

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

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

by

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“Our ignorance about water has been as deep as the ocean.”<sup>1</sup>

## INTRODUCTION

More than one billion people do not have access to an adequate water supply and several billion lack access to basic sanitation, which is the number one cause of diseases linked to water and water contamination.<sup>2</sup> In countries such as Gambia and Haiti, people live on less than 4 liters of water per day.<sup>3</sup> By contrast, most toilets in the Western world use several times that amount of water for a single flush. Cholera and dysentery, two of the more deadly water-related diseases, claim around 10 million victims each year, primarily among young children and the elderly; sadly, these diseases are easily preventable.<sup>4</sup> In light of this information, I have set out to review the crisis of global water scarcity. Certain areas of our world are running out of fresh water at an alarming rate, and the global distribution of water is making it increasingly more difficult for poor people to access it. Movements to commodify water and privatize the industries that provide it are, in many cases, exacerbating this situation of scarcity and trapping poor people in a cycle of water poverty.

While much research has been done on the need to find solutions to the problem of water scarcity, there is currently a void in this undertaking regarding the link between scarcity and water as a human right. The absence of this discussion also manifests itself

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<sup>1</sup> Rothfeder, 23.

<sup>2</sup> General Comment No. 15.

<sup>3</sup> Rothfeder, 4.

<sup>4</sup> General Comment No. 15.

in the literature on human rights. According to Peter Gleick, of the *Pacific Institute for Studies in Development, Environment, and Security*, “Several of the major references and bibliographies related to the issue of human rights have no entries or citations related to water. Even the current index of the website of the UN High Commissioner for Human Rights has no entry for water.”<sup>5</sup> This paper seeks to address the question of whether there exists a human right to water and, if so, what obligations that entails for major market actors, such as: state governments; water corporations; and international lending institutions.

The paper begins with an empirical overview of the situation of water scarcity, illustrating where it exists and demonstrating that it is, indeed, an imminent problem. The section highlights several issues stemming from, and contributing to, water scarcity, including environmental problems caused by building dams and draining aquifers and security issues involving the political motivations of states for controlling water sources. At this stage I also raise the point that water is predominately used for, and often wasted on, industrial and agricultural purposes, as opposed to serving individual needs. This theme is revisited at the end of the paper, in the concluding comments on what types of policies can help deliver water to those who need it.

The following section establishes the existence of water as a human right. The argument begins with a general description of the nature of human rights, as an integral part of humanity. The position is supported by the institutionalization of rights in international law, via references to major human rights instruments. I further the argument by using theories of basic rights to establish their importance and preeminence. An explanation of the correlative duties owed to basic rights serves as a segue into the

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<sup>5</sup> Gleick, 489.

discussion of water as a basic, and therefore fundamentally human, right. I draw the logical conclusion that all people have a right to a subsistence quantity of water and explain what that means, given the available supply of water in the world. This position is again supported by references to international instruments that provide a legal basis for the right to water.

The next section analyzes the implementation of the right to water, using the market as an independent variable to assess the state of scarcity and situation of water as a basic right. I begin with an explanation of the arguments for markets and of the theoretical benefits of privatizing water industries. This explanation is checked, however, by the previous establishment of water as a human right. The writings of John Locke and Thomas Aquinas help describe why there needs to be limits to markets and private property arrangements, by prioritizing the subsistence rights of the poor above traditional profit-oriented market goals. This leads to an overview of the current international water market, where I give some examples that substantiate claims of market proponents and some that do not. I draw an important conclusion from these examples regarding the limits of private property in given countries, based on the structure of their government and the strength of their social and political institutions.

A review of the evolution of the international economy since World War II gives credence to my argument that powerful market actors, such as executives of water corporations, members of political administrations, and officials of international lending institutions, benefit from separating water from the development of human rights. I use an analytical framework that values the fulfillment of human rights more than economic objectives to critique the way these actors have shaped the tenets of neoliberalism,

especially regarding their strong support for free markets and what that support means for private property arrangements in the water sector.

Examples of Structural Adjustment Programs, and their “conditionalities,” demonstrate negative consequences for water privatization in developing countries. This analysis also raises questions about the legitimacy of economic and political decisions, which are made behind closed doors, by a select group of people referred to as the “transnational elite.” I describe how the activities of the transnational elite are, at international forums, codifying water as a *need* and how this is leading people to think of water not as a human right but, rather, as a commodity to be bought and sold. The section ends with an evaluation of the bottled water industry, new technologies for shipping water, and the way in which global trade rules favor the transnational elite and, consequently, jeopardize the human right to water.

In the final section, I widen the focus from the right to water to a more general discussion of human development. I use the framework of human development to link human rights to major structural issues of the market that are driving water scarcity, like the role of corporations and the existence of democratic deficits. By situating human rights *and* these structural issues *within* the development framework, I am able to explain how participation in the process of development necessarily leads to the fulfillment of basic rights, including the right to water. I support my position by referring to the *Declaration on the Right to Development* and use it as a basis for some suggestions regarding solutions to water scarcity that respect the human right to water. I conclude the paper by highlighting a few points that have important consequences for the right to water and for the promotion of human development.

## **WATER – SCARCITY & SUBTLE IRONIES**

The facts and figures surrounding water scarcity seem baffling at first, given the fact that water accounts for about 70% of the Earth's surface. On closer inspection, however, it becomes somewhat easier to see the reasons why there is such a scarcity. More than 97% of Earth's water is seawater, and most of the other 3% is found in glaciers and 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 1% 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.<sup>6</sup> While this cycle demonstrates that water is a renewable resource, it fails to highlight the fact that it is also a finite one. The Earth receives 40,000 cubic kilometers of water each year regardless of how many people are alive. Thus, as the number of people continues to grow, the amount of water remains the same, which means that some people have to sacrifice a certain percentage of their water.

Despite the increasing demand for water, the amount available ought to be more than enough to meet human needs. Indeed, according to water expert Peter Gleick, humans need 50 liters of water per day (for sanitation, cooking, bathing, and drinking) to maintain a sufficient standard of living.<sup>7</sup> The number Gleick cites, while totally realistic given the Earth's current population, implies several things that must be carefully examined. First of all, Gleick's statement draws one to make the incorrect assumption that water predominately serves individual needs. In reality, domestic water consumption

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<sup>6</sup> Postel, Last Oasis, 28.

<sup>7</sup> Rothfeder, 4.

accounts for less than 10% of total usage.<sup>8</sup> 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. Industrial and energy-related uses account for the rest of water distribution.<sup>9</sup> Thus, the majority of water deprivation issues need to be addressed alongside agricultural and industrial water policies, not primarily in conjunction with household usage. By focusing on new technologies and policy prescriptions to help conserve water that is used for agricultural and industrial purposes, there will be much more water available for individual and household usage.

Also, being able to access 50 liters of water each day would present less of a problem than it does if water was 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.<sup>10</sup> The problem of water being in the wrong location has contributed to a startling trend – the growing gap between those who have access to water and those who do not. In 1990, 1.1 billion people did not achieve Gleick’s 50 liter mark; twelve years later, that number had more than doubled.<sup>11</sup> This development, while a tragedy of geography to some extent, is also exacerbated by problems related to the market and the increasing inability of many people to pay for water. The negative aspects of the market’s influence on water will be addressed later in this paper. For now, it is important to note that almost every country in which water scarcity is particularly acute can be classified as developing or least-

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<sup>8</sup> Barlow, 217.

<sup>9</sup> Peet.

<sup>10</sup> *Ibid.*

<sup>11</sup> Rothfeder, 5.



developed. Thus, not only do these countries lack water itself, they also lack the financial means to acquire it. Both of these problems obstruct their economic development, and, thus, many states are systematically trapped in a cycle of water poverty. At the same time, many of these countries are experiencing high population growth rates, which further inhibit their prospects for growth.

The location of water is much more than a geographical dilemma for individuals, families, and communities. Indeed, the politics of thirst have become a serious problem for many state governments. Not surprisingly, several countries that are desperate for water have become increasingly willing to flex their muscles to acquire it. In 1995, then vice president of the World Bank, Ismail Serageldin, made the oft-quoted remark that “if the wars of this century were fought over oil, the wars of the next century will be fought over water.”<sup>12</sup> While a full-scale water war has yet to erupt, tensions have risen to the surface and, in many cases, have boiled over in the form of skirmishes and instances of political leveraging. For example, in 1990, Turkey shut off the flow of the Euphrates River to Syria, in order to convince Syria to withdraw its support for a Kurdish separatist movement in Southeast Turkey. Turkey’s strong-arming worked and was partially responsible for a change in Syria, which quietly began to distance itself from the Kurdish cause.

