

**THE POLITICAL ECONOMY OF FRESH WATER:
FROM THE COMMONS TO CORPORATE ENCLOSURE**

by

Kyle Ross Mitchell
B. A., Simon Fraser University, 2004

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APPROVAL

Name: Kyle Ross Mitchell
Degree: Master of Arts
Title of Thesis: The Political Economy of Fresh Water: From the Commons to Corporate Enclosure

Examining Committee:

Chair: Dr. Dara Culhane
Associate Professor of Anthropology and
Chair of the Graduate Program

Dr. Gary Teeple
Senior Supervisor
Professor of Sociology

Dr. Gerardo Otero
Supervisor
Professor of Sociology

Dr. Nick Blomley
External Examiner
Professor of Geography / Chair of Graduate Studies

Date Defended/Approved:

March 27, 2007



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ABSTRACT

Water is essential for life, and for this reason access to and control of water have been contentious issues for centuries. Since the 1980s this struggle has taken the form of a conflict over the privatization of water resources. Access to and control of water supplies are issues defined by the prevailing private property relations that comprise the global economy – those characterized by the preeminence of transnational corporate private property. Neoliberal policies, introduced throughout the world, have facilitated transnational corporate control over all aspects of economic and social reproduction, thus subordinating all forms of rights to the corporate form. This change in regulating power has led to significant questions arising from the implications of the commodification and privatization of fresh water. In reaction to these changes an increasingly organized movement is growing to resist this latest example of the enclosure of the commons.

Keywords: Fresh Water, Political Economy, Property, Privatization, Transnational Corporation.

DEDICATION

To the memory of my father Graham Mitchell.

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LIST OF ABBREVIATIONS AND ACRONYMS

CEDAW: UN Convention on the Elimination of all forms of Discrimination Against Women
CESCR: UN Committee on Economic, Social and Cultural Rights
CIDA: Canadian International Development Agency
CIS: Commonwealth of Independent States
CCE: Coca-Cola Enterprises
CRC: UN Convention of the Rights of the Child
ECOSOC: UN Economic and Social Council
FDI: Foreign Direct Investment
FRW: Friends of the Right to Water
GATS: General Agreement on Trade in Services
GATT: General Agreement on Tariffs and Trade
GWP: Global Water Partnership
ICESCR: International Covenant on Economic, Social and Cultural Rights
ICSID: International Centre for Settlement of Investment Disputes
IFC: International Finance Corporation
IFIs: International Financial Institutions
IIC: UN Independent Inquiry Committee
IMF: International Monetary Fund
IWRM: Integrated Water Resource Management
MDGs: Millennium Development Goals
NGOs: Nongovernmental Organizations
OECD: Organization of Economic Co-operation and Development
OHCHR: Office of the UN High Commissioner for Human Rights
PBG: Pepsi Bottling Group
PPP: Public Private Partnerships
PSI: Public Services International
P3s: Public Private Partnership
SAPs: Structural Adjustment Programs
SGEMV: Société Générale des Eaux Minérales de Vittel
SIDA: Swedish International Development Agency
TRIPS: Trade-Related Aspects on Intellectual Property Rights
UDHR: Universal Declaration of Human Rights
UN: United Nations
UNDP: United Nations Development Program
UNCED: United Nations Conference on the Environment and Development
WCW: World Commission on Water
WTO: World Trade Organization
WWC: World Water Council

INTRODUCTION: THE POLITICAL ECONOMY OF FRESH WATER

Introduction

Contemporary critical analyses of economic globalization do not often address the prevailing property relations that frame the nature of production, distribution, and exchange of goods and services within the global economy. This conceptual and theoretical gap is also evident in studies of the privatization and commodification of fresh water goods and services. Because the capitalist mode of production and accompanying global economy are grounded within a private property framework, an analysis of economic globalization and/or of all goods and services affected by economic globalization must take into account these prevailing relations.

Property relations comprise the greater socio-economic structure of any given social formation and reflect the way in which the division of labour is organized and stratified (Hinkelammert, 1986, p.174). These relations also lie at the heart of the political, economic, legal and cultural spheres. In the capitalist social formation, unequal property relations frame the relations within all these spheres (Caruthers & Ariovich, 2004, p.23; Reeve, 1986, p.7). This study is concerned with the inequalities that arise from private property relations insofar as they pertain to the political economy of fresh water resources.

Property, as a legal relation, refers to the rights, claims and entitlements an individual or group has to goods or services. In the capitalist mode of production, private

individuals exercise exclusive rights to things in relation to other individual's private rights or in many cases other individual's lack of private rights. These property relations are typified in the Universal Declaration of Human Rights (UDHR) where 'human rights' and freedoms are first and foremost grounded in private property. Indeed, social rights, as a category of human rights, are universal or group rights in the sense that they are based upon an idea of equal access to state-provided goods and services. These rights, however, are seen as countervailing, or, in other words, rights that are subordinate to the prevailing private property relations, which are typified in political or civil rights (i.e. political and civil rights as exclusive individual rights). Insofar as property relations are private/exclusive, the limit of an individual's rights or freedoms is comprised of another's rights or freedoms.

Because these property relations are embodied in the hierarchical structure of capitalist societies, they perpetuate the unequal material conditions and class dynamics that are associated with the global production and distribution of goods and services (Anderson & McChesney, 2003, p.1). As Anderson and McChesney point out, "not all members of society share equally in ownership and control of assets..." (Anderson & McChesney, 2003, p.1). In other words, ownership and control of socially necessary goods and services in capitalist social formations create unequal levels of access to these resources. These unequal property relations, reflected in the political, economic and/or social structures of power, are the condition for the development of a population or class (Berle & Means, 1968, p.3).

The political economy of fresh water and the study of property relations are issues that determine access to or exclusion from such an essential resource. In several United

Nations (UN) reports initiating the 'Water for Life Decade' project (2005-2015) - a project associated with the Millennium Development Goals (MDGs) – it is estimated that 1.1 billion people lack access to safe water and 2.4 billion lack access to basic sanitation (World Water Assessment Programme [WWAP], n.d.B). Indeed, inadequate access to fresh water goods and services is yet another form of social exclusion based on private property, one that has become a contentious issue in the globalization debate.

The commodification and privatization of fresh water goods and services are part of a broader process whereby the prevailing property relations enclose all aspects of social reproduction. Increasingly, through privatization, the commons are subordinated to transnational corporate control thereby transforming these resources into a form of transnational corporate private property.

The Scale of Fresh Water Enclosure

Although the majority of the world's water services are municipally owned (with significant disparity in quality of service, however), aging water infrastructure in the First World as well as an increased concern over inadequate access to fresh water goods and services in the Third World have ignited a debate over the ways in which people receive access to fresh water goods and services. In light of these concerns global governing institutions promote and implement economic processes that further entrench commodification and privatization processes. As a result, in the last two decades an increasing number of countries have initiated a shift in water policy away from state provision to an economic or commodity approach favouring decentralized and market-driven policies (Bjornlund, 2003, p.553; Langford, 2003, p.553). As Haughton notes, there is nothing new about private companies selling water; however, what is particularly

disconcerting is the scale of their activities in the last two decades (Haughton, 2002, p.791). He notes of the increase in private provision of water services in the First and Third World, “this is important as it represents a fundamental rethink of the politics of water, as the operational aspects of water management are increasingly shifted away from the public sector toward the private sector (Haughton, 2002, p.791).

Indeed, private sector participation has significantly increased in the last two decades across all sectors and in water services in particular. In a 2004 policy paper, the IMF reports, “after a modest start, a wave of privatization is now beginning to sweep the world (International Monetary Fund [IMF], 2004, p.5). This IMF report cites an increase in privatization projects across key public sectors in various countries including the United Kingdom, Australia, Ireland, Japan, the US and Canada as well as in many continental European Union countries including Finland, Germany, Greece, Italy, the Netherlands, Portugal, Spain and in many central and eastern European countries including Czech Republic, Hungary and Poland (IMF, 2004, p.5). In 2004 World Bank privatization projects generated US\$33 billion in private investment, and this increased in just one year where in 2005 private investment totaled US\$57 billion (Kikeri & Burman, 2005, p.3). Kikeri and Burman note that three sectors account for nearly 90 percent of this total investment: infrastructure (including water services), finance and energy. According to the World Bank’s private project investment database, in 1991 the private sector was involved in only two of the World Bank’s water projects. By 2005, however, private sector investment was involved in 383 projects (a 2050 percent increase) (The World Bank Group, 2005). The World Commission on Water has estimated that

investments in water infrastructure need to increase to US\$180 billion a year over the next 25 years (The World Bank Group, 2004, p.11).

As the majority of water privatization projects over the last thirty years have taken place primarily in Africa, Asia, and Latin America (as a result of World Bank and IMF conditionalities), transnational water corporations are now looking to increase their market shares in US and European markets (Murray, 2003, para.14). While transnational corporations supply only 10 percent of the world's population with water services this is expected to increase to 17 percent by 2015 (Luoma, 2004, p.53). Industry analysts note that the relatively low figure of people receiving private water services represents enormous market potential for transnational water corporations seeking out new markets (Luoma, 2004, p.53). In 1990 private water companies served 51 million people in just 12 countries. By the early 2000s over 300 million people in 100 countries were being served by private companies (Luoma, 2004, p.54; Hallstein & Wolff, 2005, p.91). In 2004, water corporations served an estimated 50 million people in the US alone (19 percent of the US water market) and 250 million in Europe (26 percent of the European water market). These numbers are expected to increase by 2015 when over 100 million people in the US (or 36 percent of US water services) and 375 million people across Europe (or 37 percent of European water services) will be served by private corporations (RWE, 2005, p.228).

Luoma quotes a May 2000 Fortune magazine editorial which predicted that "water would become 'one of the world's great business opportunities' and that 'it promises to be to the 21st century what oil was to the 20th'" (Luoma, 2004, p.54). Although World Bank estimates of the global water market have gone as high \$800

billion industry analysts generally value the market at \$500 billion and predict an increase to approximately \$3 trillion in five years (Yaron, 2000, p.28; Murray, 2003, para.12).

Significance of Research

The purpose of this research is to add to a growing body of literature concerning the consequences of economic globalization. The objective of this thesis is to bridge a gap in the existing literature with respect to the privatization and commodification of fresh water resources. Though some literature explores these processes, rarely do these analyses situate what is happening within the context of the prevailing property relations that govern the global economy - those relations that directly affect the way in which we relate to fresh water. The theoretical framework of this thesis identifies private property relations – relations that instigate and perpetuate unequal class relations that are at the heart of the political economy of fresh water - as the essence of the contradiction that is capitalism. The privatization and commodification of fresh water are among the many contentious issues with respect to the increasing power of the transnational corporation.

Research Questions

The central questions of this thesis are framed by the prevailing property relations that define capitalist social formations. In the context of the global economy, we ask what are the global commons, how are fresh water goods and services a part of the commons, and, furthermore, why are the commons increasingly becoming privatized?

Four subquestions follow these central questions. First, from the point of view of capital, what is the problem with the commons? Within a system governed by private property relations, this question addresses the need to privatize and profit from all aspects

of social reproduction. Second, from a human point of view, what is important about the commons? This question seeks to explore humanity's 'common heritage' in the shared reliance on those resources that constitute the global commons. Third and more specifically, within the context of the global economy, which institutions and mechanisms are responsible for the increase in the commodification and privatization of fresh water goods and services? This question explores the preeminence of corporate rights and the subordination of all other forms of right to this prevailing property form. Fourth, what forms of resistance have arisen to challenge the enclosure of the fresh water commons? This analysis critically explores the increasingly common human rights-based approach to fresh water and questions the effectiveness of such an approach. Finally, what are the implications of treating water as an economic good or commodity as opposed to a commons? Placing market value on something so essential to life as water may have significant ramifications for those who do not have the necessary means to access privatized water systems. This question explores the corporate right of exclusion.

Methodological Approach

This documentary analysis will explore the various means whereby transnational corporations obtain the necessary rights to control the world's fresh water resources; and it will explore the efforts to resist the commodification of fresh water resources. To this end, this analysis will examine the operations of the global enabling framework [whose main components are the United Nations (UN), the World Trade Organization (WTO), the World Bank, and the International Monetary Fund (IMF)] as well as the operations of three major transnational water corporations, namely Veolia Environnement, Suez, and RWE Thames. In addition, this analysis will explore the operations of four major bottled

water corporations in an effort to address the latest example of the commodification of fresh water. Furthermore, we will identify and provide critical analysis of the resistance to the privatization and commodification of fresh water resources.

Data collection for this study will consist of retrieving documents released by these global governing institutions and transnational water corporations, as well as documents from various inter/non-governmental organizations, including the Blue Planet Project, Friends of the Earth, the World Water Council (WWC), Global Water Partnership (GWP), and World Commission of Water (WCW). These documents will be retrieved on the World Wide Web from the websites of these institutions, corporations and inter/non-governmental organizations. They include institutional mandates, constitutions, trade treaties and/or agreements, project profiles and databases, publications and reports, and press releases, among other documents. A “critical discourse” analysis will be employed to examine these documents, effectively seeking to highlight the neoliberal discourse that pervades the implementation of the policies and projects carried out by the institutions and organizations in question.

Literature Review

This literature review consists of a survey of arguments from both the proponents and opponents of the privatization and commodification of fresh water goods and services. Interestingly, as the increasing privatization and commodification of fresh water goods and services becomes a terrain of contention in the ongoing dispute over the global commons, still, very little has been written, at least from a purely academic viewpoint, about how property relations relate to the increasing commercialization of fresh water.

There are, however, useful but largely abstract conceptualizations of the question at hand in economic, geographic, ecology and environmental literature.

