while helpful for illustrating the preeminence of such rights, nevertheless fails to reconcile human rights with the structural issues of the market that perpetuate scarcity. Therefore, it is necessary to broaden the scope of the argument from the right to water to the concept of a process of human development that entails widespread structural changes.

Basic rights extend beyond the right to water and include such things as the right to food, the right to adequate housing, the right to basic healthcare and education, and the right to security. These rights lead to the attainment of other rights and, thus, must be achieved before other rights can be. While in some circumstances the fulfillment of basic rights may require the provision of goods or services, what one often needs is simply to be granted the opportunity to provide for oneself. Henry Shue states that, in such situations, “the request is not to be *supported* but to be allowed to be *self-supporting* on the basis of one’s own hard work.”⁶³ This sense of personal responsibility and agency is espoused by Nobel Laureate Amartya Sen in *Development as Freedom*. Sen views economic development as a crucial component of human existence, insofar as it helps to expand the opportunities available to people. He states, “Development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy.”⁶⁴ These freedoms are what give people the opportunity to support themselves, and, in so doing, they help expand the process of development to those around them.

Personal accountability is the first step in a process of development that reflects both the agency of the individual and, also, leads to the enjoyment of a more comfortable life. In the UNDP’s 2000 “Human Development Report,” the

authors write, “Human development is the process of enlarging people’s choices, by expanding human functionings and capabilities. Human development thus also reflects human outcomes in these functionings and capabilities.”⁶⁵ Development is, in this sense, about the process of leading a free and self-supporting life and enjoying the fruits of one’s own labor. More than this, however, the process of development represents the full embodiment of what it means to be human, and, therefore, it is something to be enjoyed, in and of itself.

Drew Christiansen, in *Basic Needs: Criterion for the Legitimacy of Development*, argues that, while the fulfillment of subsistence rights is an integral part of human existence, it is important insofar as it leads to the enjoyment of those things that give life its meaning: “love, friendship, skill, art, knowledge, pleasure.”⁶⁶ This is what he means when he states, “Human beings want not just to live, but rather to live fully.”⁶⁷ The right to subsist is a requisite part of humanity — it is built into what it means to be human. Yet, minimal survival is not enough. As Christiansen says, “To eke out a living is hardly a human life at all.”⁶⁸ Mere subsistence leaves people in a state of constant uncertainty regarding their future security, and it limits their capability to develop into full human beings and to enjoy those things which make life worth living.

Serious social, philosophical, and theological work is being done to promote human development, under the auspices of the Right to Development (RTD), which is “the integration of various human rights into one overarching concept, which mirrors the concept of integral human development.”⁶⁹ In 1986, the United Nations General Assembly adopted the *Declaration on the Right to Development*. Article 2.2 of the *Declaration* states, “All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being.”⁷⁰ This article expresses the linkage that occurs in the Right to Development between human rights and the participatory aspect of development.

Every human being has a right to enjoy fully fundamental freedoms — civil and political, as well as economic, social, and cultural — as a matter of human rights entitlement and as a means toward personal growth and fulfillment. In this sense, all people are entitled to participate in their respective structures of governance and to give voice to the policies and institutions that govern them. The Right to Development is “participatory and environmentally sound. It involves [...] enhancement of people’s capabilities and widening of their choices.”⁷¹ This means that market structures — be it the role of corporations or the way in which political decisions are processed on a domestic

level — must be informed by the focus on empowerment and participation that the Right to Development provides. In other words, human rights and market mechanisms both operate within the framework of the Right to Development. Thus, people are free to pursue the fulfillment of their rights, and the market is obligated to assist in this aspect of development.

The 1986 *Declaration on the Right to Development* marked an important turning point in the international community's concern for this crucial right. Since that time, several significant actions have been undertaken to ensure that the Right to Development is implemented. A decision in 1998 by the UN Economic and Social Council established an open-ended Working Group and an Independent Expert on the Right to Development.⁷² The findings of the Working Group and Independent Expert have laid down specific ground rules for the Right to Development, principally through the forum presented at the United Nations Commission on Human Rights. In 2003, at the 59th session of the Commission, the open-ended Working Group upheld its status as the only global forum on the Right to Development.

Just seven years after its adoption, the *Declaration on the Right to Development* had become a customary and principle aspect in the consideration of the international formation and protection of rights. At the 1993 Vienna World Conference on Human Rights, the members of the meeting declared that they “reaffirm the right to development, as established in the *Declaration on the Right to Development*, as a universal and inalienable right and an integral part of fundamental human rights.”⁷³ Such progress plays an essential role in the formation of this right and certainly contributes to the substantive improvement of human well-being.

In summary, there is a human right to water, and this right ranks at the very forefront of rights that must be fulfilled, along with other basic rights. Thus, individuals must not be allowed to go without water. This obligation applies to the government responsible for the well-being of its people and, also, to the agent responsible for water distribution. Because water is often not priced to match the cost of its provision, a price reform might help conserve supplies. At the same time, because water is predominately used by the industrial and agricultural sectors, individuals and households should not be saddled with large price increases. Cost-usage fees can be a practical way of regulating use and encouraging thriftiness, especially among high-volume, and thus high-cost, users like factory owners and farmers. However, a water system that excludes certain groups who cannot afford to pay the user fees is inconsistent with the human right to water. Therefore, “the user fees must be

affordable for the poor, and even waived to a certain limit, to ensure that minimum needs are met.”⁷⁴ Any reform of the water sector that makes it impossible for people to access water is an infringement upon the human right to water. Likewise, price increases for water that divert income away from the subjects of other rights, like standard healthcare or basic education, are contrary to the Right of Development.