Other instances, from the conflict between Botswana and Namibia over the Okavango River to Malaysia’s threat to cut off Singapore’s water supply, demonstrate the possible violent future of water resource allocation. The Six Day War of 1967 provides perhaps the best example of water violence. Israeli Prime Minister Ariel Sharon once said, “People generally regard June 5, 1967, as the day the Six Day War began, but in

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<sup>12</sup> Shiva, ix.

reality, it started two and a half years earlier, on the day Israel decided to act against the diversion of the Jordan.”<sup>13</sup> Sharon’s reference is to an Arab League meeting in which Syria, Jordan, and Egypt decided to divert the Jordan River in order to sap Israel of its main water source. Israel destroyed the diversion sites, and the ensuing attacks from its neighbors officially began the war. These occurrences lead to a critical conclusion: if water scarcity has already been at the root of several conflicts, the political/military future of a world with ever-dwindling supplies will be extremely volatile.

Additionally, Gleick’s 50 liter water minimum would be a more easily attainable goal if people and governments had not horribly mismanaged and undervalued water throughout history. For time immemorial people have attempted to master water. The Bible begins with God’s creation of the world, as He gives structure to it by separating the waters of the Heavens from those of the Earth. His desire to subdue the water, while grandiose and symbolical in nature, is deeply rooted in mankind. President Theodore Roosevelt’s chief advisor on water programs was once quoted as saying that controlling water was “the single step remaining to be taken before Man becomes master over Nature.”<sup>14</sup> 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 alone there are more than 22,000 dams, which divert and channel hundreds of rivers.

While harnessing water has its benefits (power, irrigation, flood prevention, etc.), current research points to many downsides caused by damming rivers. First of all, dams cause pollution by blocking drainage systems that carry out man-made sediment. This leads to soil erosion and shorter lifespans for reservoirs that fill up with mud. Dams also

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<sup>13</sup> Rothfeder, 52.

<sup>14</sup> Shiva, 54.

prevent certain fish, such as salmon, from “returning to their spawning-grounds to breed.”<sup>15</sup> Furthermore, in an interesting twist of fate, dams actually create a lot of flooding, as they are prone to rupturing. In fact, it has been reported that as much as two-thirds of the Earth’s available freshwater is lost yearly to floods that dump water into the seas.<sup>16</sup> Dams are certainly not responsible for all of these floods, but they do share some of the blame with natural causes. Accordingly, today virtually no one disagrees that there is an overabundance of dams in countries such as China, the United States, India, and Japan. Even advocates of water diversion projects in general, such as John Peet, business affairs editor of *The Economist*, realize that not enough attention has been paid to the detrimental effects of dams.

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. This water, 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.<sup>17</sup> This problem has been fuelled by the Desert Kingdom’s water-intensive wheat farming, which the government has been pushing for the last twenty years. At its current rate of extraction, Saudi Arabia’s groundwater will be long gone by 2050.<sup>18</sup> Saudi Arabia’s mismanagement of groundwater for agricultural irrigation (they could conserve their water by importing wheat, for example, at one-fourth what it costs them to produce it) is by no means an isolated case. From the United States

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<sup>15</sup> Peet.

<sup>16</sup> Rothfeder, 21.

<sup>17</sup> Postel, *Last Oasis*, 31.

<sup>18</sup> *Ibid.*, 32.

to Libya to China, water-intensive crop irrigation is draining aquifers and laying the foundation for a very unsustainable future.

The consequences of a future without sufficient water for the world's inhabitants should be enough to elicit a global effort to conserve water and allocate it mindfully. After all, as previously mentioned, several billion people suffer from water-related issues; it has been estimated that around 20 thousand people die each day from diseases linked to water contamination.<sup>19</sup> According to Peter Gleick, "At any given moment, approximately one-half of the people in the developing world suffer from disease caused by drinking contaminated water or eating contaminated food."<sup>20</sup> To neglect the duty to immediately address this situation is tantamount to saying that it is acceptable for these thousands of people to die every day and for millions more to suffer from the lack of clean water.

According to this line of reasoning, human beings do not have a right to water and, therefore, refusing to share water resources is justified. Such logic also means that those who are able to acquire water (whether by purchasing it, storing excess amounts of it, securing it through the use of force, etc.) are entitled to it. The truth, however, is that all human beings are entitled to a certain amount of water. The right to water is a human right; it has direct repercussions on the lives of people, and, moreover, it belongs to all people by virtue of their shared humanity. The implications of such a right are numerous in the current climate of water scarcity and are the subject of the next section of this paper.

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<sup>19</sup> Gleick, 488.

<sup>20</sup> *Ibid.*

## WATER AS A HUMAN RIGHT

In order to talk about water as a human right, it is necessary to take a closer look at what, exactly, human rights entail. One way of thinking about human rights is to consider their ethical foundations in major religions. Whether implicitly or explicitly, all religions contain a theory of human rights based upon the dignity of human life. In Christianity, for example, it is easy to grasp the concept of such a theory given that human beings are said to be made in the image and likeness of God; their individual reflection of God is enough to stake a claim to their worthiness to be treated with respect and to be accorded dignity – in the manner in which a true Christian would treat God in a face to face encounter. This type of theological justification and explanation hints at the broader, secular foundation for human rights.

Outside of the religious argument based on God-given rights, it is somewhat more difficult to illustrate the case for the existence of human rights. It is not, however, impossible. Simply put, human rights are those which belong to all people because of their humanity. The authors of the 2000 United Nations Development Program's *Human Development Report* state, "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."<sup>21</sup> In other words, human rights are built into what it means to be a human. Article 1 of the *Universal Declaration of Human Rights* states,

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<sup>21</sup> United Nations, 16.

“All human beings are born free and equal in dignity and rights.”<sup>22</sup> These nameable rights, which belong to all people equally, are an intrinsic part of humanity.

Also, they apply equally to all people, they cannot be taken away or voluntarily given up, and they cannot be divided so that some may be suppressed in order for others to be promoted. This is not to say that human rights are always protected and promoted – obviously that is far from true. Rather, such a declaration signifies that a person who lives a life in the absence of human rights lives a life that is less than fully human.<sup>23</sup> While such a statement may sound unfair, it is nonetheless true, and, in fact, it is the logical conclusion of negating such an integral part of the human person.

One way of understanding human rights is to consider the way in which they are applied theoretically to society at large. While human rights are usually most relevant on a personal level, they are heavily dependent on social conditions that go beyond the ability of any one individual to control.<sup>24</sup> The *Human Development Report* states the point well: “Human rights express the bold idea that all people have claims to social arrangements that protect them from the worst abuses and deprivations—and that secure the freedom for a life of dignity.”<sup>25</sup> Without the recognition of human rights, the world would be much as it once was, savage and brutal for all but the few who, through coercion of one sort or another, managed to dominate their fellow beings. In this way, human rights often serve as a foundation for the rule of law; that is, human rights represent a basic ordering of society.

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<sup>22</sup> Universal Declaration

<sup>23</sup> Vincent, 14.

<sup>24</sup> United Nation, 23.

<sup>25</sup> *Ibid.*, 2.

Certainly laws, and their enforcement, can exist without respecting human rights (as they do in many countries), but the recognition of human rights necessarily paves the way for a structured order of communal living. Such structure is witnessed in the evolution of human rights law, particularly the establishment of the 1948 *Universal Declaration of Human Rights* and the two instruments built from it: the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, both of which were adopted in 1966 and entered into force ten years later, in the spring of 1976. These two covenants are largely responsible for the incorporation, in recent decades, of human rights concerns in state governments and political institutions and for the general momentum built around the promotion of international human rights and the rule of law. The institutionalization of human rights on an international level is illustrated by the rights-based language used in the Constitutions of countries as diverse as Cambodia (1993), Eritrea (1996), and Mexico (amended in 1999).<sup>26</sup>

In a more abstract way, the mechanism responsible for a general ordering of society is the obligation inherent in every human right. To say that someone has a right to something by virtue of her humanity is meaningless unless there exists a reflexive duty which is owed to her. Thus, it has been said that the ascription of a right carries no weight without “the possibility of a correlative duty resting somewhere, such that: ‘Right and duty are different names for the same normative relation, according to the point of view from which it is regarded.’”<sup>27</sup> This means that, quite often, someone other than the

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<sup>26</sup> Main Instruments.

<sup>27</sup> Vincent, 9.

right holder has an *obligation* not to obstruct the attainment of the right and even, in many cases, to actively help fulfill it.

For example, as an American citizen I am well aware of my human rights to “Life, Liberty, and the pursuit of Happiness.”<sup>28</sup> While many aspects of these rights are personal and demand individual accountability, other aspects clearly entail duties of other parties. My right to liberty is certainly violated if it is obstructed by my neighbor who consistently tries to kidnap and enslave me. It is also violated, however, if those responsible for my care and protection are negligent in their duties. In this example, my mother and father are obligated to actively help fulfill my right to liberty by not letting the kidnapper into our house.