Notably, there is a large body of economics and market ecology literature proclaiming the benefits of the commodification and privatization of various environmental goods and services which is directly applicable to the question of fresh water. These theories will be employed within this literature review to gain a broader understanding of the proponent's arguments and to bridge the aforementioned gap in fresh water literature.

Very little, moreover, has been written by those opposed to commodification and privatization about how property relations relate to these processes. Although the existing literature is useful for framing the opposing arguments, it tends to be conceptually and theoretically vague. It is the intention of this thesis to fill this gap and offer a broader conceptual and theoretical understanding of the privatization and commodification of fresh water goods and services.

The Politics of Crisis and Scarcity

Many proponents and opponents of privatization and commodification of fresh water goods and services have come to a consensus concerning the state of fresh water resources: these resources are in state of crisis and scarcity. These claims are made on the basis of rising capital costs for infrastructure construction and improvement, rapid global industrialization, population growth and limited and/or declining fresh water resources (Anderson & Shaw, 2000; Barlow & Clarke, 2001; Black, 2004; Gleick, 2001; Holmes,

2002; Smith, 2004). Made categorically by proponents, these same claims have divided the opponents.

Many critics of commodification and privatization point to the crisis and scarcity assertions as being highly problematic (Bakker, 2005; Johnston, 2003; McCarthy, 2005; Yaron, 2000). Although these critics recognize the factors contributing to these claims, they suggest, however, that framing the fresh water issue in terms of crisis or scarcity overstates the issue. More than this, many authors suggest that claims of crisis and scarcity are “manipulated”, “overestimated” or “socially produced” in order to support various agendas (Johnston, 2003; McCarthy 2005). These authors argue that such claims too often lead to shotgun solutions or policy justifications that promote the commercialization of fresh water resources (Bakker, 2003). Yaron goes a step further to point out that corporations exploit these claims suggesting that they are “a necessary prerequisite to ensure profitability of the resources” (Yaron, 2000, p.35).

Similarly, Johnston asserts that more than reflecting the relative aspects of supply and demand, water crisis and scarcity also reflects the “relative aspects of how water is valued (the cultural meanings as well as economic values), relative levels of access and patterns of use, and the relative degrees of control over water resource management and distribution” (Johnston, 2003, p.74). Furthermore, crisis and scarcity claims may lead to “the economic ability to pay for water, or, the customs, social conditions, and relationships that privilege access to some while withholding access to others” (Johnston, 2003, p. 74). Johnston summarizes as follows:

Scarcity is also an aspect of social relations and transformations in the loci of control over local water resources. Perceptions of water scarcity typically emerge when ecosystemic factors and processes fail to produce

customary supplies; when human actions and activities influence supply and/or increase demand; when changes in power and economy affect access; and, when valued human uses conflict with valued ecosystemic needs (Johnston, 2003, p.81).

The way in which states react to claims of crisis and scarcity is a key issue here.

Though the opponents are divided with respect to these claims, all sides of the argument are faced with the same question: how do we best allocate fresh water resources? This question is loaded with issues of ownership and control – issues that will be discussed throughout this thesis.

Proponents of Privatization and Commodification

A common thread linking the proponents of the privatization and commodification of fresh water goods and services is their belief that commons property regimes fail to recognize the value of water, and, as a result, invariably lead to what Hardin referred to as the ‘tragedy of the commons’ (Smith, 2004; Nieuwoudt, 2000; Anderson & Shaw, 2000). The ‘tragedy of commons’ describes a situation where individuals, looking to maximize individual gain, exploit and therefore degrade the commons.

Proponents of the commodification and privatization of fresh water goods and services, as aforementioned, situate their argument in claims of fresh water crisis and scarcity and argue that the public sector is the least efficient mechanism for managing fresh water goods and services through this unstable period (Anderson and Leal 1988; Anderson & Shaw, 2000; Bjornlund 2003; Razzaque 2004). Consequently, they advocate for public sector reform, including the deregulation of publicly delivered fresh water goods and services and the creation of a global water market. These proponents promote

free market mechanisms and argue that once the private sector has acquired the necessary and appropriate institutional mechanisms (i.e. pricing and private rights), then, water, as Bakker notes, is allocated “to its most highly valued uses, thereby maximizing efficiency” (Bakker, 2005, p.548).

Much has been written with respect to applying economics to fresh water goods and services; however, the literature seems inconclusive when it comes to results. We argue that market mechanisms do not equitably satisfy the myriad of competing interests. Notably, however, the question for the proponents of privatization and commodification is not one of equity but of efficiency. They argue that efficiency encourages the highest valued use of fresh water goods and services. This idea is wrapped up in two theories that inform this perspective: market environmentalism and free market economics.

Market environmentalism is a variant of ecological modernization that views the interests of the environment and the market as compatible (Bakker, 2005, p.543). This theory conceptualizes the cause of environmental problems, including problems having to do with environmental goods and services, as an absence of markets (Anderson & Shaw, 2000, p.4). For market environmentalists, then, market mechanisms can solve problems related to environmental goods and services without radical political or economic change (Sydee & Beder, 2006, p.89).

The solution to crisis and scarcity, from the point of view of market environmentalists, then, is to allocate private rights over environmental resources, including the right to use, exclude and transfer. Market environmentalists argue that private owners incur the costs and benefits of their actions. In turn, the opportunity cost that is attached to private goods (in this case fresh water) promotes the highest valued use

of such a resource (Anderson & Leal, 1988; Anderson & Shaw, 2000, Nieuwoudt, 2000). It follows from this that private rights and prices attached to environmental goods and services are incentives to 'economize' consumption (Nieuwoudt, 2000, p.28). More than this, market environmentalists suggest that private rights and pricing extend beyond conservation issues and serve as revenue generation mechanisms where revenue may be reinvested in capital-intensive re/construction of infrastructure (Smith, 2004, p.7).

Market environmentalism is grounded in a version of free market economics, which is, as Anderson and Shaw point out, "skeptical about governments and confident of markets" (Anderson & Shaw, 2000, p.35). Consequently, proponents of privatization and commodification advocate for the deregulation of publicly delivered environmental services and the creation of markets. This is not to say, however, that the state loses all of its purpose. Free market environmentalists and free market economists argue, instead, that the state's role should be redefined. Instead of providing goods and services the state performs a form of re-regulation in initiating and securing the institutional mechanisms for free market environmentalism to work. In other words, as Ouyahia suggests, the "essential" role of the state is to "define the scope of business" (Ouyahia, 2006, p.17). Acknowledging the state's redefined role, Nieuwoudt connects three attributes that are key to a successful water market: security, stability and flexibility. All three of these attributes require the active participation and cooperation of the state. Security is the ability to identify and gain protection for the right to the use of a good or service. Ouyahia adds that this includes the state's guarantee that there will be a return on investments for the private sector (Ouyahia, 2006, p.17). Stability assumes that the right of use will continue to be recognized. Flexibility, on the other hand, allows the right of

use to be transferred (Nieuwoudt, 2000, p.28). Once these free market mechanisms have been institutionalized, so the argument goes, the marketplace will oversee the provision of environmental goods and services in the most efficient, cost effective way.

Proponents of the commodification and privatization of fresh water goods and services acknowledge the concern with pricing when it comes to equity and broader social objectives. Some market environmentalists and free market economists go as far to suggest that seeking universal provision under free market conditions “leads to a trade-off between efficiency and social welfare objectives (Ouyahia, 2006, p.10). We can conclude from this concession that the market will inevitably fail some consumers. Acknowledging this concern, Nieuwoudt and Ouyahia suggest that inequalities that arise due to exclusion issues must be corrected through political negotiation (Nieuwoudt, 2000, p.33; Ouyahia, 2006, p.17). In the face of this concession, however, market environmentalists and free market economists remain steadfast in their belief of the market and argue that if all of the appropriate market mechanisms are put in place and the state fulfils its role as re-regulator, then, the appropriate market mechanisms will adjust accordingly to make up for market failures (Rogers, Bhatia, and Huber, 1998; Smith, 2004).

Although it seems that on occasion proponents of commodification and privatization do a better job than opponents at framing their discussion within the context of property relations (perhaps because they have a better understanding of the legal and institutional mechanisms with respect to rights and entitlements) what their analysis lacks is a human element. Bakker suggests that “social externalities are now, to a greater degree than in the past, excluded from the water policy framework” (Bakker, 2005, p.551). Proponents too often assume that when left alone, the market will operate as a

natural phenomenon, when, in fact, the market is a social construction that produces inequality.

Proponents fail to mention that efficiency, in terms of free market economics, necessitates inequity. Indeed, the fundamental principle of free market economics, as mentioned above, is the right to exclude others from the use and enjoyment of a thing. The right of access, then, is defined in terms of competition amongst consumers. However, this competition is based on access to property. In a free market, access to property is determined by one's access to consumer cash or credit. As the distribution of wealth in the capitalist social formation is highly uneven, it follows, then, that some are excluded from socially necessary goods and services because they are poor – a point expanded upon within the thesis.

If the fundamental attribute of a commons is its non-excludability, then, it would seem that applying private rights to the commons is contradictory - a point that is overlooked by the proponents of privatization and commodification. Can we conclude, then, that once a commons is subject to market forces it loses this non-exclusive attribute? Or, in other words, is a commons destroyed when subjected to the free market? This is a point that the proponents of privatization and commodification of fresh water goods and services ignore entirely. Because of the lack of conceptual and theoretical rigour on the part of the opponents, however, this claim – that a commons is destroyed once subjected to the free market - is one that remains on the level of an assertion.

Opponents of Privatization and Commodification

Opponents of the privatization and commodification of fresh water goods and services (Barlow & Clarke, 2002, Clarke, 2005, Black, 2004, Holland, 2005) argue that water is not an economic good but a commons and therefore should not be subjected to the rules and regulations of the free market. What unites those opposed to privatization and commodification is their assertion of collective ownership and rights against the relentless privatization and commodification of the commons (McCarthy, 2005, p.11). Acknowledging the increase in commodification and privatization these authors claim, as Yaron does, “water management policy seems not to be based any longer on the premise that water is a social resource necessary for all life, but rather on the view that it is an economic resource to be managed by market forces” (Yaron, 2000, p.8).

Many critics of privatization and commodification of fresh water goods and services conceptualize these processes in terms of economic globalization and suggest that these processes constitute the ongoing enclosure and destruction of the fresh water commons (Barlow & Clarke, 2001; Black, 2004, Holland, 2005; Shiva, 2002; Yaron, 2002). Furthermore, these authors suggest that by transforming the fresh water commons into private property, these processes, in large part, benefit transnational water corporations.

Indeed, the point of consensus for the opponents is that fresh water is part of a global commons or part of the ‘shared inheritance of humankind’. These opponents reach this conclusion, however, without analytical rigor or assessment in terms of the property relations that define either the commons or the capitalist social formation. This leads authors such as McCarthy to suggest that opponents’ analyses are prone to “analytical

mistakes or incoherence” (McCarthy, 2005, p.1). Because the critical issue of the enclosure of the commons is the question of property relations, or in other words, how we relate to the commons, it is of utmost importance to draw out the implications of such property relations so as to gain a greater understanding of our relationship with the commons.

In his analysis of the enclosure of the commons, or what he refers to as “accumulation by dispossession”, Swyngedouw poignantly notes that there is more to the privatization of the commons than just pricing through the process of commodification. Instead he points out that the enclosure of the commons is “a new property reconfiguration that is based on some form of ‘private’ ownership or control” (Swyngedouw, 2005, p.82). This enclosure, he notes, is a form of “theft”, however, one that is “legally and institutionally condoned, if not encouraged...” (Swyngedouw, 2005, p.82). Through Swyngedouw’s analysis we are able to situate the commodification and privatization of the fresh water commons in a broader framework through which we are able to gain an understanding of the processes of economic globalization and capital accumulation. He writes, “the new accumulation strategies through water privatization imply a process through which nature’s goods become integrated into global circuits of capital; local common goods are expropriated, transferred to the private sector and inserted in global money and capital flows, stock market assets, and portfolio holdings”(Swyngedouw, 2005, p.87). In this context, we are able to extrapolate that the enclosure of fresh water commons represents but one terrain through which capitalist property relations seek to expand and open up markets.

What the opponents' arguments are missing, however, is a clear theoretical framework that considers the property relations attached to fresh water goods and services from which they may conceptualize the capitalization of fresh water. Such an analysis would most definitely benefit from the contributions of both McCarthy and Swyngedouw. Indeed a radical analysis of the property relations associated with the privatization and commodification of fresh water goods and services could perhaps use their analyses as a platform from which to build a theoretical framework that would offer conceptual substance outside that of the capitalist relations of production.

Organization of Thesis

Chapter one defines and discusses the concept of property. The prevailing property relations of any given social formation define various groups' and/or individuals' rights and entitlements with respect to the socially necessary goods and services available. Consequently, these property relations reflect the way in which people meet their needs. As the prevailing property relations in the capitalist social formation are those characterized by private property, this chapter examines how these capitalist property relations increasingly enclose the commons (in this case the fresh water commons), as well as how the enclosure process affects the way in which people meet their fresh water needs.

Chapter two consists of a critical discourse analysis of the global governing institutions whose policies and programs seek to redefine the fresh water commons as an economic good with market value. This chapter explores the pathways whereby transnational corporations gain access to fresh water goods and services thereby transforming these resources into a form of transnational corporate private property.

Chapter three provides an overview of the global water market. Worldwide, the number of people who satisfy their water needs via the transnational corporation is increasing. This chapter explores the various factors for the increasing involvement of the private sector. Furthermore, the chapter documents the various forms of the commodification and privatization of fresh water goods and services and includes an overview of the three preeminent transnational water corporations – Veolia Environnement, Suez, and RWE Thames.