If people are unable to access water regardless of whether or not a reform has taken place, it is the government’s responsibility to subsidize them. At all times the government is responsible for ensuring that people can fulfill their right to water. This conclusion comes from framing water in terms of human rights, and it also corresponds to the duty of governments to assist in full human development. Because governments must function within the Right to Development, citizens are entitled to participate in the process of development and to have their basic needs protected by their government. Therefore, they have a right to be consulted about water policies that will affect them and to help shape policies so that they will not infringe on basic rights.

Additionally, corporations are limited in their activities insofar as they are obligated to respect basic rights. Water corporations must meet the subsistence needs of the individuals they serve before pursuing other objectives. Similarly, officials of international lending agencies, such as the IMF and World Bank, are responsible for making certain that their programs respect the right to water. The authors of the 2000 Human Development Report state, “All countries—rich, poor, stagnant, dynamic and in transition—face the challenge of ensuring that the voices of the people are heard above the whirl of spin doctors and the lobbying power of corporations and special interests.”⁷⁵ At the same time, though, corporations and special interest groups must actively seek to protect the human rights of those who are affected by their activities and policies.

In a world in which billions of people remain trapped in poverty and unable to fulfill many of their basic rights, the realization of the right to water serves as a segue into poverty elimination and the fulfillment of other rights. It also serves as an essential reminder that subsistence will not be met until the structures and forces responsible for contributing to scarcity are removed. The way in which we deal with the right to water has the potential to provide incredible benefits to billions of people. How we conceive of and manage water can also serve as a watershed for the promotion of human development.

Notes

- ¹ Rothfeder, 23.
- ² *Ibid.*, 4.
- ³ General Comment No. 15.
- ⁴ *Ibid.*
- ⁵ Peet.
- ⁶ Gleick, 489.
- ⁷ Postel, Last Oasis, 28.
- ⁸ Rothfeder, 4.
- ⁹ *Ibid.*
- ¹⁰ Shiva, 54.
- ¹¹ Postel, Last Oasis, 31.
- ¹² *Ibid.*, 32.
- ¹³ Universal Declaration.
- ¹⁴ United Nations, 16.
- ¹⁵ Gleick, 501.
- ¹⁶ *Ibid.*, 491.
- ¹⁷ Shue, 23.
- ¹⁸ *Ibid.*, 131.
- ¹⁹ Press release.
- ²⁰ General Comment No. 15.
- ²¹ Gleick, 495.
- ²² Estache, 1180.
- ²³ *Ibid.*, 1191.
- ²⁴ *Ibid.*, 1185.
- ²⁵ *Ibid.*
- ²⁶ Barlow, 104.
- ²⁷ Rothfeder, 102.
- ²⁸ Barlow, 104-5.
- ²⁹ *Ibid.*, 90.
- ³⁰ Peet.
- ³¹ Barlow, "The World Bank."
- ³² World Bank, 66.
- ³³ *Ibid.*, 161.
- ³⁴ *Ibid.*, 161-2.
- ³⁵ *Ibid.*, 164.
- ³⁶ Grusky.
- ³⁷ *Ibid.*
- ³⁸ Barlow, 109.
- ³⁹ *Ibid.*, 112.
- ⁴⁰ *Ibid.*, 99.
- ⁴¹ United Nations, 8.
- ⁴² Robinson, 49.
- ⁴³ *Ibid.*, 32-3.
- ⁴⁴ *Ibid.*, 35.
- ⁴⁵ Rothfeder, 87.
- ⁴⁶ Spillet.

- ⁴⁷ Estache, 1181.
⁴⁸ Barlow, 89.
⁴⁹ *Ibid.*, 96.
⁵⁰ *Ibid.*, 143.
⁵¹ Rothfeder, 120.
⁵² Barlow, 135.
⁵³ *Ibid.*
⁵⁴ *Ibid.*
⁵⁵ Rothfeder, 120.
⁵⁶ GATT.
⁵⁷ Barlow, 166.
⁵⁸ NAFTA.
⁵⁹ *Ibid.*
⁶⁰ “There’s Plenty up North.”
⁶¹ Barlow, 167.
⁶² *Ibid.*, 176.
⁶³ Shue, 40, my emphasis.
⁶⁴ Sen, 14.
⁶⁵ United Nations, 17.
⁶⁶ Christiansen, 260.
⁶⁷ *Ibid.*
⁶⁸ *Ibid.*
⁶⁹ Diarmuid, 139.
⁷⁰ Declaration.
⁷¹ Fact sheet.
⁷² *Ibid.*
⁷³ Vienna Declaration.
⁷⁴ “Water, Health and Human Rights.”
⁷⁵ United Nations, 8.

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