According to the United Nations Development Program, human rights entitle people to make “moral claims on the behaviour of individuals and on the design of social arrangements.”<sup>29</sup> This statement means that, in the above example, I could hold my parents and the government (at some level) responsible if my neighbor were to kidnap and enslave me. In general, human rights insure that the actual enjoyment of a justified demand is guaranteed by society against typical threats.<sup>30</sup> This is especially relevant to situations when one has no control over the environment and, thus, cannot fully enjoy the substance of his own right. In the above example, a situation of this sort would occur if I were a child of, say, only five years. Because a five-year-old is utterly unable to defend himself, the need for external protection is greatly heightened. I will return shortly to the argument regarding negative and positive obligations; for the present time, though, it is

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<sup>28</sup> Declaration of Independence.

<sup>29</sup> United Nations, 16.

<sup>30</sup> Shue, 13.



sufficient to simply note the characteristic that human rights are entitlements to something, and that this often necessitates a certain action by one or more other parties.

While it is well and good to say that people are entitled to certain things by virtue of their humanity, it is important to keep in mind the fact that a theory of 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? These are difficult questions, and they are cause for much concern given the great power inequalities in the world. In Human Rights and International Relations, R.J. Vincent makes an argument for several human rights, including those to property and food. He states, however, that “we may doubt whether the obligation to compensate a millionaire citizen for the appropriation of an acre of his or her property for the construction of a section of motorway is as morally pressing as the obligation to feed the starving in Ethiopia.”<sup>31</sup>

Vincent’s argument connects with the reader on an emotional level, but is that because it is fundamentally correct, or because it plays on common stereotypes and prejudices (such as that rich people are spoiled and do not fully deserve what they have or that African states are totally incapable of reaching a comfortable standard of living)? If it is correct, and a starving person’s right to food is more important than the protection of a rich person’s piece of property, then one could say that we live in a very unequal world. Indeed, more than twenty thousand people die every day from hunger and, daily, several millions more throw away countless tons of uneaten food (not to mention live in big houses, drive nice cars, go on expensive vacations, etc.). But how do we calculate which

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<sup>31</sup> Vincent, 141.

rights (like the right to food in the above example) are more important than other rights (like that to the private ownership of land)?

Because of the way in which rights are spoken about at the United Nations and within state governments, there is reason to distinguish between civil and political rights, on one hand, and economic, social, and cultural rights, on the other. Civil and political rights include such rights as those to life, liberty, and security of the person. Economic, social, and cultural rights are comprised of rights like those to payment for performed work, a subsistence level of nutrition, and a certain amount of education. During the 1950s and '60s, the United States and USSR disagreed about how to value these rights. The United States government was wary of economic, social, and cultural rights, claiming socialist undertones, and the democratic nature of civil and political rights disagreed with the ideology of the USSR. Even though these two sets of rights represent entitlements to seemingly dissimilar things, and even though they have been treated differently during the course of history, they are of equal worth. By viewing human rights through a framework of *basic rights*, these two sets of entitlements can be reconciled.

Basic rights are those rights without which other rights cannot be enjoyed; they are the building blocks of all other rights.<sup>32</sup> For example, the right to physical security is a basic right in that it is virtually impossible for someone to fully enjoy any right if another person can legitimately threaten him with rape, torture, murder, etc., when he attempts to enjoy the initial right.<sup>33</sup> Without a right to physical security, people would be placing themselves in great danger every time they wished to exercise another right.

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<sup>32</sup> Shue, 20.

<sup>33</sup> Vincent, 21.

Thus, physical security is an end unto itself and, also, it makes safe the way toward the fulfillment of other rights. People are entitled to the enjoyment of human rights but, first, everyone is entitled to the elimination or prevention of the most serious obstacles that would prevent them from enjoying their rights.<sup>34</sup>

The argument demonstrating that security is a basic right and, thus, must be one of the first rights to be upheld, is fairly evident to the senses. Instinctually, everyone knows how it feels to flinch when imminently faced with the use of force, not to mention how it feels to actually experience physical pain, and would, therefore, certainly not want to lead a fear-filled life. The desire for physical security, however, is not sufficient to ensure that other rights can be enjoyed as well. After all, how many rights can someone enjoy who, though not physically threatened by another, is too sick or emaciated to walk or even stand? As this example demonstrates, there are other types of security than just that of the physical person, such as security of health for the sick person and economic security for the one who is emaciated. Rights to these types of security are not at first as easy to comprehend as the right to physical security because, for instance, not everyone has experienced true hunger and can adequately say what that feels like and what its effects are. However, careful thought can make clear the reason why certain aspects of economic security can and should be analyzed within the rubric of basic rights.

Quite simply, as stated in the above example, there are some specific things of an economic nature which are absolutely essential to the fulfillment of other rights, such as “unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care.”<sup>35</sup> These basic human needs, to which all people

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<sup>34</sup> *Ibid.*, 22.

<sup>35</sup> Shue, 23.

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 is similar to a right to physical security in that it necessarily must precede the attainment of other rights. Vincent states the point effectively: “The right to subsistence (an economic and social right) [...] is quite as important as the right to security (a civil and political right); starvation is quite as much a threat as violence.”<sup>36</sup> Both of these rights must be established firmly before other rights can be enjoyed. In other words, a person must be actually enjoying (or, I should say, actively engaged in) a subsistence level of existence before “having” other rights in the theoretical sense can really take on any practical meaning or be actively pursued.

In order to better understand the implications of basic rights, it is helpful to consider three corresponding duties inherent in all basic rights: to refrain from depriving; to protect someone who could be deprived by another; and to aid one who is already deprived.<sup>37</sup> The first duty is certainly the strongest and most readily apparent. For example, regarding the right to physical security, I am obligated not to attack another person and, relating to subsistence rights, I have the duty not to take resources from another person or block her from accessing resources necessary for her survival. The second duty fits the previous example of the neighbor who tries to kidnap and enslave me; if I am only five years old, my parents clearly have an obligation to protect me and keep me out of my neighbor’s grasp. These first two duties are what most laws set out to establish. They call for people to abstain from directly harming others, and they delegate certain responsibilities to protect those who might otherwise be harmed.

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<sup>36</sup> Vincent, 12.

<sup>37</sup> Shue, 52.

The third duty, to aid one who is already deprived, is the least familiar and, thus, quite arguably the most important. Regarding the right to subsistence, this principle means that one cannot withhold from another person resources which would be sufficient for her to meet a basic level of survival (assuming the first person has already fulfilled his right to subsistence). To withhold these resources would be a flagrant violation of the right to subsistence. On this point, Henry Shue states,

To deny a helpless person material resources that would save the person's life or vitality in order to protect material resources controlled but not needed so desperately by one or more other persons is to inflict a profound indignity—not to mention probably death—upon the person whose urgent needs are denied. For it is not merely that the person's own preferences are to be subordinated to someone else's preferences, nor merely that the person's own needs are to be subordinated to someone else's needs, but that the person's most vital needs are to be subordinated to someone else's preferences—by accepted social practices and institutions.<sup>38</sup>

This statement illustrates the seriousness of basic rights, such as that to subsistence; if someone has achieved a subsistence level of existence, he cannot refrain from aiding others if they have not reached a similar level. This does not mean that one cannot acquire more goods and use more resources than other people, just that all people must be at a subsistence level before this can occur. Put more clearly, the fulfillment of a basic right (such as that to subsistence) is more important than any other activity, including satisfying one's own preferences and fulfilling one's own other non-basic rights and, thus, one must necessarily sacrifice anything apart from one's basic rights so that those of other people can be met.<sup>39</sup>

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<sup>38</sup> *Ibid.*, 122.

<sup>39</sup> *Ibid.*, 114.

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.”<sup>40</sup> The action of aiding a helpless person is not philanthropy or charity. Rather, it is a necessary condition for living a life according to the principles of human rights and the dignity they guarantee for all people. It is, thus, a mandatory action and is truly an expression of justice. In *Property, Justice, and the Common Good*, theologian B. Andrew Lustig states the point succinctly: “It is not ‘charity,’ in some merely discretionary sense, that requires us to respond to others as *we* see fit; rather, it is justice which requires that we respond to neighbors according to *their* basic needs.”<sup>41</sup>

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. In a statement to Brazil’s bishops regarding the 2004 Fraternity Campaign, Pope John Paul II said, “Water is a vital instrument, indispensable for survival and, moreover, a right of all.”<sup>42</sup> While linking the right to water to the need to survive, the Pontiff also notes the fact that water is a priceless tool for human betterment. Like the subjects of other subsistence rights, water is necessary to human beings in and of itself, and, also, as a medium through which other rights can be enjoyed.

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<sup>40</sup> *Ibid.*, 131.