Everywhere people are resisting the processes of economic globalization. As capitalist private property relations begin to enclose the fresh water commons and as people begin to experience the consequences of this enclosure, an increasing number of individuals and groups are resisting the privatization and commodification of fresh water goods and services. Chapter four provides a critical analysis of these resistance movements and their strategies.

Finally, chapter five draws out the implications of the corporate enclosure of the commons. This chapter builds on the findings of the thesis and argues that the enclosure of the fresh water commons represents a broader enclosure movement whereby the prevailing property relations of the capitalist mode of production enclose the most fundamental aspects of social reproduction, including water, thereby subordinating life in general to the transnational corporation. As mass exclusion to goods and services defines the capitalist social formation, this chapter concludes that the commodification and privatization of fresh water perpetuates and increases existing inequalities. As fresh water resources become a form of transnational corporate private property, those that do not have the means to enter into a contractual relationship with the corporation, or those that

have the means but choose not to enter such a relationship, will be excluded from the fundamental source of life itself - water.

CHAPTER I – CONCEPTUALIZING THE PROPERTY QUESTION

Introduction

The concept of property is central to our understanding of issues with respect to access to fresh water goods and services. For this reason, the purpose of this chapter is to define and discuss the concept of property so as to gain a clearer understanding of how these relations affect the allocation of fresh water goods and services. With the increasing commodification and privatization of socially necessary goods and services, including fresh water goods and services, people are forced to meet their needs individually in the marketplace. To meet these needs, however, one must have the necessary rights to participate within such a free market. Obvious concerns, detailed in this chapter, surface as a result of the unequal distribution of property in capitalist societies.

Property and the Fresh Water Commons

The Common and Legal Conception of Property

The common conception of property is one of property as a reference to a thing(s) or an object(s). Many writers suggest that this conception of property is a result of commodity production and exchange in the free market. In other words, people have come to think of property as physical objects or commodities possessing exchange value. Many writers note that this common understanding of property may be traced to the time when people began producing things or objects strictly for exchange and not necessarily

under free market conditions (Macpherson, 1978, p.7-8). Although a valid dictionary definition, this conception of property misses a second sense of property that implies a legal relationship between people towards things.

The distinction between property as a thing or physical possession and property as a relationship is crucial to understanding the legal definition of property. Effectively, this distinction separates the physical thing from its possession. It follows, then, that legally property is a right to goods and services broadly defined. The meaning of property, then, is synonymous with the meaning of right (MacPherson, 1978, p.2). Property is a right in the sense that a person has an entitlement or claim to the use, disposal, or benefit of something.

As entitlements, rights are the embodiment of forms of socially legitimated power. Formalized rights become ensconced in law and enforced by an institutional power such as the state. Moreover, the state - elected officials and various representative powers, including its legislative body, the law courts, security, police and military forces - plays a critical role in defining, allocating, and enforcing the prevailing property relations (Anderson & McChesney, 2003, p.1). Whereas formalized rights are maintained by institutionalized power, informal rights are enforced by group customs, practices, expectations, norms, etc. (MacPherson, 1978, p.3; Anderson & Simmons, 1993, p.7). In either case, rights are enforceable claims sanctioned in a given social formation.

Mistakenly, many writers commonly treat property as identical with private property or an exclusive individual right, when in fact a right is often possessed collectively so that people may share in the use of a common resource. As Macpherson points out, this common yet narrow conception of property as private property

encapsulates only one form of property relation, one that can be seen as the product of a particular set of historical circumstances (Macpherson, 1978, p.2). This common mistake can be attributed to the preeminence of private property as the prevailing form of property in the world today.

The distinction between the different systems of property calls our attention to the fact that any given system of property is a system of rights involving more than one person (Anderson and Simmons, 1993, p.7). In fact, rights determine and define actions that individuals take in relation to other individuals regarding socially necessary goods and services (Heritier, 2002, p.40). The essence of property, then, is the way in which individuals or groups relate to each other with respect to the social product.

The Allocation of Rights to Socially Necessary Goods and Services

The social hierarchy of a given society, which is reflected in the social division of labour, is an expression of the ways in which rights are allocated, possessed, and/or exercised. Inasmuch as private property is the abstracted form of the division of labour in a capitalist social formation (private property as abstract relations and the division of labour as real relations) various stages of the division of labour represent various forms of property.

The prevailing property relations in any given social formation reflect the ways in which socially necessary goods are produced and services distributed. More than this, the institutionalization of these rights as well as the legal enforcement of these relations maintain and reproduce relations of power - i.e. certain classes exercising power and/or privilege over, or at the expense of other classes within the same society. As Singer

suggests, “property law defines entitlements and obligations that shape the contours of social relations” (Singer, 2000, p.13).

As rights are forms of socially legitimated power over resources the allocation of rights reflects the social hierarchy within any given society. Because property is a right to the use and disposal of a resource, it bestows upon individuals or certain groups the power to decide what should happen to particular resources (Caruthers & Ariovich, 2004, p.32; Reeve, 1986, p.16). Inasmuch as property relations reflect how the relations of power are exercised or played out within any given society, they represent a set of social relations that define privileges and corresponding sanctions (Hunt, 1995, pp.81-82).

Implicit within the question of the enforceability of claims or rights are notions of access and exclusion. These are critical questions having distributional implications with regard to the socially necessary goods and services of any given society, whether that society is local, regional, national or global in scope (Kantor, 1998, p.34).

Ownership as Private Property

Ownership refers to the relationship an individual or group has to goods or services. Within a system of private property, ownership, as private property, is an expression of an exclusive right or title over goods and services (Dodds, 2004, p.12201). Because the solitary individual is seen as the fundamental unit of analysis within the capitalist mode of production, private property exists, as Tittenbrun points out, “when the right to an economic good or service is vested in a private person...”(Anderson & McChesney, 2003, p.3; Tittenbrun, 1996, p.14). This idea flows from the classic school of economic liberalism that views the economic and rational individual, acting out of self-interest

within a private property framework, as the most efficient means by which society's goods and services may be distributed. Within the capitalist mode of production, the allocation of property is consistent with the ideas of economic liberalism whereby the atomized individual is the exclusive owner of private rights.

Inasmuch as private rights in a capitalist social formation confer ownership over a good or service, this private right or entitlement presupposes the individual owner's private freedom to use and dispose of property as they wish (Reeve, 1986, p.16). These freedoms 'relieve' individual property owners from governmental restrictions or regulations so that property owners may use their property in accordance not with a greater good or collective will, but rather with their own will and 'rational' judgment. The 'burden of responsibility' for the production and distribution of socially necessary goods and services shifts from society as a whole to the private individual (Singer, 2000, p.2-4).

These legally enforceable exclusive individual rights of ownership, as Pejovich points out, include: "(i) the right to use an asset (*usus*), (ii) the right to capture benefits from that asset (*usus fructus*), (iii) the right to change its form and substance (*abusus*), and (iv) the right to transfer all or some of the rights specified under (i), (ii), and (iii) to others at a mutually agreed upon price" (Pejovich, 1990, p.28; Noyes, 1936, p.358). Underpinning all of these rights is the right of exclusion. This right allows property owners to exclude non-owners from the use and enjoyment of socially necessary goods and services which in turn may shape a non-owner's life chances (Caruthers & Ariovich, 2004, p.23; Anderson & McChesney, 2003, p.82). Caruthers and Ariovich suggest, in the capitalist world of commodified relationships, "the right to control, govern, and exploit

things entails the power to influence, govern, and exploit people” (Caruthers & Ariovich, 2004, p.23). This power to exclude, therefore, has traditionally been considered the bedrock of the private property framework in a capitalist society and is increasingly encroaching upon all forms of social reproduction.

It follows, then, that although physical exclusion from fresh water goods and services is one of the many concerns addressed throughout the thesis, it is not the physical matter of water itself that is the property of concern here. Rather, when we speak of property, we speak of a world of legal relations enforced and reproduced by an economic system, namely capitalism. Access to or exclusion from fresh water goods and services, and, as an extension, the commons in general, are issues wrapped up in the realm of private property relations.

The Study of the Commons

Literature on the commons is convoluted and complex. Some of this literature is inconsistent and contradictory when it comes to the operationalization of key concepts. This may be due to the fact that the concept of the commons crosses various academic disciplines as well as non-academic arenas. This confusion may also be due in part to constantly evolving ideas of what resources actually make up the commons. In light of this confusion, some suggest that universalizing the commons under a single definition may be perilous (Goldman, 1998, p.4). In any case, it is of critical importance to draw out a conceptualization of the commons so as to illustrate the underlying argument.

Fresh water goods and services are considered to be part of the commons. The commons are often designated as ‘common property’ and refer to natural resources such as: air, the atmosphere, the high seas, lakes, rivers, groundwater basins, forests, and

fishery stocks (Feeny et. al, 1990, p.3). This definition can be extended to include public or communal goods and services such as: education, healthcare, water services or, in general, facilities that are governed by common property arrangements (as is the case with communal and/or state property arrangements).

As Feeny et.al note, it is important not only to delineate the characteristics shared by the commons, but also to distinguish between the resource and the property regimes in which the resource is held (Feeny et.al, 1990, p.3). Three categories of rights – consisting of both formal and informal property arrangements and varying levels of access to the commons – have evolved in relation to the commons, including, open-access property, common property and state property. Ostrom et.al argue, “devising property regimes that effectively allow sustainable use of a common-pool resource requires rules that limit access to the resource system and other rules that limit the amount, timing, and technology used to withdraw diverse resource units from the resource system” (Ostrom, 2000, p.338). This calls into question the effectiveness of ‘open access’ regimes where there are no rules to govern the use of the commons. This question calls our attention to the three categories of common property.

Categories of Common Property

Open Access

Open access regimes are defined by an absence of an articulated or well-defined property arrangement. Open access regimes lack formal or informal regulatory frameworks so that there is free and unlimited access to the commons (Burger & Gochfeld, 1998, p.8). Much of the commons literature points to the potential of degradation and destruction of the commons under open access regimes, or what Hardin

referred to as the 'tragedy of the commons'. Ostrom et.al note, "when resource users interact without the benefit of effective rules limiting access and defining rights and duties, substantial free-riding in two forms is likely: overuse without concern for the negative effects on others, and a lack of contributed resources or maintaining and improving the common-pool resource itself" (Ostrom et.al, 1999, pp.279). Examples of open access resources include recreational fishing in open oceans or the atmosphere (Burger & Gochfeld, 1998, p.8; Feeny et.al, 1990, p.4). Anderson and McChesney suggest, "it is problems that arise with the lack of exclusion that promote efforts to define private or communal property rights and enforce them against access by those without rights" (Anderson & McChesney, 2003, pp.60). Ostrom et. al note that, historically, evidence points to the fact that resource users have successfully transformed open access arrangements into "group-property and individual property regimes...that grant individuals varying rights to access and use of a resource" (Ostrom et.al, 1999, p.279).

Communal Property

Common property arrangements are generally found in smaller communities, where, as Blomley notes, "interdependent users...exclude outsiders while regulating internal use by community members" (Blomley, personal communication, March 30, 2007). Regulated use within such communities is based on the premise of equal access to the commons for all community members. Commons property, then, is based on an inclusive property arrangement within a defined community. Because rights are shared, or inclusive, they are unlikely to be transferable (Feeny et.al, 1990, p.4). Instead, as Blomley points out "the existence of intricate internal rules and principles governing membership, access to and control of resources..." (Blomley, personal communication, March 30,

2007). Examples of common property regimes include small fishing villages or inshore fisheries, shellfish beds and forests (Burger & Gochfeld, 1998, p.8; Feeny et.al, 1990, p.4). Communal rights within such groupings as tribes, band or clans are increasingly subordinate to private rights and therefore small groupings as such are increasingly uncommon. Where common property regimes do exist, they may or may not be legally recognized (Feeny et.al, 1990, p.4). Anderson and McChesney notes, “the rights of insiders often are recognized by the state, although in traditional societies, rights of isolated groups sometimes are based on local customary law and social norms” (Anderson & McChesney, 2003, pp.76).

State Property

Rights may be possessed by an aggregated unit such as the state and extended to individual citizens by way of state legislation. State property involves ownership by local, regional or national governments (Ostrom et.al, 1999, p.279). Although much of state property is exercised on the grounds of universal access, the state, acting as stewards and trustees and governing in the interests of its citizens, regulates access to the commons. To an extent, however, the existence of state property within capitalist societies reflects the contestation for rights amongst competing groups. Examples of state property include goods and services such as healthcare, education and waters services, but also crown-owned public lands such as forests or parks (Burger & Gochfeld, 1998, p.8).

If the right of inclusion (regulated within communal and state property regimes) characterizes the commons, then, as the commons are increasingly enclosed by private property they cease to exist. In other words, when the fresh water commons are commodified and privatized they are transformed into a form of private property. This is

not to say, however, that the commons and private property cannot co-exist; as private property is the prevailing property relation in the world today, the commons do exist, albeit under the constant pressure of privatization. In other words, the commons and private property are contradictory.

‘Tragedy of the Commons’

The history of capitalism is the history of the enclosure of the commons. The enclosure movement is characterized by the capitalization of all aspects of life, including nature. This movement not only signifies a transfer of power but a profound change in the social order whereby collective and common property rights give way to private property rights.

Many argue, as Bollier does, that issues surrounding the commons have been “tainted by the narrative that a commons is invariably a tragedy” (Bollier, 2002, p.10). This narrative originates from Garret Hardin’s ‘tragedy of the commons’ theory. Hardin argued that an inevitable feature of the commons is that the commons ‘remorselessly generates tragedy’ as individuals look selfishly to maximize individual gain until the commons become degraded (Goldman, 1998, p.47). Hardin’s conclusion suggests that individual gain from exploiting the commons outweighs individual losses, and as a result, tragedy, in the form of degradation, is inevitable.

Many of Hardin’s critics argued that he confused the commons with ‘open access regimes’ where there are no restrictions to the use and enjoyment of common resources and where, consequently, no appropriate rights are applied to users and/or common resources (Bollier, 2002, p.20). As Anderson and McChesney suggest, however, careful

study of commons regimes has proven that “well functioning common property regimes do not create open access outcomes” (Anderson & McChesney, 2003, p.75). Bollier points out, “without the ‘social infrastructure’ that defines a commons – the cultural institutions, norms, and traditions – the only real social value in ‘open-access regimes’ is private profit for the most aggressive appropriators” and therefore “Hardin’s essay might more appropriately have been entitled, ‘tragedy of open access’” (Bollier, 2002, p.20).

After much criticism and misuse of the ‘tragedy of the commons,’ Hardin reneged his conclusions and recast his theory. Hardin clarified that, in fact, he was not writing about a commons regime where authority over the use of the commons rests in the community and its ideals of collective property. Rather, he was referring to an ‘open access’ regime in which authority rests nowhere and where there is an absence of any such property regime (The Ecologist, 1993, p.13).

Even though Hardin clarified and recast his theory, conservative economists, in an effort to justify the imposition of a private property framework for governing the commons, continue to employ his earlier claim that “selfish individuals using common pool resources will over consume to the detriment of all...” (Goldman, 1998, p.22). Bollier suggests that these economists misconstrue Hardin’s theory in order to “denigrate collectively managed property and champion the efficiencies of private property regimes” (Bollier, 2002, p.19). The Ecologist argues that the misuse of Hardin’s original theory has transformed the ‘tragedy of the commons’ into the “tragedy of enclosure” (The Ecologist, 1996, p.15).

The Enclosure Movement

Enclosure movements have taken many forms, from the British enclosure movements of the 15th to 19th century to the post World War II development era and present day economic globalization. All enclosure movements can be characterized by the usurpation of the commons and/or collective and common property rights and the introduction of exclusive individual or corporate rights.

The Historical Enclosure Movement

The English enclosure movement has been characterized as a brutal project of private exploitation, one that became, as Bollier suggests, an “identifiable historical process...” where common land and livestock was enclosed by private property relations (Bollier, 2002, p.45). The English enclosure movement was historically significant in two ways: first, expropriated land and livestock were transformed into commodities; and secondly, the social organization of society was significantly altered whereby those who lost land and livestock (essentially the means of subsistence) became subject to the rule of a capitalist class (The Ecologist, 1993, p.23). As Katz points out, “land and labour were transformed into commodities, compelling all to derive their livelihood from purchase and sale” (Katz, pp.282-283).

The English enclosure movement created populations of dispossessed people who were later transformed into a proletariat class that moved into the cities in search of work. The Ecologist argues that the processes of ‘development’, ‘economic growth’, and ‘progress’ that came to characterize the historical enclosure movement were in fact processes of expropriation, exclusion, denial, and dispossession, or otherwise, enclosure

(The Ecologist, 1993, p.22). The industrial revolution that succeeded the English enclosure movement intensified the subordination of all social relations that were outside the realm of the capitalist private property in an effort to open new markets to capitalist accumulation (Duchrow & Hinkelammert, 2004, p.32).

The Contemporary Enclosure Movement

Since the 1980s, neoliberalism has become the dominant economic paradigm amongst liberal democratic states throughout the world. This is due, in large part, to the preeminence of the global enabling framework – the UN, WTO, IMF, and the World Bank. Essentially, the modus operandi of these global governing bodies and international financial institutions (IFIs) is the aggressive promotion of neoliberal policy reforms.

Influenced by classical economic liberalism that emerged in the nineteenth century, neoliberal policy reforms are based on the idea that the market is the proper guiding mechanism by which people should structure their economic lives (MacEwan, 1999, p.4). As such, neoliberal policy reforms increasingly commodify all aspects of social reproduction that lie outside the realm of private accumulation, as these relations, from the point of view of capital, are unproductive, or not producing profit. Indeed, by encouraging neoliberal reforms, the global enabling framework has made a concerted effort to assign economic value to common resources, such as fresh water, in order to subject the global commons to the rules and regulations of the global economy.

Neoliberal policy reforms include the commodification, deregulation and privatization of the commons. These policies seek to expand, globally, the reach of capitalist property relations. Commodification refers to a constant process whereby a

non-market good or service is transformed into an economic good (Gleick, 2002, p.35; Castree, 2003, p.277; Radin, 1996, p.8). This process necessitates a relationship between the market and those goods and services that people depend upon for subsistence and survival. Commodification is a precondition for deregulation and privatization and integral part of the commercialization of all aspects of life.

By way of neoliberal policy reform, liberal democratic governments throughout the world are changing their regulatory practices and deregulating their economies, increasingly subjecting public goods and services to private investment. As Teeple notes, neoliberal policies are part of “a movement away from state provision of social services and programs, especially those that are ‘universal’ or characterized by ‘social rights’” (Teeple, 2000, p.111). Effectively, deregulation opens up national borders whereby transnational corporations gain access to new arenas of capital accumulation.

Privatization refers to the process whereby public goods and/or services are transferred to the private sector. This transfer of control facilitates the privatization of the commons, and, in this case, fresh water resources and utilities (Gleick, 2002, p.35). As transnational corporations pursue new arenas of capital accumulation, all forms of property are increasingly transformed into transnational corporate private property.

Indeed, economic globalization can be viewed as a broader contemporary enclosure movement whereby international governing institutions introduce, maintain, and secure the prevailing private property relations - those property relations that give the global economy its impetus. These private property relations and representative governing institutions that characterize and constitute the global economy, enclose all relations and resources outside of this property framework. The commodification of

resources, the deregulation and subsequent privatization of public goods and services, can be seen as the expansion of private property relations worldwide, or in other words, the most recent form of enclosure. Assetto and Stevis point out, “enclosure is integral to the survival of capitalism because capitalism depends both on the institution of private property and on continued expansion of investment, markets, and profits” (Assetto & Stevis, 2001, p.113).

In sum, if historical enclosures can be defined by the introduction of private property and capital, contemporary enclosures can be defined by the global expansion of transnational corporate property. All forms of social reproduction are increasingly enclosed with the capitalist relations of production and subordinated to the narrow framework of corporate private property. The realization of new arenas for profit maximization, as well as capital investment for the purposes of private accumulation, are two of the main goals characterizing the ongoing enclosure movement. These goals are predicated on the preeminence of private property relations whereby surplus value can be extracted from the commodification and privatization of all forms of social reproduction including nature.

Indeed, historical and contemporary enclosures or, in other words, the development of systems of private property, are not only defined by the enormous inequality they create, but also the extremely contentious and often violent processes that characterize the dispossession of the commons (Andreasson, 2006, p.4). Reed points out that the right of exclusion captures the essence of this controversial process. He notes, “to understand why some consider property to be ‘theft,’ ‘murder,’ and ‘exploitation,’ one has to only appreciate that ‘property’ means that some in society can legally hold more

resources than others have and that the state generally places a duty on the members of a community to keep away from these resources no matter how they may desire or need them” (Reed, 2004, p.489). These processes have led authors, such as Anton to suggest that enclosures “defy moral justification” (Anton, et al., 2000, p.8). Anton comments:

Much that was not private property became property through forcible exclusion of ordinary people from what up to the point of exclusion had been traditionally held in common. We know from history and anthropology that, if anything, the norm for human societies includes common or shared property, and we also know that the development of the market means that the process of converting what is held in common to private property increases extensively... and increases intensively, until all features of social life – however intimate, sacred or ancient – fall under the sway of private ownership (Anton et al., 2000, p.8).

The distinguishing feature and primary concern with respect to the enclosure of the fresh water commons lies not only in the power of private property, but also the transfer of these powers to the transnational corporation.

Conclusion

Through mechanisms and processes of economic globalization, the most dominant institution of the 21st century, the transnational corporation, transforms the fundamental beliefs, values, and ideology of society, shaping the world according to its own interest and creating a world dominated by transnational corporate private property. Increasingly, transnational corporate private property comes to govern and mediate the political, legal, economic and cultural spheres of the capitalist social formation (Sklar, 1988, p.2).

Ultimately, the market enclosure of the global commons, and in this case fresh water goods and services, represents an expansive global capitalist system that seeks to

transform all forms of property into corporate private property. As fresh water is subordinated to the free market, and as it increasingly takes the form of transnational corporate private property, an individual's access to fresh water is subordinated to a contractual relation with a transnational corporation. Ultimately, within the context of economic globalization, the commodification and privatization of fresh water goods and services can be seen as the transformation of a good held in common to a commodity controlled by transnational corporations.

CHAPTER II – THE TRANSNATIONAL WATER ALLIANCE: GLOBAL GOVERNING INSTITUTIONS, THINK TANKS AND TRANSNATIONAL CORPORATIONS

Introduction

Globally, there has been a concerted effort amongst various international financial institutions and other global governing bodies to classify fresh water and its related services as an economic good, one that can be commodified, privatized, and consequently sold as a commodity on the free market. Because a significant portion of the world's population do not have sufficient financial means to exercise private rights to goods and services in the free marketplace, issues associated with commodification and privatization, namely those of access and exclusion, come into question.

By initiating and infiltrating a number of key intergovernmental agencies, international non-governmental organizations, as well as global governing institutions, transnational water corporations implement their agenda to commodify and privatize fresh water goods and services. It is these organizations and institutions that effectively provide the means whereby the fresh water commons are increasingly transformed into transnational corporate private property. This transnational water alliance represents the interests of transnational water corporations in the development and expansion of the global economy and a global water market.

This analysis will examine the roles and operations of global governing bodies, namely the global enabling framework including the UN, the WTO, the World Bank, and the IMF, as well as various international water organizations and agreements. This analysis pays specific attention to how the roles and operations of these governing bodies and organizations relate to and represent transnational corporate interest to commodify and privatize the fresh water commons. The conceptualization of issues within this chapter is couched in terms of the broader property framework that serves as the theoretical basis for this thesis. By applying this property framework to the mandate and operations of these governing bodies and organizations, the nature of their work and the extent to which these organizations transform the way in which societies produce and distribute goods and services will be better understood.

Second, this chapter will explore the various intergovernmental organizations and NGOs that have a vested interest in garnering public support for the commodification and privatization of fresh water goods and services. As previously mentioned, these organizations not only represent the interests of capital, for the most part they are the embodiment of capital. Often, these organizations are made up of former high-ranking officials from development banks such as the World Bank or the IMF, or former presidents, vice-presidents and/or executives from transnational water corporations. This section will explore the relationship between capital and the public support for the commodification and privatization of fresh water resources.

Third, this chapter will examine the operations of the global enabling framework with respect to how their policies and operations relate to the commodification and privatization of fresh water goods and services. Barlow and Clarke refer to the global

enabling framework as the “political machinery” of capital and suggest that these institutions “are indispensable in providing the financial and legal leverage required to build a global water market” (Barlow & Clarke, 2002, p.156-157). The policy frameworks of these governing institutions effectively provide the means by which transnational water corporations gain access to fresh water goods and services.

International Agreements and NGOs

The Dublin Principles

The 1992 International Conference on Water and Environment, held in Dublin, Ireland, marked the first concerted effort on the part of transnational water corporations to gain access to the fresh water commons. The principles developed at the conference, which constitute the Dublin Statement, have had a significant impact on the way in which NGOs, global governing institutions, transnational corporations and states view fresh water with respect to their policy initiatives. The Dublin Statement is regarded as the basis for water sector reform today. Moreover, from the point of view of transnational water corporations, the Dublin principles represent the necessary vindication for the commodification and privatization the world’s fresh water goods and services.

Critics of the Dublin Statement are concerned with the statement’s provision that suggests, “Water has an economic value in all its competing uses and should be recognized as an economic good” (WWAP, 2003). Indeed, the Dublin Statement is predicated on the idea that water is an economic good, and therefore a commodity that may be bought and sold on the free market. In support of the Dublin Statement the UN suggests that “past failure to recognize the economic value of water has led to wasteful

and environmentally damaging uses of the resource” and therefore “managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources” (WWAP, n.d.A).

Though the Dublin Statement is presented as an effort to better manage fresh water goods and services, the principles outlined within the statement have been met with scepticism as critics argue that these principles represent key ideological underpinnings marking a transformation in the way we conceptually view fresh water. Gleick suggests that transforming water as a commons into an economic good “challenges traditional approaches to government provision of basic water services” (Gleick, 2002, p.58). He notes that the idea of water as an economic good that should be subject to the rules of the marketplace is “among the most powerful and controversial new approaches to water policy...” (Gleick., 2002, p.33).

Touted by neoliberal governments, NGOs and transnational corporations alike, the ‘Dublin Principles’ are consistent with the processes of economic globalization and are intended to garner public support for the creation of a global water market. The Dublin Statement notes that “a high priority should...be given to the preparation and implementation of integrated management plans, endorsed by all affected governments and backed by international agreements” (United Nations Environment Programme [UNEP], n.d.). Integrated management plans, otherwise known as Integrated Water Resource Management (IWRM) is a form of governance that recognizes the social aspect of water management while enhancing the economic priorities of water planning. Effectively the Dublin Statement endorses the processes of economic globalization which seek the total, or at least, partial privatization of fresh water goods and services.