<sup>41</sup> Lustig, “Property,” 187.

<sup>42</sup> Pope.

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.<sup>43</sup> Dr. Ziegler’s statement creates a crucial link between water and food and alludes to the interrelated nature of basic rights. Indeed, without water, human beings would die of thirst, but they would also suffer from hunger by not being able to cook. Without food, the water people have would not be able to sustain them. 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.”<sup>44</sup> It is, in this sense, clearly a basic right and, thus, must be secured with other basic rights before more general, non-basic rights can be pursued.

What then, exactly, does it mean for there to be a basic right to water? Drawing from the previous explanation of subsistence rights, 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.”<sup>45</sup> According to Peter Gleick, in *The Human Right to Water*, 5 liters of water per day is enough for people to just barely survive. He is quick to point out, however, that studies demonstrate a substantial improvement in human health when people have an additional 20 liters of

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<sup>43</sup> Press release.

<sup>44</sup> General Comment No. 15.

<sup>45</sup> Gleick, 495.

water per day.<sup>46</sup> Gleick’s figure of 25 liters per person, per day, barely falls in the range of the 20 to 40 liter recommendation made by the United States Agency for International Development (USAID), World Bank, and the World Health Organization (WHO), and, moreover, it is only half of the 50 liters Gleick personally recommends for living a sufficient life. The exact amount is, at this point, a secondary issue to the fact that people have a right to enough water that will allow them to survive.

The right to a subsistence amount of water has a solid legal foundation in international treaties and covenants. The *International Covenant on Economic, Social and Cultural Rights* (ESCR) states, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>47</sup> While the Covenant does not mention water *per se*, the list of specified rights is clearly not exhaustive and, as previously argued, it is impossible to enjoy an “adequate standard of living” without water. It goes on, in the following article, to recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>48</sup> Again, the concept of high physical and mental health is meaningless without access to water, as life cannot proceed without it. Similarly, the *Universal Declaration of Human Rights* (UDHR) states, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.”<sup>49</sup> Clearly, this entails a subsistence quantity of water, even though water is not directly addressed.

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<sup>46</sup> *Ibid.*, 496.

<sup>47</sup> International Covenant, article 11, paragraph 1.

<sup>48</sup> *Ibid.*, article 12, paragraph 1.

<sup>49</sup> Universal Declaration, Art. 25, 1.



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.”<sup>50</sup> Certainly the drafters could not have foreseen the profligate misuse and misappropriation of water which has taken place in the last fifty years and which has contributed greatly to diminishing supplies. Moreover, as Gleick maintains, logic seems to suggest that those who drafted the ESCR and UDHR “considered water to be implicitly included as one of the ‘component elements’ – as fundamental as air.”<sup>51</sup> This would explain why there is no mention of a human right to air. The air quality and water scarcity issues that exist today were simply not as problematic at the time when these documents were framed. Thus, there was no reason to explicitly mention either of them. Yet, rights to both of these resources can be inferred from the language and context of the articles on basic rights.

More specifically, however, the right to water is recognized, by name, in several other 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.

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<sup>50</sup> Gleick, 501.

<sup>51</sup> *Ibid.*, 491.

## **IMPLEMENTATION OF THE RIGHT TO WATER**

Moving beyond the illustration of the right to water, it is important to analyze the reasons why so many people are not enjoying 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. As previously stated, human rights, though universal, inalienable, and indivisible, are nonetheless violated every day. In the case of water, this could simply be a geographic coincidence. Sparsely-populated Canada has more water than it needs, and more densely populated areas like the Indian Subcontinent or the Middle East are water-restricted. Certainly nature plays a role in water allocation, but to rely on that explanation alone is to take away from the intelligence and sophistication of human beings. Other situations of nature, such as endowments of oil, steel, or coal, do not preclude countries without those resources from acquiring them. Mankind, through trade, is able to relocate resources around the world all the time. Net importers of these commodities, like the United States or Singapore, are able to acquire them with relative ease. Why then, should water be any different?

In fact, in many ways, global water scarcity is not that dissimilar from other situations of scarcity. Many of the areas of the world where people chronically lack water, like sub-Saharan Africa and rural areas of developing and least-developed countries, are also areas where people do not have enough of several other resources. Yet, no one notices that, for instance, Kenya is not a high consumer of gasoline. Indeed, why would the focus be on that when many people in Kenya have a difficult time finding enough water to drink? The point is that consumption of water and other resources and

goods, though linked to environmental circumstances, goes beyond natural endowments. Ethiopia, for example, is actually a relatively fertile place, where the wide-scale production of food is entirely possible. Yet, Ethiopia stands again on the threshold of famine. Even if Ethiopia were not able to be self-sufficient in food production, there is more than enough excess food in the world to feed all of Ethiopia several times over.

Therefore, it is fairly obvious that scarcity goes beyond the ability of people to make use of their land and resources. In fact, it is a combination of many things, which preclude people from obtaining the goods and resources they need. These include the political situation, the degree of peace and stability in the country, the health of the population, the strength of institutions, access to technology, policies regarding foreign investment, etc. To list all the variables influencing the standard of living for people in a given country would be exhaustive, and it goes beyond the scope of this paper. Here, one factor, the market, is used as an independent variable to assess the state of water scarcity and water rights. Because the concept of “the market” is so broad, I chose to focus on the incentives and actions of those institutions which, in an international context, are in powerful market positions, including: national governments of rich countries; global water corporations; and international lending institutions.

These actors have a disproportionately large influence over the way markets function, especially when their interests coincide, as I believe they do regarding water. My argument is that it behooves them to push for the privatization of water markets and that, consequentially, they are apt to refrain from framing water in the language of human rights. Built into my position is an analysis of private property arrangements that values the protection of human rights more than economic objectives like profit making and

expanding market share. It is an analysis that supports the argument that a select group of powerful market actors are undermining democratic progress and limiting the prospects for the evolution of human development. In order to complete this analysis, it is necessary to review the evolution of the international economy, focusing on the tenets of neoliberalism, its support for free markets, and what that support means for private property arrangements in the water sector and for the way in which water is valued in general. First, however, it will be helpful to understand the arguments for the privatization of water markets and to assess the degree to which private water markets already exist in the world today.

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. This point of view, based on economic theory, suggests that higher prices for water will lead to better planning and the best possible appropriation of this resource. If people are forced to place a greater value on water because of a price increase, say proponents of this line of reasoning, they will be less likely to waste it. Currently, around the world, water is free or priced very low for most people. Overwhelmingly, federal, state, or local governments subsidize domestic water purchases 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 want higher prices correctly state that a low price ignores the expensive tasks of collecting, purifying, storing, and delivering water. They make the point, in other words, 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 things like thirsty crops. 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. After all, while governments do partake in some market-based activities, the majority of their services are paid for in advance by tax revenue. Overwhelmingly, the market is shaped and propelled by the operations 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 anything efficiently or with high quality. Furthermore, the social loss attributable to an inefficient operation is not concentrated enough for anyone to take issue with it. Government services are spread out over the entire population, and, thus, 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, thus, they are much more likely to respond to their needs and preferences. This is why free market advocates generally favor the existence of private enterprises. As far as the water industry goes, supporters of privatization see no reason why this sector of the market should be treated differently than any other. Given the

establishment of water as a human right in this paper, however, it is important to analyze whether or not this logic makes sense. Should basic necessities be left to the “free-hand” of the market? Two issues need to be looked at before arriving at a conclusion regarding this question. The first has to do with the theoretical issue of what it means to subject human rights to the market and its laws of supply and demand. The second, and in many ways more practical, question is: how is the market currently dealing with subjects of human rights, such as water?

At issue in the first question are the nature and limits of ownership inherent in private property, especially regarding ownership of something such as water, to which people have a subsistence right. In “Of Property,” his fifth chapter in the *Second Treatise on Civil Government*, John Locke builds a case for private property, basing his premise on a theological frame of reference. Because he begins with Scripture, Locke is quick to create a two-tiered structure of ownership, with absolute ownership belonging solely to God.<sup>52</sup> Humans, however, are heirs of the earth; to them God has entrusted all His creation, and He has given it to mankind in common. Locke states, “Whether we consider natural *reason*, which tells us, that men [...] have a right to meat and drink, and such other things as nature affords for their subsistence: or *revelation*, which gives us an account of those grants God made of the world to Adam,” it is clear that God has given these things “to mankind in common.”<sup>53</sup>

At the same time, however, while God has given all to mankind in common, He has also given people the ability to reason, so that they can make the best use of what they have. Locke argues that there needs to be a way by which the goods of the earth can

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<sup>52</sup> Lustig, “Natural Law,” 138.

<sup>53</sup> Locke, GVT Bk. 2 Ch. 5 Sec. 25.

be partitioned among its inhabitants, for to say people have an equal share in the resources of the land carries no weight if people do not actually get to enjoy those resources. Thus, Locke writes, “Property, in its most general sense as appropriation, whether private or communal, is available to man because he possesses right reason.”<sup>54</sup> The act of dividing up what God has given is, therefore, both the appropriate expression of reason and, also, a personal claim on what was previously communal property. Because people “own” their labor, the physical act of securing a resource for nourishment confers the essence of private property upon that resource; they now own it. Locke states, “Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.”<sup>55</sup>

If that into which a person invests her labor becomes her private right, it seems to follow that she could claim a right to a boundless number of things – is this so? According to Locke, this conclusion does not hold. His argument is based on the premise that whatever one cannot use returns to its communal state. If a man kills a deer but only uses half of it to feed himself and his family, the other half no longer belongs to him. “People,” Locke states, can only have “as much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than his share, and belongs to others.”<sup>56</sup>

Andrew Lustig, in “Natural Law, Property, and Justice: The General Justification of Property in John Locke,” highlights two criteria for property claims in Locke’s argument: the “sufficiency requirement,” and the “no wastage requirement.” He states,

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<sup>54</sup> Lustig, “Natural Law,” 122.

<sup>55</sup> Locke, GVT Bk. 2 Ch. 5 Sec. 27.

<sup>56</sup> *Ibid.*, Sec. 31.

“In claiming private property, one must leave, as Lock says, ‘enough [the sufficiency requirement], and as good [the no wastage requirement] left in common for others.’”<sup>57</sup>

This means that Locke’s thesis cannot be used to support or promote unbridled acquisition, but, rather, that private property serves a very important purpose only up until a certain point. If, however, private property claims deprive other people of the means of their subsistence (through quantitative or qualitative measures, or both), then they have exceeded their purpose and are no longer valid claims.

Thomas Aquinas, in the *Summa Theologica*, also reaches this conclusion about the limits of private property, but he presses the issue further than Locke. Aquinas touches on difficulties with appropriation, stating that people are more careful when providing those things that are for personal, as opposed to group, consumption.<sup>58</sup> He also states, “It is to be observed that quarrels arise more frequently where there is no division of the things possessed.”<sup>59</sup> The ease inherent in the division of labor aside, Aquinas bases his argument for private property on a concept of community similar to that in Locke’s *Second Treatise*. The crux of Aquinas’ justification for private ownership is not one’s ability to use efficiency as a means to personal savings and hoarding but, rather, to use the efficiency of private property arrangements as a social bulwark against deprivations of need in the population at large. He posits, “In this respect man ought to possess external things, not as his own, but as common, so that, to wit, he is ready to communicate them to others in need.”<sup>60</sup>

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<sup>57</sup> Lustig, “Natural Law,” 120.

<sup>58</sup> Aquinas, SS Q 66 A 2 Body Para 1/2.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*, Para 2/2.



This requirement of ownership ties into Locke's argument for limiting claims to private property, but it adds a positive dimension absent in Locke. Whereas Locke states that people must simply leave enough for others to get by on, Aquinas argues that in situations of scarcity, private property reverts to its former communal nature. Aquinas writes, "In cases of need all things are common property, so that there would seem to be no sin in taking another's property, for need has made it common."<sup>61</sup> If a person is in imminent danger and cannot find any other alternative, he can take whatever it is he needs to ensure his survival, according to Aquinas. "It is not theft, properly speaking," he claims, "to take secretly and use another's property in a case of extreme need: because that which he takes for the support of his life becomes his own property by reason of that need."<sup>62</sup>

Implicit in this line of reasoning is the immediate rectification of the antithesis of scarcity: that is, the removal of excess from those who have an abundance. According to Aquinas' logic, even though all property becomes communal in situations of need, the property best suited to fill the need is that which the taking of will not perpetuate scarcity: or, in other words, the excess of the rich. Therefore, when someone is in need, he should take from the excess of the rich man before taking from others who will then be in need themselves. In this scenario, the abundance of the wealthy man does not belong to him; on the contrary, it is *owed* to the person going without, and the wealthy person is *obligated* to give of his bounty, or it can justly be taken from him. As Aquinas states:

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<sup>61</sup> *Ibid.*, A 7 OTC.

<sup>62</sup> *Ibid.*, Rp 2.

“Whatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor.”<sup>63</sup>

Despite the appearance of his argument, Aquinas is certainly not advocating the continual taking of goods by people who do not have enough. He realizes that such a situation would only perpetuate scarcity, as the goods of one person cannot satisfy all who are in need. Also, he is aware of the need to find structural answers to poverty that go beyond the immediate solution of taking from those with an abundance. Therefore, he places a great deal of emphasis on the importance of individuals being responsible with what they have. He states, “Since, however, there are many who are in need, while it is impossible for all to be succored by means of the same thing, each one is entrusted with the stewardship of his own things.”<sup>64</sup> By taking care of one’s own possessions, people are able to come to the aid of those in need. This act of charity is possible because of the responsible management of property, and it is the just way to act toward the poor.

This conceptualization of private ownership has interesting implications for property arrangements today. Clearly, Aquinas would be shocked at the degree of inequality that exists between rich and poor and would, undoubtedly, at least reiterate the importance of responsible stewardship, if not recommend a higher degree of charity amongst those with a “superabundance.” But, unlike in Aquinas’ time, today there are institutions designed to serve as safety nets for those in need. The concept of the social welfare state is built upon the integration of institutions designed to protect people in situations of poverty. Insurance programs, Social Security (and similar programs in other countries), homeless shelters, soup kitchens, retirement benefits, etc., all contribute to a

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<sup>63</sup> *Ibid.*, Body Para 1/2.

<sup>64</sup> *Ibid.*, Para 2/2.

greater sense of security for people that, if ever faced with scarcity in their lives, would at least mean that they do not have to take what they need from other people.

Even though the role of institutions and their contribution to poverty reduction were non-existent when Aquinas lived, his analysis on the limits of ownership is still applicable today. His argument rests on responsible management of one's own property and the required charitable giving to those in need. Although institutions are not individual people themselves, they are made up of, and run by, people and are, thus, subject to the same parameters of personal ownership. That is, institutions must manage their resources responsibly and give of their excess to those in need. If they fail to do so, and people are unable to survive on their own, then the institutions no longer have a right to their resources, which revert to common ownership, as did all property in situations of extreme scarcity in Aquinas' argument.

Aquinas would, according to his own logic, have to take a similar position regarding private enterprises and their obligation to make sure the basic needs of individuals are met. A private water company, for instance, can easily create a situation of scarcity by pricing water out of its customers' budgets. Because people desperately need water, the company would no longer own the water or the right to its provision if it were to withhold it. The company, just like a regular person, is responsible for giving of its excess, which it would undoubtedly create through a price increase, to the poor. The private company must function within the same rules as an individual person and, therefore, must necessarily give of its excess to the poor before it can use that excess for other ends, such as making a profit. This way of conceptualizing corporate responsibility means that private enterprises are limited in what they can do with resources they own.

They must help fulfill the basic rights of their consumers before attempting to maximize other aspects of their business agenda.

This conclusion begs the question: what is occurring in the world today? Are markets exacerbating poverty and contributing to situations of water scarcity? Are private enterprises helping the poor access the water they need to survive, or are they actually damaging the lives of poor people by putting profit concerns before the rights of their consumers? In “Utilities Privatization and the Poor: Lessons and Evidence from Latin America,” Antonio Estache, Andres Gomez-Lobo, and Danny Leipziger correctly note that there is a general stigma regarding the effects of privatization on the poor. “The perception that privatization policies hurt the poor,” they state, “is widespread in the popular press and is an important factor determining the political sensitivity of the reform agenda.”<sup>65</sup> There seems to be two related reasons for the bad press on privatization.

The first is that privatization and economic growth are closely linked, though this is often more so in rhetoric and in people’s minds than in reality. In the past fifty years, since privatization became an international development mantra, several developing countries, most notably the four Asian Tigers (Taiwan, Hong Kong, Singapore, and South Korea), have adopted privatization strategies and have sustained positive growth. Other countries, however, from Kyrgyzstan to Kenya to El Salvador, have not achieved the same sought-after results following privatization strategies. Consequently, because the reasons for growth (or lack thereof) are complex and often only apparent in time and, due to the controversial nature of privatization, many people blame privatization, even though other policies often play a much larger role in the lack of growth.

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<sup>65</sup> Estache, 1180.

The second reason is a result of market failures and poorly functioning private enterprises. In many developing countries, imperfect markets and asymmetrical information create a situation whereby private enterprises are not faced with competition and, thus, provide a service below what it otherwise would be given competition. Black markets are a prime example of this situation. In the former Soviet Union, for instance, several private enterprises existed on the black market, and, often, were able to make a lot of money without having to compete with other businesses. The mafia existed throughout the former Soviet Union, protecting monopolized industries of black market goods and perpetuating their power at the same time. By doing so, they gave a bad name to industries not run by the state and contributed to the stigma surrounding privatization. This has been evidenced by the many difficulties privatization has met in several post-Communist countries, as well as in other countries trying to adopt privatization strategies.