Under the ‘Capacity Building’ provisions that internationally coordinate commodification and privatization efforts, the Dublin Statement suggests that governments are “required” to act judicially in creating an “enabling environment in terms of institutional and legal arrangements...” (UNEP, n.d.). This implies that governments are required to formalize the commodification and privatization of fresh water goods and services thereby actively creating an ideal environment for private interests to operate. Furthermore, the statement notes that these principles should be “backed by international agreements” suggesting that globally, there needs to be a common conceptual understanding of fresh water in terms of consistent property framework (i.e., private property).

Many suggest that the Dublin Statement resonates with Hardin’s earlier postulation that when a resource is free people do not regard it as valuable. It follows, then, that the operation, maintenance and investment in fresh water utilities should be covered by payments by consumers and not by state subsidies (Holland, 2005, p.12). Moreover, as Gleick suggests, “economists seized upon the idea to argue that water should be treated as a private good, subject to corporate control, financial rules, market forces, and competitive pricing” (Gleick, 2002, p.58).

In effect, the Dublin Statement is the conceptual leverage for gaining widespread support for the ideological shift in the way in which transnational actors, including national states, view fresh water goods and services. However, the rhetoric utilized to describe commodification and privatization within the Dublin Statement is such that it withholds the nature of this ideological transformation. Analysis of the Dublin Statement reveals the neoliberal underpinnings with which these policies are consistent.

Barlow and Clarke note that the Dublin Conference, along with the United Nations Conference on the Environment and Development (UNCED) in Rio de Janeiro that same year, were significant not only for redefining water as an economic good, but also for the fact that the conferences served as fora where the proponents of the commodification and privatization of fresh water formed a series of organized networks of international water agencies (Barlow & Clarke, 2002, p.157). In fact, as Black notes, it has been widely reported that many of the policy fora at these conferences were co-opted, “by international exponents of the neoliberal agenda and their corporate allies” (Black, 2004, p.68).

Three agencies in particular were founded as a result of these two meetings, namely: the World Water Council (WWC), the Global Water Partnership (GWP), and the World Commission on Water (WCW). Effectively, these organizations are think tanks that serve as a critical link between transnational water corporations and the policy makers of global governing institutions (Luoma, 2004, p.55). Luoma notes, “through these partnership, the economic motives of the major water companies become rationalized as, or embedded in the façade of, broader public interest objectives” (Luoma, 2004, p.55). The policy frameworks and operations of all three of these agencies – based on the principles of the Dublin Statement – reflect their ideological support for the commodification and privatization of fresh water goods and services (Barlow & Clarke, 2002, p.157).

The World Water Council (WWC)

The WWC was established in 1996 by the United Nations and the World Bank and acts as an “international multi-stakeholder platform”. Barlow and Clarke point out

that the WWC's main task is "to provide decision makers with advice and assistance on global water issues" (Barlow & Clarke, 2002, p.158). Their mission is to "to promote awareness, build political commitment, and trigger action on critical water issues at all levels, including the highest decision making level, to facilitate the efficient conservation, protection, development, planning management and use of water in all its dimensions on an environmentally sustainable basis for the benefit of all life on earth" (World Water Council [WWC], n.d.A). In addition, the council "aims to reach a common strategic vision on water resources and water services management amongst all stakeholders in the water community" (WWC, n.d.A).

Currently, the WWC has dedicated its operations to advancing the water-related Millennium Development Goals (MDGs), all of which are consistent with the idea that water is an economic good. These water related MDGs include a broad range of topics that are encapsulated by four major themes: (i) Water, Human Rights and Politics, (ii) Water, Institutions and Financing Capacity, (iii) Water Services and Infrastructure, and (iv) Water and Environment. Of these, the WWC council focuses its efforts in three key areas: (i) Politics and power structures, (ii) Development and improvement of policies and institutions, and (ii) Implementation and impact of policies (WWC, n.d.B). The WWC is the catalyst and organizing body that hosts the triennial World Water Forum – a meeting that is notorious for bringing together the most powerful actors when it comes to the commodification and privatization of fresh water resources. To date, the final reports from all four World Water Forum conferences strongly favour private sector participation with respect to the provision of fresh water goods and services.

Critics of the WWC call attention to many of the organization's high-ranking officials who have close ties to global governing institutions and private industry. WWC's president until January 2005 was William Cosgrove, an ex-World Bank consultant. The acting president, Loïc Fauchon, is also president and director general of Groupe Des Eaux de Marseilles, a water company owned by water giants Suez and Veolia (Holland, 2005, p.114). René Coulomb, from the water corporation Suez, is one of three founding members of WWC and sits on WWC's board today (Holland, 2005, p.114).

The Global Water Partnership (GWP)

In response to the demands made at several key international environmental meetings, a group of agencies, including The World Bank, the United Nations Development Program (UNDP) and the Swedish International Development Agency (Sida), collaborated to create the GWP (Global Water Partnership [GWP], n.d.A). The GWP essentially carries out the operational mandate of the WWC and also acts as a "a working partnership among all those involved in water management: government agencies, public institutions, private companies, professional organizations, multilateral development agencies and others committed to the Dublin-Rio principles" (GWP, n.d.A). In effect, as Holland points out, the GWP "serves as a mechanism for alliance building and information exchange" (Holland, 2005, p.115).

GWP's main operating principle rests upon the idea that water is an economic good. Barlow and Clarke note that this principle, guided by the provisions of the Dublin Statement, "lies at the core of the GWP's main programs to reform water utility systems and water resource management in countries around the world" (Barlow & Clarke, 2001,

p.157). This principle is reflected in the policy mandates of a number of affiliated organizations that carry out the GWP's policy initiatives. For example, one such organization, Cap-Net - an international water network dedicated to "capacity building and Integrated Water Resource Management (IWRM)" - asserts that there is a "widespread need for water sector reform..." The challenge, however, from Cap-Net's point of view, "is to reach mutual agreement about the level at which...government responsibility should cease, or be partnered by autonomous water services management bodies and/or community-based organizations" (Cap-Net, n.d.A). Moreover, in a recent policy paper, Cap-Net implies that the right of exclusion, based on the idea of private rights to water, is the appropriate allocating mechanism for fresh water. They write:

Treating water as an economic good is an important means for decision making on the allocation of water. This is particularly important when extending supply is no longer a feasible option. When there is competition for water resources it brings into the open the need to justify the allocation of water to one user rather than to another (Cap-Net, n.d.B).

This statement implies that exclusion to socially necessary fresh water goods and services is necessary and justified in terms of market logic.

Like the WWC, critics of the GWP are concerned with the organization's close ties not only to global governing institutions and development banks, but also to private industry. For example, the current chairperson of the GWP, Ms. Margaret Catley-Carlson, is a former president of the Canadian International Development Agency (CIDA), and sits as chair of the Water Policy Advisory Committee of Suez – one of the world's largest transnational water corporations (GWP, n.d.B; Friends of the Earth, n.d.). In addition, René Coulomb, a senior executive of Suez and one of the founding members of the World Water Council (WWC), sits on GWP's steering committee. Also, Ivan

Chéret, a representative of Suez, sits on the GWP's Technical Advisory Committee (Barlow, Maude, n.d.A). These close ties invariably affect policy decisions and therefore have a direct affect on the policy initiatives that arise as a result of GWP's operations.

World Commission on Water for the 21st Century (WCW)

In 1998, with the assistance of a number of governments, the WWC, the UN, and the World Bank formed the World Commission on Water for the 21st Century (WCW). The purpose of the WCW is to present a long-term vision of fresh water that is consistent with the Dublin Statement and the operations and policy frameworks of the WWC and the GWP. The primary responsibility of the WCW is to promote an agenda that favours the granting of private property rights to fresh water goods and services via the free market (Holland, 2005, p.117).

At the time of WWC's inception the chairperson was Ishmail Serageldin – former vice president of the World Bank. Other board members to date include former Suez executive director Jérôme Monod, Margaret Catley-Carson – the current chairperson of the GWP, and Enrique Iglesias – president of the Inter-American Development Bank (Barlow & Clarke, 2002, p.158; Holland, 2005, p.117).

The WWC, GWP and WCW and the Conceptualization of Fresh Water

The significance of the WWC, GWP, and the WCW, is that these organizations are responsible for creating the necessary ideological conditions, or in other words, gaining public support, for the commodification and privatization of fresh water goods and services. In fact, Cap-Net notes that their view of fresh water as an economic value should be viewed as a “philosophy” or “guiding conceptual framework” (Cap-Net,

n.d.C). Indeed, like other such water organizations, Cap-Net's motivations are guided by an ideology or specific conceptualization of the world. This is a world governed by private property relations where all social relations are carried out by contract in the marketplace. As Cap-Net suggests, this is a world where one's freedom or liberty to use or enjoy fresh water goods and services is exercised at the expense of another person's use and enjoyment.

Economic Globalization and Fresh Water

The global enabling framework, including the operations of the UN, the WTO, the IMF and the World Bank, is a global regulatory regime whose modus operandi is the aggressive promotion and implementation of a global capitalist system of transnational corporate private property. By implementing and enforcing standardized neoliberal policy reforms the global enabling framework aligns nation-states' trade and regulatory policies in such a way that gives the global economy and transnational corporations their impetus.

Though the imposition of neoliberal reforms differs in intensity throughout much of the First and Third World, these reforms impose similar economic initiatives: liberalization, deregulation and privatization. As previously mentioned, liberalization opens national markets to the flow of capital, whereas deregulation subjects publicly provided goods and services to competition from private enterprise. Privatization ultimately transfers the control of goods and services from the public to private sector (Gleick, 2002, p.35).

The global enabling framework imposes a set of rules and regulations with which national governments must comply. The decision-making capacities of nation states are

circumscribed under the binding agreements of the WTO and/or the conditionalities attached to World Bank and IMF loans. As Teeple notes, national policies are rendered “subordinate to the demands of the global market and to the regulations, laws, standards, and enforceable deregulatory powers of these international organizations” (Teeple, 2000, p.128).

In negotiating concessional agreements with the global governing institutions, nation-states have but two choices: either alter domestic policies by implementing neo-liberal reforms so as to secure capital mobility and market access for transnational corporate capital, or suffer the far-reaching draconian disciplines of these institutions. Many of these reforms are aimed at reducing consumer, environmental, health and labour standards, as well as reducing business taxes, facilitating relocation of operations to lower wage areas and encouraging the liberalization and expansion of markets within national borders (Brecher & Costello, 1998, p.57). The facilitation of market-orientated reforms initiated by these global governing institutions pervades all aspects of social reproduction. As the WTO and various regional free trade agreements implement neo-liberal reform throughout much of the First and Third World, the IMF and World Bank carry out these policies in the Third World by way of structural adjustment programs (SAPs).

United Nations (UN)

Following the Dublin meeting and the 1992 United Nations Conference on Environment and Development in Rio, the UN adopted the view that fresh water has an economic value. Gleick points out that Chapter 18.8 of UN Agenda 21 clearly states: “Integrated water resources management is based on the perception of water as an

integral part of the ecosystem, a natural resource, and a social economic good...” (Gleick, 2002, p.38).

Founded in 1945, the United Nations was intended to facilitate relations between nation-states and international institutions and organizations in an increasingly globalized world. The UN would become the political foundation for a global capitalist system. As Teeple notes, “the UN Charter of 1945 may be seen as both the culminating statement of the principles of relations between national capitals and the beginning of the end of such relations” (Teeple, 2005, p.205). In other words, as transnational capital increasingly usurps national capital, the UN continues to lose much of its relevance.

Although its role as the facilitator of national capitals has become increasingly irrelevant, the UN continues to play an important role in the promotion of liberal democracy and private property within the global economy (Teeple, 2000, p.205). The UN plays a critical role in shaping the political, economic, and social conditions for capital to expand in its effort to access new arenas of capital accumulation. For example, the UN Global Compact – a partnership between the UN and the private sector – is a global initiative to promote corporate responsibility. Critics, however, point to the initiatives explicit promotion of corporate development and argue that the initiation of such an agreement affirms the UN’s commitment to corporate rights and private property. Teeple notes that by endorsing such an agreement “the UN not only declares its support in principle for corporate-driven economic development, but also is actively working to advance that agenda” (Teeple, 2005, p.156). Furthermore, by promoting free trade within the global economy the UN implies the preeminence of the rights of transnational corporations (Teeple, 2005, p.7). Moreover, through institutions such as the Security

Council, the UN assumes the role of policing the capitalist world economy whilst entrenching the necessary property relations for transnational capital to expand (McMichael, 2000, p.231).

By infiltrating many of the organizations and operations of the UN, transnational water corporations play an increasingly important role in UN policy formation. For example, the Director General Kofi Annan initiated the UN Water Advisory Board and in doing so appointed several prominent water privatization advocates to direct the board's policy directives, namely: Mahmoud Abou Zeid – Egypt's Irrigation and Water Minister and a member of the board of governors and founder of the WWC, Michel Camdessus – the former Managing Director of the IMF, Peter Woicke – Executive Vice-President of the International Finance Corporation (IFC) (part of the World Bank group), and Gérard Payen – Senior Executive Vice-President of Suez (Holland, 2005, pp.118-119).

Endorsed in 2003, UN-Water is the UN inter-agency mechanism that oversees water-related issues with respect to international agreements such as the MDGs. UN-Water's mandate is to facilitate effective support to member states in their efforts to achieve international water goals and targets. UN-Water also includes mechanisms for working with “non-UN system stakeholders”, or in other words, private citizens and/or private industry. UN-Water claims they serve to “strengthen inter-agency collaborative arrangements within the key areas of freshwater, water and sanitation, energy, oceans and coastal areas, and consumption and production patterns” (UN-Water, n.d.).