In utility industries in Latin America, for example, which were all state-run until fairly recently, private enterprises have been illegally operating for decades. Again, though, their services have not taken place in a market characterized by perfect competition. Their illegal and informal connections are usually of very poor quality. Estache, Gomez-Lobo, and Leipziger state, “In the water sector it may also be the case when, due to an illegal connection, there is a serious reduction in the quality of the water that reaches the household.”<sup>66</sup> Even though this water is low quality, it must be of better quality or cheaper than the alternative provided by the state, otherwise it would not be chosen. Nevertheless, because the informal provider is not regulated or competed against, the quality of the service will almost assuredly be needlessly low.

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<sup>66</sup> *Ibid.*, 1181.

In some instances, however, the state service does not reach all consumers. In situation like this, Estache, Gomez-Lobo, and Leipziger found that these households often times pay an illegal/informal provider up to twenty times the price charged by the state. In these circumstances it is obvious that, because the government cannot provide regular service to all people, expanded services via privatization would be very beneficial.<sup>67</sup> Nonetheless, even though privatization would help solve the problem, it is a mistake to relate private enterprises in informal markets to those found in situations of true competition: doing so usually portrays privatization in an unnecessarily negative light.

Indeed, Estache, Gomez-Lobo, and Leipziger found in their study that the involvement of the private sector can substantially lower the price of utilities or increase their quality (or both), “to the extent that privatization introduces competition.”<sup>68</sup> Because competition provides incentives for producers to work harder and allows consumers to exercise their preferences, it generally lowers prices and/or increases quality. While privatization is usually a pre-condition for competition, it is not the prime factor for lowering costs – competition, on the other hand, is.<sup>69</sup> “Evidence shows that, in general, competition is good for all consumers, including the poor,” Estache, Gomez-Lobo, and Leipziger state, and, in this sense, competition represents a case where “efficiency considerations and welfare considerations coincide.”<sup>70</sup> 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

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<sup>67</sup> *Ibid.*, 1185.

<sup>68</sup> *Ibid.*, 1183.

<sup>69</sup> *Ibid.*, 1183.

<sup>70</sup> *Ibid.*, 1191.

substantially more for a reliable service.”<sup>71</sup> Thus, even if poor people do end up paying more for something 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.<sup>72</sup>

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.<sup>73</sup> In the United States, for example, where privatization is just in its infancy, the private water sector creates more than \$80 billion each year in revenue, which is more than four times the annual sales of Microsoft.<sup>74</sup> Annual global water revenues amount to approximately 40% of the oil industry.<sup>75</sup> A few examples, from the United Kingdom to Bolivia, demonstrate the effects of privatization of utilities, in general, and of water markets, in specific.

In the U.K. water was a public service until 1989, when then Prime Minister Margaret Thatcher initiated a privatization program, floating all the English utilities on the stock market and privatizing their assets. Initially, the outcomes 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 Brits whose water was disconnected increased by 50%.<sup>76</sup> 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

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<sup>71</sup> *Ibid.*, 1185.

<sup>72</sup> *Ibid.*

<sup>73</sup> Barlow, 104.

<sup>74</sup> Rothfeder, 102.

<sup>75</sup> Barlow, 104-5.

<sup>76</sup> *Ibid.*, 90.

English water, except that it remained in public hands when 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."<sup>77</sup> In this case, therefore, privatization appears to have been the correct solution.

Chile experienced a similar positive outcome when it privatized its electricity and telephone industries in the late 1980s. In 1988, only about 2% of the poorest people in Chile (taken from the bottom two income deciles) had electrical access, and just over 3% of poor people owned telephones. According to Estache, Gomez-Lobo, and Leipziger, in their study on Latin American utilities, ten years later, after fully privatizing these industries, only 5.5% of poor households still did not have access to electricity and around 60% did not have telephones.<sup>78</sup> These numbers clearly show that privatization was beneficial for the Chilean people.

In Cochabamba, Bolivia, however, a similar 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 lead by the American construction firm Bechtel. Privatization began in October, when the Bolivian government turned the water sector over to a subsidiary of Bechtel. Within a few months, water rates rose exponentially, requiring some people to

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<sup>77</sup> Peet.

<sup>78</sup> Estache, 1181.



spend close to half their monthly budgets on water.<sup>79</sup> In January, 2000, strikes and protests began to break out in the city. The government called in military troops, enacted curfews, and imposed martial law. Several protests turned violent and a seventeen year-old boy was killed by a soldier. By April, under immense pressure from the Bolivian people, the government tore up its 40 year contract with the consortium and gave control back to SEMAPA. Even though the people of Cochabamba are yet to find a solution to the many water problems they face, which led them to privatize in the first place, their experience shows that privatization can be extremely dangerous and even life-threatening.

The preceding examples suggest some important points about when, where, and in what context privatization reforms take place. 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 experienced difficulties paying for water. Over time, as the example illustrated, privatization made the water sector more efficient and lowered prices below pre-privatization levels. In this case, even though poor people were hurt in the short run, they still had enough income to be able to access water, and, over time, they benefited from lower prices. In Bolivia, however, privatization proceeded too quickly, and the transition period produced unbearable results on people with low incomes. Many people were simply unable to pay for water and found no choice but to take to the streets to protest the price increase.

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<sup>79</sup> Barlow, "The World Bank."

In *Attacking Poverty*, the 2000/2001 World Bank “World Development Report,” the authors state that those who lose out from 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.”<sup>80</sup> In the United Kingdom, everyone was included in the market for water, as evidenced by people’s ability to pay for it without sacrificing other necessities. Many Bolivians, by contrast, were not included in the market and, thus, the decision to reform the market was inherently flawed. Moreover, because water is such a vital resource, any period of time during which people are unable to access it is unacceptable. This conclusion can also be inferred from the Chilean example. While the telecommunications and electricity industries are important, they are not basic necessities and can, thus, be sacrificed while adjustments take place.

Furthermore, when a vital industry like water services is privatized, the people undergoing the painful adjustment have to believe that their government will protect them if the negative effects cannot be borne on the individual or household level. One reason why water privatization worked in the U.K. was because even though the price of water increased, people, especially those who were economically disadvantaged, trusted that the Thatcher administration would help them weather the immediate negative effects of privatization; and they believed so with good reason. Indeed, no democratic government would survive a future election if its people experienced prolonged water scarcity or extreme financial strain.

In Bolivia, on the other hand, the lack of supporting safety-nets and social provisions meant that the Bolivian people had no assistance in shouldering their new

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<sup>80</sup> World Bank, 66.

economic burden. Even though the President at the time, Hugo Banzer, was democratically elected, the political climate was not conducive to the type of economic adjustments necessary for water privatization. For one thing, the close relationship between the Banzer administration and the U.S. government suggests that the decision to privatize the water sector and to award the contract to an American firm was, at least in part, motivated by a desire to curry favor with the United States. The “World Development Report” notes that “the capture of the reform process by powerful individuals or groups lies at the bottom of most failed reforms.”<sup>81</sup> Whether or not rent-seeking can be blamed for the failed privatization strategy in Bolivia, there was, as previously mentioned, a lack of institutional support and social provisions at the micro level, which guaranteed the failure of the reform.

Thus, both the sector in question and, also, the nature of the political regime in power have important implications regarding the decision to privatize an industry like water, which is integrally linked to basic rights. The evidence is mixed. If everyone is included in the market, and the political regime is responsive to its citizens, privatizing the water sector can bring real benefits to people, especially poor people who experience lower prices and better service. If, however, people are left out of the market and/or the administration is more concerned with maintaining power than bettering the lives of its people, the decision to privatize water industries will be extremely detrimental, particularly with regard to the poorest members of society.

If the decision to privatize the water sector is potentially explosive, why would governments run the risk of doing so? One immediate answer that floats to the surface is that governments are increasingly turning to the private sector in order to fix their own

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<sup>81</sup> *Ibid.*, 64.

fiscal problems. Not only does privatization mean that they no longer have to sink money into a dilapidated water infrastructure, they also make a profit at the point of sale. Ironically, though, governments often end up paying for a good portion of the privatization through favorable tax schemes and grants and subsidies, which are taken out of tax revenue. Another explanation is that it is in the interests of many powerful people and institutions to push for the privatization of water services and delivery, as it was for President Banzer, World Bank officials, and Bechtel executives in the Bolivian example. In order to understand the power structure that allows privatization to benefit a concentrated group of individuals or institutions, it is necessary to briefly review the evolution of the international economy during the past half-century and the neoliberal model from which privatization flows.