UN-Water formally declared 2005-2015 as the ‘Water for Life’ Decade (the second UN-declared international water decade – the first being 1981-1991). One of the many goals of the ‘Water for Life Decade’ is to meet the Millennium Development

targets of reducing by half the proportion of people without access to safe drinking water and basic sanitation by 2015 (UN-Water, n.d.). The policy initiatives set out to achieve the 'Water For Life Decade' and MDGs are guided, in part, by the basic principle that water is an economic good. Furthermore, these policy positions promote and facilitate the integration of private sector involvement with respect to the provision of fresh water goods and services.

The World Trade Organization (WTO)

The initiation of the General Agreement on Tariffs and Trade (GATT) in 1947 was an effort to establish a system of rules to regulate trade between nation-states. However, it was not until January 1, 1995, at the GATT Uruguay Round meeting that a comprehensive legal framework for global trade emerged in the form of the WTO (Higgot & Weber, 2003, pp.440-441). Besides functioning as a legal framework for global trade, the WTO extended GATT's role of reducing tariffs by promoting the rights of the corporation as the preeminent right in the global trade regime (Cavanagh, 2002, p.44).

Like the UN, the WTO is an independent jurisdiction. Unlike the GATT, however, the WTO's agreement is binding on all its members and therefore, under international trade law, the WTO operates as a formal global governing power (McMichael, 2001, p.175). As Higgot and Weber note, "all parties must commit to full membership and a permanent 'single understanding' of the rules-based nature of the system" (Higgot & Weber, 2003, p.441).

Wallach and Woodall outline the primary responsibilities of the WTO as follows: privatize, commodify, deregulate, harmonize, liberalize investment, liberalize finance, manage trade, create new property protections and homogenize culture and consumer demands (Wallach & Woodall, 2004, pp.4-5). By promoting this 'development' agenda, the WTO utilizes its political and juridical capacity to entrench private property relations and consolidate commercial law on a global scale (Higgott & Weber, 2005, p.434). Essentially the WTO seeks to transform all goods and services into commodities so that social reproduction, in general, may be subordinated to the private property relations of the global free market (Wallach & Woodall, 2004, p.13).

Many critics of the WTO point to the ideological basis upon which the WTO is legally grounded (Higgott & Weber, 2003, p.442). The WTO's ideological bias towards the free market is evident from the many rulings of WTO dispute panels. In most cases, these dispute panels have not only favoured the right of private property over social rights, but also extended private rights (Price, 2002, p.56). Higgott and Weber point out that WTO dispute panels operate according to the "principle of commercial enterprise and the movement towards comprehensive liberalization and privatization..." and therefore these panels generally favour market-orientated resolutions (Higgott & Weber, 2003, p.447).

The WTO and its agreements amount to a fundamental shift in the way we perceive the world. Social relations are redefined and characterized by the way in which individuals are increasingly drawn to the market in order to privately satisfy basic human needs. This market entrenchment is carried out by the WTO in a number of ways; however, three multilateral agreements characterizing the operational context of the

WTO, established at the Uruguay Round negotiations, are key to this entrenchment. These agreements include the GATT, the General Agreement on Trade in Services (GATS) and the Trade Related Aspects of Intellectual Property Rights (TRIPS) – an agreement which relates to copyrights, trademarks, industrial designs and patents (Rillaerts, 1999, p.16). These three agreements take precedence over the domestic regulatory and trade policy of WTO member countries and have the potential to overrule any domestic policy deemed restrictive to trade (Higgot & Weber, 2003, p.441; McMichael, 2001, p.175).

Once a country is accepted as a WTO member nation it undergoes WTO accession. The accession procedure consists of a series of bilateral and group negotiations, including negotiations of service liberalization, in general, as well as the liberalization of specific public sectors (Ellwood, 2003, p.12). Moreover, following a member's accession they are subject to all agreements that fall under the auspices of the WTO including three key GATT provisions: 'tariff binding', 'Most Favoured Treatment' and 'National Treatment'. Girouard outlines these provisions:

Article II, pertaining to "tariff bindings," provides that each member will apply a customs duty to the imported products of each other member that is no less favorable than the rate specified for the products in the member's tariff schedule. Article II is reinforced by two other provisions: Article I, pertaining to 'Most-favored-nation Treatment' for imports, which ensures that a WTO member agreeing to a trade concession with another member or non-member extends that concession to all other WTO members; and Article III, pertaining to 'National Treatment,' which prohibits a WTO member from applying differential taxes, charges, or regulations to domestic products and products imported from other WTO members (Girouard, 2003, p.254).

Many argue that by providing market access to private industry through provisions such as the 'Most-favoured-nation Treatment' and 'National Treatment', and by securing

market access through WTO dispute panel resolutions, the WTO makes the processes of privatization and deregulation not only inevitable but also irreversible (Ellwood, 2003, p.12).

Furthermore, these binding agreements call into question the sovereign rights of member countries. WTO arbitration bodies rule on legal issues that are specific to relevant disputes even if these issues are the subject of highly contentious national debates. Moreover, as Mann suggests, decisions made by WTO arbitration “are not subject to review by domestic courts, but only to limited arbitration review processes that do not usually permit the reversal of general errors in law, even in relation to the interpretation of domestic laws.” He adds, “In a similar vein, it is clear from the arbitrations that when domestic law and international law under an investment agreement appear to be in contradiction, it is international law that will prevail” (Mann, 2004, p.17).

In the 1980s western governments and the growing private service industry recognized the opportunity of international trade in services in the WTO. Rillaerts notes, “by removing obstacles to international trade in services and by offering services exporters predictability for their industrial trade and investment, export could be stimulated for services...” (Rillaerts, 1999, p.15). Now, in addition to goods, services would fall under the GATS – a goods and services agreement operating under the auspices of the WTO. This agreement has significant implications for fresh water goods and services.

WTO and GATS

Service liberalization under GATS was initiated at the WTO's Uruguay Round negotiations in 1986 and officially came into force on 1 January 1995 (Kirkpatrick et.al. 2006, p.2). However, as Wallach and Woodall note, in 2000 new negotiations "aimed at dramatically expanding the WTO constraints on governments' right to regulate and at adding new service sectors to those already governed by GATS rules" would extend the reach of GATS (Wallach & Woodall, 2004, p.109). Indeed, a wide range of trade in services is included under the GATS 'progressive liberalization' agenda (Mann, 2004, p.8). Wesselius points out that GATS provisions are far-reaching and include public services that "affect the environment, culture, natural resources, drinking water, health care, education, social security, transportation services, postal delivery and a variety of municipal services" (Wesselius, 2002, p.12).

Critics concerns over the GATS agreement are two-fold. First, GATS promotes market relations through the liberalization and privatization of services. Although the GATS agreement does not specifically require member countries to adopt privatization policies, it sets the conditions for deregulation and privatization. As Mann notes, the 'progressive liberalization' mandate of the GATS "implies freeing the service sectors of limitations on the provision of services from outside or on foreign investment or foreign ownership of service companies inside the liberalizing state " (Mann, 2004, p.8). Furthermore, according to the GATS agreement, once a country has opened a specific sector to private sector involvement, any WTO member nation can demand of that nation that certain services be opened to all interested private companies – foreign or domestic (Holland, 2005, p.160).

Before GATS, certain services were public in the sense that people had universal access irrespective of their ability to pay for the right to use them. Effectively, GATS redefines these services in terms of their commercial potential. As Higgot and Weber suggest, “GATS is premised on a particular market-orientated structure of ownership that disregards the social context of service provision...” (Higgot & Weber, 2003, p.436).

Critics’ second concern with the GATS is the expansive authority given to the WTO under this agreement. The GATS permits the WTO to limit member countries’ ability to establish or maintain federal, state and local regulations for protecting public service sectors. In other words, GATS rules apply to all levels of government: national, regional, and municipal. Once again, this calls into question the sovereign rights of WTO members (Wallach & Woodall, 2004, p.109). Wesselius notes that the GATS “constraints apply to virtually all government measures affecting trade in services, from labour laws to consumer protection, including regulations, guidelines, subsidies and grants, licensing standards and qualifications and limitations on access to markets, economic needs tests and local content provisions” (Wesselius, 2002, p.12). Indeed, GATS affects government autonomy because as an investment agreement the rights of private investors must be taken into consideration (Price, 2002, p.60). Under the domestic regulation rules of the GATS, a member country may challenge another member’s laws on the grounds that a particular regulation may be a trade barrier, even if that regulation is protecting a public sector. If the WTO finds a government in contempt of trade rules, that government then must be compelled to amend government legislation and programs or face economic sanctions by the WTO (Polaris Institute, 2003, p.5).

Fresh Water and the WTO's GATT and GATS

Currently, fresh water goods and services are not included under the GATT or GATS agreements. The inclusion of fresh water under these agreements is a contentious issue that has been vehemently debated in the last decade by WTO members. WTO member countries are given opportunities, first under their WTO Accession agreements and second under GATS negotiation, to place conditions or limitations on certain goods and service sectors. There are many grey areas, however, with respect to fresh water goods and services especially when the 'progressive liberalization' mandate under the GATT and GATS agreements are taken into consideration.

Girouard suggests that the argument that a member is permitted to set conditions or limitations on certain goods and services is problematic for a number of reasons. First, he argues that the WTO agreement is "binding on all its members" and that each member must ensure the "conformity of its laws, regulations and administrative procedures" to the provisions of GATT and GATS. It follows, then, that it would prove difficult for a national state to negotiate such conditions and limitations in their accession into the WTO. Second, he points to the GATT provision that requires the "WTO members' consent not to adjust their GATT obligations through domestic measures" (Girouard, 2003, p.259). Third, Girouard point out that the WTO's Ministerial Conference and General Council have exclusive authority to adopt interpretations of the GATT thereby potentially rendering members' interpretations irrelevant (Girouard, 2003, p.259).

Conditions and limitations granted to members under the GATS agreement are currently subject to change under the Doha Round negotiations. Mann points out, "the most recent negotiating document, the July 2004 WTO statement that resumed the Doha

Round negotiations after Cancun, includes a specific statement that no sectors are to be *a priori* excluded from negotiations. Hence, all public utility and service sectors are subject to negotiations and the pressures that come with them” (Mann, 2004, p.11).

In short, how the GATT and GATS rules will play out with respect to fresh water goods and services remains uncertain. After the publicized failure of the WTO’s Seattle (1999), Doha (2001) and Cancun (2003) negotiations, the Hong Kong meetings (2006) were to be a site of WTO progress on key issues such as trade in services. However, besides agreeing to carry out the Doha Round negotiations, it has been reported that little if anything was accomplished in Hong Kong either. WTO scheduled negotiations in 2006 continue to proceed. After much criticism for its lack of progress in the last five years of negotiations, the WTO is seeking legitimacy from its current negotiations making critic’s concerns all the more relevant.

The World Bank and the International Monetary Fund (IMF)

Whereas the WTO is primarily responsible for initiating and enforcing liberalization, deregulation and privatization policies throughout the First World, the World Bank and IMF carry out these same neoliberal policies throughout much of the Third World. Founded in 1944, the World Bank and the IMF have evolved into global governing institutions that facilitate the inclusion of Third World economies into the global economy. The market-orientated reforms that characterize the World Bank and IMF ‘development’ agendas have increased in number and intensity since the 1970s.

Conditionalities attached to World Bank and IMF loans, commonly referred to as SAPs, promote market-orientated reforms on public industries and services including

telecommunications, electricity, transportation and water services among others. Between the 1980s and 1990s, SAPs were imposed on close to ninety Third World countries. After three decades of criticism over SAP reforms, however, the World Bank and IMF are carrying out the same neoliberal policies albeit under the newly named 'Poverty Reduction' and 'Growth Facilitation' programs (Amengo-Etego, 2003, p.20).

Both the World Bank and the IMF have stressed the need for countries to reform, strengthen and secure property rights and the rule of law so as to create a favourable investment climate for the private sector (World Bank and IMF Development Committee, 2005, p.6). In a 2005 joint policy paper outlining a 'Five Point Agenda' with respect to their participation in the MDGs, the World Bank and the IMF themselves pointed out that their operations seek to "improve the enabling climate for private activity by removing regulatory and institutional constraints and strengthening economic infrastructure..." within Third World countries (World Bank and IMF Development Committee, 2005, p.3).

Indeed, many critics argue that transnational corporate control over Third World economies is formalized in IMF and World Bank imposed SAPs. In most cases SAPs go beyond debt repayment and short-term macroeconomic stability effectively dismantling domestic regulations that are viewed as obstacles to the expansion of capital markets (Cavanagh, 2002, p.41). Honeywell points out that the dismantling of legislative power and the deregulation of economies "allows for the free mobility of capital and subsequently large foreign direct investment (FDI) projects by transnational corporations (Honeywell, 1983, p.30). Indeed, the beneficiaries of World Bank and IMF procurement contracts are typically transnational energy and construction firms, large consulting firms

and other large-scale procurement contractors (Korten, 1995, p.167). Rarely do local community or business initiatives benefit from World Bank or IMF projects. Moreover, in most cases, large transnational corporations monopolize markets, effectively undermining local community and business initiatives. Black estimates that of the billions of dollars invested, less than 1 percent of World Bank loans allocated for improved water services and sanitation systems has gone to small-scale local ventures (Black, 2004, p.81).

Conclusion

As the processes of economic globalization increasingly encroach upon property relations that exist outside prevailing corporate private property, access to resources such as fresh water become mediated by the rules and regulations of the free market. These processes necessitate the commodification and privatization of fresh water and are carried out by an increasingly organized global water alliance made up of international non-governmental water organizations, transnational water corporations and global governing institutions.

As UN efforts secure and reinforce the conditions for liberal democracy globally, trade agreements enforced by the WTO as well as SAPs programs imposed by the World Bank and IMF facilitate the transformation of all property relations outside those of private property relations. Inasmuch as these global governing bodies create the conditions whereby fresh water goods and services are increasingly subordinated to the free market and subject to the control of transnational corporations, these institutions fundamentally transform the way in which people meet their fresh water needs.

CHAPTER III – CORPORATE ENCLOSURE OF THE FRESH WATER COMMONS: THE PREEMINENCE OF TRANSNATIONAL CORPORATE PRIVATE PROPERTY IN THE GLOBAL WATER MARKET

Introduction

The institutions and processes of economic globalization set the conditions whereby transnational water corporations increasingly take ownership and/or control of publicly provided fresh water goods and services. Indeed, trends from the global water market reveal a substantial and growing private sector involvement. These trends substantiate this thesis' claim that the commons are increasingly being transformed into a form of transnational corporate private property.

The increasing commodification and privatization of fresh water goods and services takes the form of a highly monopolized global water market whereby a group of transnational water corporations seek to expand their ownership and/or control in the water services sector as well as in the ever-growing bottled water industry. Although the privatization of fresh water goods and services is not a new phenomenon, what is particularly noteworthy about privatizations today is the global proportions with which this phenomenon reaches as well as the extent to which transnational corporations control and benefit from these processes.

In order to reach a point where we may explore the implications of transnational corporate control of the world's fresh water goods and services (Chapter 5), we must first survey the market trends of the global water industry, trends that by in large have taken

shape over the last three decades and point to the creation of a global water market characterized by transnational corporate dominance.

Privatization of Fresh Water Goods and Services

The History of the Privatization of Fresh Water Utilities

The privatization of water utilities has a long history. Water services were privatized in parts of Europe as early as the 1850s. In France, a wave of privatization hit the predominantly publicly delivered water service sector in the early 19th century. By the mid 19th century municipalities throughout France began to contract water services to private contractors (Gleick, 2002, p.60). Today, 77 percent of water utilities in France are privately operated (Holland, 2005, p.220).

The trend in the United States went in the opposite direction. At the beginning of the 19th century private water companies controlled 94 percent of water services. Private control declined, however, as water companies failed to provide equitable access to all citizens (Gleick, 2002, p.60). Although the state was the main water services provider throughout the 20th century, like other First World countries, there was a significant increase in privatization throughout the 1990s. In fact, privatization of water and wastewater services grew by 84 percent in 1990s and 13 percent in 2001 alone (Moore & Segal, 2006, p.6). Today more than 40 percent of drinking water systems in the United States are private. As market trends indicate, there is a significant increase in private sector participation with respect to the remaining 60 percent of water systems that are government owned (Moore & Segal, 2006, p.6).

Although the French and US have seemingly gone different directions in the past with respect to their policies on water privatization, like the majority of First and Third World countries today, their current policies call for a significant increase in private sector participation. A 2000 OECD policy paper on water utility services confirms the significant increase in “commercialization and private sector participation...” (Organisation for Economic Co-operation and Development [OECD], 2003, p.13).

Factors Contributing to a Growth of Private Sector Involvement

Worldwide governments struggle not only to repair and maintain existing water services infrastructure but also to construct infrastructure where there is a lack of water services in the first place. Instead of redistributing public monies, however, governments are turning to the private sector for capital investment. This increase of private sector participation can be attributed to a number of varying and largely ideological factors.

The first factor, characterized as a ‘crisis of scarcity’, is one that is often asserted by both proponents and opponents of privatization. It is widely reported that although there is an abundance of water in the world, the amount of fresh water is rapidly depleting. Barlow and Clarke report that readily accessible fresh water resources make up only one half of one percent of the total amount of water on earth; the remaining is seawater or water that is stored in aquifers (Barlow, 2001, p.5). The Blue Planet Project - a fresh water advocacy group and extension of the Council of Canadians - reports that 1.5 billion people worldwide lack access to clean and safe drinking water and this figure is predicted to increase by the year 2025 when it is estimated that over 3 billion people, or half of the world’s population will be living with less than adequate fresh water (Blue Planet Project, n.d.). Friends of the Earth point out that water related diseases kill 5

million people annually, 4 million of those being children (Friends of the Earth Privatization report, 2005). Some claims have gone as far as predicting that the wars over the next fifty years will be fought not over land or oil, but rather water security.

Though these statistics represent a call for concern, it is important to note that the ‘economics of scarcity’ invariably contribute to a public anxiety and subsequent willingness to accept private sector participation across many public sectors. Yaron argues that although few corporations would openly articulate a policy capitalizing on water scarcity, corporations profit from policy initiatives that seek to address scarcity claims. The ‘economics of scarcity’ can be used to justify free market mechanisms for allocation purposes where allocation is based on the sale and purchase of fresh water goods and services. In addition, the ‘economics of scarcity’ necessitate the need to find new sources of fresh water, which in turn largely benefits corporations as they acquire the necessary rights to access alternative ways of obtaining water (e.g. water diversion, capture, and desalination). Yaron asserts, “what may be viewed as an altruistic quest by the corporations to meet growing demand in water-scarce regions may actually be a quest for new products and markets” (Yaron, 2000, p.35).

Several other factors contribute to the willingness to transform publicly delivered fresh water goods and services. Gleick lays out some of the factors influencing governments to consider and adopt privatization policies. He points to the widespread belief that: “(i) privatization can help satisfy unmet basic water needs, (ii) more business is better, (iii) the private sector can mobilize capital faster and cheaper than the public sector, (iv) smaller government is better, and (v) competent, efficient water-system operations require private participation” (Gleick, 2002, p.58).

Many of these factors are driven by the belief in the growth imperative. The growth imperative is informed by the idea that private sector investment contributes to growth and that growth is required to reduce poverty (Bayliss, 2003, p.4). This is a worldview that finds the cause of poverty not in the enclosure of the commons but in the lack of capitalist development. It is a worldview that finds capitalist growth and/or progress not as a force of social and environmental destruction, but rather the solution to poverty and environmental destruction. It is a worldview that sees all social relations that lie outside that of the realm of the commercial as being poor or undeveloped (Shiva, 2005, p.23).

Although many of the factors mentioned above are often argued separately, all of them are consistent with the broader neoliberal framework that seeks to privatize fresh water goods and services. Indeed, unprecedented growth of the global water market, particularly within the last three decades, is consistent with the global expansion of neoliberal policy reform. The commodification of fresh water, the deregulation and privatization of public water utilities and the liberalization of markets in general (each characteristic of neoliberal policy reform), contribute to an increase in transnational corporate management and/or control of fresh water goods and services.

Survey of the Global Water Market

Utilities and Sanitation Sector

As transnational corporations look to increase their stake in the global water services market they focus their privatization efforts in four major areas, including water and wastewater services, water treatment, water related construction and engineering, and

water services technologies (Yaron, 2000, p.19). Within these areas, transnational water corporations employ their expansionist strategies in one of two ways. The first and most common strategy is in the form of public-private partnerships. The second and least common is characterized by government divestiture or full privatization where full ownership and control of water services is transferred to water corporations.

Public-Private Partnerships

Worldwide there have been 715 reported public-private partnerships (PPPs) in the water and sanitation sector since 1989. Sixty percent of these PPPs are located in the most urbanized parts of the world - Western Europe (16 percent), North America (12 percent), Central/East Europe/Commonwealth of Independent States (CIS) (6 percent), and most significantly Latin America and the Caribbean (26 percent) (Mehtotra & Delmonica, 2005, p.158). The remaining 40 percent of PPPs are distributed in the following regions: East Asia and the Pacific (16 percent), South Asia (10 percent), Sub-Saharan Africa (10 percent), and Middle East and North Africa (4 percent) (Mehtotra & Delmonica, 2005, p.158).

Public-private partnerships - commonly referred to as P3s or PPPs - involve private sector participation in a number of different ways. PPPs are characterized by private involvement in sectors and services that have been traditionally overseen or provided by the government (IMF, 2004, p.3). The IMF reports, “PPP presents business opportunities in areas from which it was in many cases previously excluded” (IMF, 2004, p.4).

Although private interests in the water market primarily focus their operations in water services they may also be involved in the construction and supply of infrastructure assets. In many cases, large transnational water corporations build large-scale water infrastructure in return for increased corporate involvement in the provision of water services, including a guaranteed profits on capital investment (Luoma, 2004, p.54; Murray, 2003 para.12). Interestingly, as Mehtotra and Delmonica note, “seventy percent of the operating PPPs requiring capital expenditure involve international contractors” (Mehtotra & Delmonica, 2005, p.158). Typically however, local governments continue to own the infrastructure in PPPs (i.e. plumbing, pumping, and filtering stations amongst other such facilities), whilst the operational responsibilities are transferred to a private, often foreign interest (Gleick, 2002, p.63; Luoma, 2004, p.54; Mehtotra & Delmonica, 2005, p.158). There are, however, forms of PPPs in which the private sector owns the utility through a lease or concession contract. Below is a snapshot of the various PPP models. Each model consists of varying degrees of private and public participation and ownership.

Public Water Corporations and Corporate Utilities

The public water corporation and/or corporate utilities model is characterized by the split ownership of a separate public body – a corporate utility - where private ownership is restricted and the public partner retains majority ownership (OECD, 2003, p.109; Gleick, 2002, p.65). Gleick notes that there are two different interests overseeing such an operation: “private owners seek to recover costs and maximize profits...” whereas public owners “are more likely to embrace concerns about affordability, water quality, equity of access, and expansion of service” (Gleick, 2002, p.66).

Service and Lease Contracts

In service and leasing contracts the public sector may retain asset ownership as well as a degree of control over the utility while a private corporation provides the day-to-day operations and maintenance (Yaron, 2000, p.83; OECD, 2003, p.25). This may include general services contracts, control over management of leased facilities and revenue collection. These contracts often include revenue sharing between the public and private partners (Gleick, 2002, p.66). However, in this model, as Yaron points out, “all investment risk is being borne by the government” (Yaron, 2000, p.83).

Concession Contract

Whereas in private-public joint ventures ownership of assets often remains with the public partner for the contract term, concession contracts place full responsibility for the water system, including operation and maintenance as well as capital investment risk and financial responsibility, in the private corporation (Gleick, 2002, p.66; OECD, 2003, p.25; Yaron, 2000, p.83). In order to recoup capital investments corporations typically sign long-term contracts spanning 25-50 years in length (Gleick, 2002, p.66; Murray, 2003, para.13). Regardless of the quality of service, many concession contracts guarantee the corporate service provider a minimum rate of return on investment (Murray, 2003, para.13).

Concession contracts include: Build-Operate-Transfer (BOT), Build Operate-Train-Transfer (BOTT), Build-Own-Operate-Transfer (BOOT), Rehabilitate-Operate-Transfer (ROT), and Build-Own-Operate-Own (BOO). Partial concessions are agreements that give corporations responsibilities for a portion of the water-supply

system. As concession contracts end, ownership of capital facilities may be transferred back to the government (Gleick, 2002, p.66).

Government Divestiture or Full Privatization

The second strategy, characterized as government divestiture or full privatization, is one that is typically reserved for the largest water corporations. This strategy is characterized by the purchase of smaller operations that have established a presence in a particular geographic region (Yaron, 2000, pp.19). These smaller operations may either be part of an existing PPP or a previously fully privatized operation. These types of acquisitions involve either the outright purchase of existing operations or the gradual takeover whereby large water corporations purchase shares in an existing corporation. As they increase their ownership of shares, large corporations increase their controlling stake of these smaller private operations. Often large corporations will eventually choose to purchase profitable operations outright thus transforming the operation into a subsidiary company (Yaron, 2000, p.19). Ultimately, divestiture or full privatization is the complete transfer of ownership and control (Yaron, 2000, p.83).

Notably, each model characterizes a fundamental transformation in the involvement of governments with respect to the distribution of water services. As water services are increasingly commodified and privatized governments are changing roles from “water service provider” to that of “water service regulator” (OECD, 2003, p.25). Indeed, market trends point to the fact that there will be a substantial increase in both PPPs and divestitures by 2025. Interestingly, in order to increase their controlling stake in the increasingly monopolized global water market, corporations are entering into joint

ventures or partnerships with other water corporations and/or corporations in other sectors (construction, energy etc.).

Three Transnational Water Giants: Veolia, Suez and RWE Thames

Veolia Environnement

Serving over 110 million people, or 1.8 percent of the world's population, Veolia Environnement (known as Vivendi Environnement until 2003) is the world's leader in water services provision. Operating in over 80 countries, Veolia Environnement's operations are managed by a large number of subsidiaries operating various businesses. Veolia Environnement's operations fall under four divisions: water (water cycle management), waste management (collection, management, treatment and recycling of waste), energy services and transportation (Veolia Environnement, n.d.B).

As Veolia Environnement's biggest revenue earner, Veolia Water earned \$11.7 billion in 2005, 50 percent of which was earned in France (Chandra et. al., 2005, p.33). Veolia Water's website states that as a water services provider it "specializes in outsourcing services for municipal authorities, as well as industrial and service companies, it is also one of the world's major designer of technological solutions and constructor of facilities needed in water and wastewater services" (Veolia Environnement, n.d.C).

Ninety-five percent of Veolia's revenue in 2003 (\$37.5 billion) was generated in industrial countries; however, their expansion has them operating worldwide (Holland, 2005, p.16). With 80 percent of their operations in Europe (50 percent in France and 30 percent elsewhere), Veolia Water is the leader in the European water utilities market. An

additional 7 percent of their operations are based in North America, 6 percent in Asia, and 7 percent in Africa, Middle East and India (Veolia Environnement, n.d.A).

Suez

Serving over 205 million individuals and 485,000 industrial clients, Suez and its various subsidiaries (including Ondeo, Ondeo Industrial Solutions, SITA and Degremont) provide a variety of private services within the electricity, gas, energy services, water and waste management sectors (Chandra et. al., 2005, p.2; Suez, n.d.).