Following World War II, the victors, led by the United States, began to reorder global economic affairs. Because they viewed the tragedy of WWII as a partial consequence of the isolationism of the 1920s and '30s, they wanted to ensure that governments around the world would liberalize their economies and, thus, develop a web of interconnectedness between countries that would be very difficult to tear apart. Accordingly, at the end of WWII they created the Bretton Woods Institutions to help promote and control the new international economic order. These institutions – the International Bank for Reconstruction and Development (or World Bank), the International Monetary Fund (IMF), and the General Agreement on Tariffs and Trade (GATT) – while charged with different tasks, became the symbolic (and often actual) force behind open markets. The World Bank's initial purpose was to help finance Europe's reconstruction following the war. The IMF was created to help maintain

exchange rate stability by making short-term loans to countries with balance-of-payments problems, and the GATT was fashioned as a forum for countries to negotiate and reduce their tariff levels.

Over time, however, the roles of these institutions changed, as did the world in which they were created. Europe rebuilt itself, the financial system in which the IMF functioned achieved a measured degree of stability, and the GATT took on new issue areas in trade and was eventually incorporated into the World Trade Organization (WTO) in 1995. During the first decade of its operation, the World Bank played a marginal role in postwar reconstruction. By the early 1960s, it started to show interest in lending opportunities in the Third World and, at that time, it began making annual loans worth over \$1 billion.<sup>82</sup> This shift in focus toward the developing world caused the World Bank to gradually overlap with the IMF, which was increasingly focused on loaning money to countries in the Third World.

The Trilateral Commission, which was formed in the early 1970s and included over 300 of the world's brightest economic and political minds, contributed to deeper economic liberalization by redefining the roles of the Bretton Woods Institutions. In one of the Commission's first reports, "The Crisis of Democracy," it stated that the most important political problems in the world had to do with "an excess of democracy."<sup>83</sup> The Commission felt that certain governments were too responsive to their highly participant societies and did not adhere closely enough to the tenets of neoliberalism. Thus, it set about concentrating power in the hands of the GATT, the IMF, and the World Bank. It called for increased reductions in tariffs and non-tariff barriers to trade and for

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<sup>82</sup> Lairson, 75.

<sup>83</sup> Barlow, 83.

“Structural Adjustment Programs” for debt-ridden Third World countries, which would make them conform to the mandates of free markets. Effectively, the Commission crafted a global royalty to plan and run the world economy.

During the 1970s many developing and least developed countries took on large commercial loans from banks in developed countries. A combination of wasteful spending, skyrocketing oil prices in the late 1970s, and rising U.S. interest rates in the early '80s, left these borrowing countries in a position where they needed to continuously refinance in order to avoid defaulting on their loans. They did this by taking on several short-term loans from the IMF. The IMF attached “Structural Adjustment Programs” (SAPs) to these loans, which imposed certain conditions on the borrowing countries. Because voting in the IMF is based on member contributions (with Western European countries and the United States accounting for almost 50% of the votes), poorer countries had little say in what the SAPs looked like.

The result was almost always a large reduction in public services or the turning over of national enterprises to the private sector, a restricted money supply, and slowed economic growth in order to achieve a balanced budget.<sup>84</sup> This strategy was also meant to produce a balance of trade surplus, which often occurred through an increase in unemployment and a decrease in inflation. Through this operation, “The IMF became the enforcer of the views of a conservative U.S. financial community, in which trade deficits were seen as an indicator of a country’s domestic profligacy and adjustments were expected to come in the domestic economy so as to make it more competitive internationally.”<sup>85</sup> Between 1980 and 1997, debt in low income countries grew by

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<sup>84</sup> Lairson, 384.

<sup>85</sup> *Ibid.*, 75.

544%.<sup>86</sup> Even though poor countries owed the majority of this debt to private banks, it was gradually transferred to the IMF in the form of concessional debt, and, thus, these countries had to abide by conditionalities similar to those of the Structural Adjustment Programs.

With the fall of the Berlin Wall in 1989, and the subsequent collapse of the Soviet Union, neoliberalism experienced a rebirth as supporters of capitalism touted free markets' victory over central state planning. The United States government seized the opportunity to promote its own particular set of interests in the international economy. John Williamson, of the Institute for International Economics (IIE), spelled out these interests in 1990 in what soon came to be known as the Washington Consensus. The heart of the Consensus featured enormous government deregulation of investment, finance, and trade. This ideology of the new world economic order stipulated that governments were to refrain from regulating or intervening with goods, capital, or services as they moved across borders.<sup>87</sup> In other words, governments were not to impede corporate market activities or to protect their domestic economies. The World Bank and the IMF adopted the Washington Consensus and pushed heavily for government deregulation, often making it a condition for loans. In the decade that followed, the privatization of water and sanitation facilities became a main condition for Structural Adjustment Programs. Multinational water companies, who were on the receiving end of privatization contracts, benefited immensely from this development.

The International Bank for Reconstruction and Development (IBRD) and the International Finance Corporation (IFC), which are both part of the World Bank, are

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<sup>86</sup> Cavanagh.

<sup>87</sup> Barlow, 82.

currently very involved in water. Four years ago in Mozambique, for example, the IBRD helped 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.<sup>88</sup> As previously mentioned, the situation in Cochabamba, Bolivia, was also affected by World Bank loan conditionalities. 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.<sup>89</sup> In fact, the IFC has provided investment capital to Suez across the world in places like Thailand, Ghana, and Brazil.

The 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-

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<sup>88</sup> *Ibid.*, 161.

<sup>89</sup> *Ibid.*, 161-2.



cost recovery,” which means that consumers pay for the “full-cost” of operation, maintenance, and capital expenditures.<sup>90</sup> These countries not only lack the infrastructure necessary to ease the structural transition to privatization, but, also, they are not consolidated democracies and, thus, the decision to privatize is almost certainly not in the interest of 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 being to “increase electricity and water tariffs by 96 percent and 95 percent, respectively, to cover operating costs.”<sup>91</sup> According to Sara Grusky, in *Privatization Tidal Wave – IMF/World Bank Water Policies and the Price Paid by the Poor*, the 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.”<sup>92</sup> 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 and corporate water providers has spilled over into political bodies other than just domestic governments and is cause for great concern. The problem with the extremely close relationship between politics and business 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

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<sup>90</sup> *Ibid.*, 164.

<sup>91</sup> Grusky.

<sup>92</sup> *Ibid.*

incentives of water MNCs. In their chapter *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.”<sup>93</sup> The extensiveness of this relationship and its ultimate impact on privatization merit some attention.

The French water giant Suez, for example, is a political animal in many ways. 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 U.S. subsidiaries, Suez has donated money for congressional campaigns and gave \$141,150 in “soft money (unrequested) donations during the 1999-2000 election cycle.”<sup>94</sup> 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, thus, develop their own legislative agendas, which will help increase profit margins

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<sup>93</sup> Barlow, 109.

<sup>94</sup> *Ibid.*, 112.

when translated into government-endorsed laws, policies, and programs.<sup>95</sup> Admittedly, this type of lobbying is not specific to water corporations; indeed, most private industries, in the majority of Western countries, lobby for their interests. What sets apart the actions of the large water corporations is the ultimate effect they have on the lives of poor people in other countries. Lobbying is a standard operation in consolidated democracies, and these political systems are advanced enough so that even the most powerful corporation, whether by accident or willful negligence, would find it difficult to easily harm the population. 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 at 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-powerful corporations. The pervasive political clout of MNCs 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," the 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

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<sup>95</sup> *Ibid.*, 99.

pollute fields and rivers from which people draw  
livelihoods.”<sup>96</sup>

The implications of this “democratic deficit” cut to the heart of the push toward privatization of water. If privatization policies negatively affect the human right to water of poor people and, yet, continue to occur, clearly there are some people who benefit. The “Human Development Report” does a good job of linking several avoidable travesties occurring in the world today with closed-door policy making (both political and corporate in nature) at the international level. 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.”<sup>97</sup> 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 and the Bretton Woods Institutions. He uses the term “transnational elite” to describe those who move and shape the global economy and, thus, benefit accordingly. Robison 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

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<sup>96</sup> United Nations, 8.

<sup>97</sup> Robinson, 49.

of the world system.”<sup>98</sup> 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.”<sup>99</sup> Whether it is the U.S. government awarding reconstruction contracts in Iraq to Vice President Cheney’s former employer, Halliburton, 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 structure and reorient 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, they actually alter previous conceptions about the very nature of those rights. As argued in this paper, water is a human right; but, 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 be at least theoretically responsible for guaranteeing access to an adequate amount. In a study presented at the fifty-sixth session of the United Nations Commission on Human Rights, Mr. Arjun Sengupta, the

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<sup>98</sup> *Ibid.*, 32-3.

<sup>99</sup> *Ibid.*, 35.

Independent Expert on the Right to Development, states, “[Human rights’] protection and promotion is the first responsibility of governments.”<sup>100</sup> This means that governments must deal with water as a human right; the alternative, which is to follow policies based on water as a human *need*, is a dereliction of governmental responsibility and means that those who cannot afford water have no right to it and must go without. The question of whether water is conceptualized as a right or as a need is far more than a matter of semantics and goes beyond the realm of the hypothetical; it cuts to the heart of what people are entitled to, by virtue of their humanity, and what their standard of living will be in actuality.

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.<sup>101</sup> A pricing relationship of this sort goes against a human right to water because it allows for the very real possibility that some people will be denied access to water because they will be

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<sup>100</sup> Commission on Human Rights.

<sup>101</sup> Rothfeder, 87.

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 places 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. There are a number of forums going on at the moment towards finding the most appropriate financing deal which allows companies like us to cope with these big issues like affordability and willingness to pay in many poorer communities.<sup>102</sup>

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, unsurprisingly, been able to convince members of groups like the IMF and World Bank that water is a human need. After all, the IMF and World

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<sup>102</sup> Spillett.

Bank benefit from putting the kick-start money into water privatization and development projects. This work helps 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, of course, 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 sidelined at the commencement 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. Estache, Gomez-Lobo, and Leipziger state, “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.”<sup>103</sup> 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,

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<sup>103</sup> Estache, 1181.



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, the things 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.

Before expanding the analysis to a more broad-based look at the role of the right to water in terms of human development, it is necessary to sharpen the focus to the individual level of how people’s conception of water is changing through developments such as the World Water Forum and its “Vision Report.” 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.”<sup>104</sup> Commodification, through purchasing and selling (for a profit), distances water from its role as a basic human right and separates it from its fundamental role in life.

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<sup>104</sup> Barlow, 89.

Environmental activist Vandana Shiva highlights the sacred nature of water, arguing that it is the source of all life and inseparable from human existence.<sup>105</sup> From the symbolic nature of water in every religion to the physical importance of water to humans (our actual beings are, after all, 65% water), there is clearly a sacred nature to water. Barlow and Clarke expand on her analysis by describing water's communal role and highlighting other aspects of life that have been traditionally valued as shared activities or resources, including: health; education; culture and heritage; and genetic codes and seeds. There was a time when these things were not for sale, they state – “These, and other essential elements of life and Nature, were part of a shared inheritance or rights that belonged to all people. In other words, they belonged to ‘the commons.’”<sup>106</sup> These communal parts of humanity are the latest frontier in the expansion of global capitalism. New companies are commodifying and commercializing the last remains of humanity's shared existence, and they are doing so at a rapid rate. The “life science” industry is a prime example. Led by corporations like Monsanto and Novartis, the genetic makeup of seeds is being bought and sold in the form of genetically-modified food and health products. Indeed, from genetics to water, the very building blocks of peoples' lives are now for sale.

Commodifying water has taken off 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

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<sup>105</sup> Shiva, Ch. 7.

<sup>106</sup> Barlow, 87.

liters of water for shipment around the globe.<sup>107</sup> Nestle is the market leader, producing and selling more than 68 brands worldwide, including Perrier, Vittel, and San Pellegrino. Bottled water, which was at one time seen to be primarily for the rich, is catching on in many parts of the world, including developing countries that have dirty water supplies. Because the industry is so young, it is difficult to predict all the negative externalities that may occur 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.<sup>108</sup> Manufacturing and disposing of plastic bottles releases harmful toxic chemicals into the atmosphere. Because this industry is just starting out, the potential for serious environmental consequences is quite high.

In his book, People Before Profit, sociologist Charles Derber states, “The corporation knows loyalty only to itself.”<sup>109</sup> This is perhaps more apparent in the bottled water industry than anywhere else. Because corporations can move their operations with relative ease, they have virtually no incentive to invest in sustainable water extraction. They will often buy land in order to access wells, bleed the wells dry, and then relocate to a new area where they can start the cycle all over again. The rhetoric of water corporations and the irony that surrounds their business practices and commercial slogans are truly amazing. Water is marketed as pure and as representative of a healthy lifestyle; *Treat Yourself Well, Everyday* is the Slogan for Coca-Cola Company’s Dasani brand, and PepsiCo says its Aquafina brand is *So Pure, We Promise Nothing*. These companies destroy previously public water sources and pollute the environment, yet they claim their

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<sup>107</sup> *Ibid.*, 96.

<sup>108</sup> *Ibid.*, 143.

<sup>109</sup> Derber, 95.

water is pure and healthy. This is without even mentioning the fact that bottled water has repeatedly been found to be of the same quality as tap water, especially in the largest bottled water markets (the U.S. and EU), which have safe water supplies.

Following the trend of marketing water as a commodity to be bought and sold in bottled form, corporations are now expanding their practices to larger quantities. Some experts have suggested that it might be cheaper for countries to import water than for them to fix the problems they have with their own infrastructure or to bring in private contractors. 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.”<sup>110</sup> 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.<sup>111</sup> 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.”<sup>112</sup> Experts say that Eklutna, Alaska, could export as much as 30 million gallons per day.<sup>113</sup> 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

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<sup>110</sup> Rothfeder, 120.

<sup>111</sup> Barlow, 135.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

more than two miles thick.<sup>114</sup> 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 price for transporting water, making it an ever-more-feasible solution. The most important developments in this area are water bag schemes. Hauled by tugboats, these polyurethane bags can actually hold a lot 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

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<sup>114</sup> Rothfeder, 120.

their best interest to do so.<sup>115</sup> 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.<sup>116</sup>

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.”<sup>117</sup> 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.<sup>118</sup> In 1998, Sun Belt Water Corporation sued the Canadian government to the tune of \$300 million for choosing to ban the export of bulk water.<sup>119</sup> 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.

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<sup>115</sup> GATT.

<sup>116</sup> Barlow, 166.

<sup>117</sup> NAFTA.

<sup>118</sup> *Ibid.*

<sup>119</sup> “There’s Plenty up North.”

The world's largest water corporation, Vivendi, sits on the U.S. 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 things 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."<sup>120</sup> 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

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<sup>120</sup> Barlow, 167.

need to pry open markets and resources.”<sup>121</sup> 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 as trade barriers and, therefore, could be challenged for 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 the very virtue of their humanity. This paper has also illustrated that it is in the interests 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 human rights. This analysis, while helpful for illustrating the preeminence of basic rights, nevertheless fails to reconcile human rights with the structural issues of the market that perpetuate scarcity. Therefore, it is necessary to

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<sup>121</sup> *Ibid.*, 176.



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.

As stated previously in this paper, 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 them. 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.”<sup>122</sup> This sense of personal responsibility and agency is espoused by Nobel Laureate Amartya Sen in his work Development as Freedom. Sen views economic development as a crucial component of human existence, in so far 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.”<sup>123</sup> 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.

Indeed, 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

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<sup>122</sup> Shue, 40, my emphasis.

<sup>123</sup> Sen, 14.

these functionings and capabilities.”<sup>124</sup> 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*, makes the argument that, while the fulfillment of subsistence rights is an integral part of human existence, it is important in so far as it leads to the enjoyment of those things that give life its meaning: “love, friendship, skill, art, knowledge, pleasure.”<sup>125</sup> This is what he means when he states, “Human beings want not just to live, but rather to live fully.”<sup>126</sup> 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.”<sup>127</sup> 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.

Thankfully, 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.”<sup>128</sup> 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

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<sup>124</sup> United Nations, 17.

<sup>125</sup> Christiansen, 260.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> Diarmuid, 139.

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.”<sup>129</sup> 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 fully enjoy 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.”<sup>130</sup> 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

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<sup>129</sup> Declaration.

<sup>130</sup> Fact sheet.

Development.<sup>131</sup> 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 7 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.”<sup>132</sup> Such progress plays an essential role in the formation of this right and certainly contributes to the substantive improvement of human wellbeing.

In order to conclude this paper, let me highlight a few key, interrelated points that may be made clearer in light of the discussion on human development and the RTD. First, 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 wellbeing 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, however, because water is predominately used by the industrial and agricultural sectors, individuals and households should not be

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<sup>131</sup> *Ibid.*

<sup>132</sup> Vienna Declaration.

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 owner 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.”<sup>133</sup> 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 minimal healthcare or basic education, are contrary to the Right of Development.

Furthermore, on a related note, 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 RTD, 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 in so much 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

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<sup>133</sup> “Water, Health and Human Rights.”

making sure 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.”<sup>134</sup> 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. Its solidification and promotion can also serve as a watershed for the promotion of human development.

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<sup>134</sup> United Nations, 8.

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