Suez's operations are broken up into two main divisions- Energy and Environment. In 2005, Suez Environment, which includes Suez's water services business, earned \$14.6 billion in revenue or 26.8 percent of the \$54.5 billion earned by its parent company Suez (Suez, 2006). Suez's Energy division includes: electricity (sale, production, trading, operation and design); gas (sale, trading, transport, distribution, storage, operation, design and construction); as well as energy services (management, design and construction) (Suez, n.d.). The Environment division includes waste services (collection, sorting, incineration, disposal, cleansing and treatment) as well as water services (design, construction, treatment, management and distribution) (Suez, n.d.). Serving approximately 80 million individuals with drinking water, Suez is the second largest private water services provider (Suez, n.d.). Suez focuses the bulk of its operations in Europe with the remainder of its operations spread throughout the world. In fact, Suez Environment performs 75 percent of its operations in Europe (Chandra et. al., 2005, p.5; RWE, 2005, p.237).

RWE Thames Water

Serving over 70 million people worldwide with drinking water and wastewater services, RWE Thames is the third largest water services provider (RWE, 2005; Chandra et. al., 2005, p.1). Unlike Suez and Veolia, who have made a concerted effort to expand their operations globally, RWE focuses on its key markets of Germany, the UK, Central Eastern Europe and North America (RWE, n.d.A).

The RWE Group is made up of seven divisions including: RWE AG (RWE group centre responsible for group management such as strategy development, planning, controlling, financing, communications and executive HR development); RWE Power (exploration, extraction, production, generation, construction and operation); RWE Energy (electricity, gas and water services); RWE npower; (construction, operation, management and maintenance of power plants; RWE Trading (the management company for all energy trading activities within the RWE group); RWE-Thames (water and wastewater services); and RWE Systems (corporate services for the RWE Group) (RWE, n.d.B).

RWE Thames – RWE Group’s water and wastewater services business – generated \$5.3 billion or 9.6 percent of the RWE Group’s \$54.9 billion annual revenue in 2005 (RWE, 2005). RWE Thames offers water and wastewater services including: water and wastewater treatment; the supply of water treatment products and services; water process engineering; the design and construction of infrastructure; planning and asset management; project management; customer services; consultancy; and project financing (RWE n.d.C).

RWE Thames focuses its operations in two key markets where they are the largest water services provider – Europe (57 percent of operations) and the Americas (22 percent of which is in North America) (RWE website; RWE facts and figures report, 2005, p.237). RWE Thames serves another 15 million people outside of these two key markets. In 2005, however, the RWE Group reported that it is exiting from the water services market in North America and UK in order to focus on its electricity and gas business in Europe. Once the sale of their subsidiary American Water is underway they will initiate the RWE Thames Water divestment (RWE, 2005, p.20).

Although the previous analysis focused on transnational water corporations operating in the regional and municipal water utilities markets, corporations are also acquiring private rights to water through the ever-growing and lucrative bottled water industry. Similar to the utilities market, the bottled water market is an increasingly monopolized industry.

The Bottled Water Industry

Estimated Value of the Global Bottled Water Market

In 1995 the global bottled water industry had an annual growth rate of 8-10 percent and was worth an estimated \$14 billion (Yaron, 2000, p.79). In less than a decade the bottle water industry experienced more than a 100 percent increase in sales, and, by 2003, the global bottled water industry was worth a reported \$35 billion (Howard, 2003, para.7). Indeed, as Clarke notes, the global bottled water market is emerging as “one of the fastest-growing and least-regulated industries in the world...” and it shows no signs

of levelling off as bottled water corporations continue to report record profits (Clarke, 2005, p.1).

Bottled water plays an increasingly significant role in regions where there is inadequate municipal water infrastructure or where problems arise due to water scarcity or water pollution (approximately one-fifth of the world's population relies on bottled water) (Clarke, 2005, p.1). However, as Gleick argues, "bottled water rarely provides adequate volumes of water for domestic use..." and therefore "bottled water sales must not be considered acceptable substitutes for an adequate municipal water supply" (Gleick, 2002, p.44). Many argue, that bottled water is not the answer for the 1.1 billion people lacking adequate access to fresh water goods and services. Arnold suggests, "improving and expanding existing water treatment and sanitation systems is more likely to provide safe and sustainable sources of water over the long term" (Arnold, 2006, para.12). Furthermore, the increasing price of bottled water makes its use for domestic purposes unreasonable.

McGrath points out that the average retail cost of 16 ounces of Aquafina (one of PepsiCo's leading water brands) is \$1.19 (US) when the estimated retail cost of 16 ounces of municipal tap water is less than a penny (McGrath, 2004, para.11). The US Natural Resources Defence Council estimated that bottled water costs up to 10,000 times more than municipal tap water (Clarke, 2005, p.4). At as much as \$2.50 per litre or \$10 per gallon, bottled water costs more than gasoline (Arnold, 2006, para.1)

Many critics point to the exorbitant profit margins from bottled water sales when corporations pay little if anything for extracting water from municipal water systems, streams or aquifers in the first place (Clarke, 2005, p.29). Moreover, between 25 and 40

percent of bottled water sold in the US and 25 percent in Canada is merely reprocessed tap water (Clarke, 2005, p.28). Perhaps even more insidious, approximately 40 percent of bottled water is tap water with or without additional purification treatment (Arnold, 2006, para.10). Yaron points out that the bottled water industry “is plagued by reports that the water quality of more than one-quarter of the brands is inferior to regular tap water (Yaron, 2000, p.79).

Regardless of the origin or quality of bottled water, the bottled water industry is ever-growing and reaping record profits. In the US alone, where sales have tripled in the last ten years, the bottled water industry is a \$4 billion industry (Yaron, 2000, p.79). In 1970 the global consumption of bottled water was 300 million gallons (Ecologist, 2003). By 2004, this figure increased to over 41 billion gallons (Arnold, 2006, para.1). Nestlé Waters recently forecast consumption levels to be near 80 billion gallons by 2012 (nestlé-waters.com). As the fastest growing segment of the beverage industry, with consumption surpassing beer and coffee, bottled water is ranked next to soda as the second leading commercial beverage in North America and Europe (Howard, 2003, para.7; McGrath, 2004, para.11). Like the utilities market, the bottled water industry is dominated by a handful of large transnational corporations. Below is a survey of the four major bottled water players.

Four Major Bottled Water Corporations

Nestlé

With headquarters in Switzerland, Nestlé is the world’s largest food processing, packaging and beverage company and ranks amongst the top ten most lucrative corporations in the world (Clarke, 2005, p.14; Nestlé, n.d.A). Nestlé entered the water

business in 1969 when it purchased a 30 percent of Société Générale des Eaux Minérales de Vittel (SGEMV) (Clarke, 2005, p.14). Since then, Nestlé has acquired control of bottled water companies all over the world. Most notably, in 1992, Nestlé purchased the entire Perrier Group. By 1997, when Nestlé acquired San Pellegrino, it gained leadership of the lucrative Italian market and established a stake in the bottled water industry on every continent (Nestlé, n.d.B; Clarke, 2005, p.14).

Under the banner of Nestlé Waters, water sales represent \$6.3 billion or 9 percent of Nestlé's \$70 billion in annual sales (Nestlé, n.d.C; Clarke, 2005, p.14). Nestlé's water sales are split amongst its 75 brands in over 130 countries (nestlé-waters.com). The companies water slogan found on their website reads – “capturing nature in its purest form” (nestlé-waters.com).

Groupe Danone

Groupe Danone is a European food manufacturing, processing and beverage corporation based in France and operating in 120 countries (Groupe Danone, n.d.). In 2004, beverage sales represented \$4.5 million or 25 percent of Groupe Danone's \$18 million net sales (Groupe Danone, n.d.).

Clarke suggests that of the four major bottled water corporations, Group Danone is the smallest and perhaps least known (Clarke, 2005, p.23). However, some of its more well known water brands include the world's leading retail water brand – Evian (having a sales presence in 125 countries and selling 1.5 billion bottles annually) – as well as Aqua, Volvic and Wahaha (Groupe Danone, n.d.). As a result of Coke and PepsiCo's dominance in the North American and European bottled water markets, Danone focuses

its energies in India, Indonesia and China, controlling 34 percent of the market in these countries (Clarke, 2005, p.24).

PepsiCo

American based PepsiCo (parent company of Pepsi, Frito-Lay and Tropicana) is the fourth largest foods and beverage company in the world (PepsiCo, n.d.; Clarke, 2005, p.18). The Pepsi Bottling Group, Inc. (PBG) is the world's largest manufacturer, seller and distributor of PepsiCola beverages. PBG owns the production and distribution rights to Aquafina - one of the world's leading bottled water brands. In 2003, Aquafina generated \$8.1 billion, or 30 percent of PepsiCo's \$27 billion annual revenues (Clarke, 2005, p.18). Interestingly, unlike Nestlé's bottled water which is spring water, Aquafina is simply tap water taken from municipal water distribution systems and purified (Clarke, 2005, p.18). Although PBG reports that the US market is its main driver and that sales outside the US generated only 29 percent of its net revenues, PepsiCo's international divisions operate in 200 countries (Pepsi Bottling Group [PBG], 2005, p.26; Clarke, 2005, p.17).

Coca-Cola

Selling over 400 beverage brands and with operations in over 200 countries, the Coca-Cola Company, based in Atlanta US, is the world's largest manufacturer, marketer and distributor of non-alcoholic beverage concentrates and syrups (Coca-Cola, n.d.). In 2004, the Coca Cola Company reported revenues of over \$23 billion (US) (Coca-Cola, 2005, p.29). In 2005 Coca-Cola Company's sister company Coca-Cola Enterprises - the

largest authorized Coca-Cola bottler in which the Coca-Cola Company has a 36 percent owning interest - provided over \$18 billion (US) in revenue (Coca-Cola, 2005, p.8).

In 1970, with the launch of Bon Aqua, Coca-Cola entered the European bottled water market. Today Bon Aqua is sold in over 50 mainly European countries. In 1999, Coca Cola entered the American bottled water market with the launch of its Dasani bottled water. Dasani is now one of Coca Cola Enterprises' top five sellers. However, as Clarke notes, "Coke's biggest move occurred in 2002 when it joined forces with its competitor Danone to form Coca-Cola Danone Waters" (Clarke, 2005, p.21). With this move, Coca-Cola acquired licensing agreements to manufacture and distribute Danone's water brands in North America, including Evian and Volvic among other brands (Clarke, 2006, p.21).

Conclusion

There is a growing body of statistics pointing to a sharp increase in private sector participation in the water utilities and sanitation sector. Indeed, these statistics point to a significant increase in the privatization of fresh water goods and services. Likewise, the sale of bottled water - yet another form of the commodification of fresh water - is on the rise. Like the water utilities and sanitation sector, industry statistics point to an increasingly monopolized bottle water industry where four major players dominate the market.

We can conclude that a greater number of people throughout the world are increasingly relying on a contractual relation with a transnational water corporation in order to meet fresh water needs. Although many different, largely ideological factors

contribute to the increase of transnational corporate ownership and control of such fresh water goods and services, and though this control may take many different forms, the end result is the same: the way in which people are satisfying their water needs is fundamentally changing.

This increase of private sector participation, however, develops concurrently with a growing resistance movement. As global capitalist relations come to pervade all areas of life and as private property relations increasingly subordinate all forms of social reproduction, a growing number of people are gaining awareness of the rising inequality with respect to the private provision of socially necessary goods and services such as fresh water. As the commodification and privatization of fresh water goods and services exacerbate these unequal conditions, a growing number of people are resisting these processes.

CHAPTER IV – RESISTANCE

Introduction

Transnational corporate private property is the preeminent global property relation within the capitalist mode of production and these relations form the greater socio-economic structure of the global economy as a whole (Chapter I). It follows that the ownership and control of socially necessary goods and services, including the production and distribution of these resources (including fresh water), become part of unequal global class relations.

As evident from the increase in the commodification and privatization of fresh water goods and services over the last two decades we have seen that the global framework of capitalist private property relations (i.e. governing institutions, trade and treaty agreements, etc.) sets the conditions whereby transnational corporations gain access to fresh water supplies thereby transforming these resources into transnational corporate private property. However, a growing resistance movement develops concomitantly with the maturation of a global system of capitalist private property relations.

The resistance to the liberalization of trade and markets, the deregulation of economies and privatization of public assets, including the commons, is a response to key issues such as the commodification of society's goods and services, environmental destruction, exorbitant corporate profits and job insecurity for workers. More than this, however, resistance is a reaction to the subordination of all forms of rights to corporate

private property and the subsequent loss of control of socially necessary goods and services.

Although resistance to economic globalization characterizes this movement in general (as is the case of the anti-globalization/ global justice movement), various groups and peoples advocate on a wide array of issues. All of these issues, however, are defined by the subordination of all property relations to private property, the expansion of capital and the increasing control of all forms of social reproduction by transnational corporations.

As fresh water goods and services are increasingly subordinated to the free market and as the common right to fresh water is transformed into transnational corporate private property, people experience a series of enclosures that fundamentally change the way in which they meet their means of subsistence. This chapter explores the consequences of these enclosures as well as the growing resistance to the commodification and privatization of fresh water goods and services.

Most recently, a growing movement of peoples, communities and groups struggling for equitable access to fresh water goods and services has taken to promoting the idea that all people have a human right to water. They argue that this right should be enshrined in the Universal Declaration of Human Rights (UDHR). These groups suggest that codifying access to fresh water as a human right may encourage governments to adopt national legislation whereby all people, irrespective of financial wherewithal, will be accorded the necessary rights that would allow for sufficient access to fresh water goods and services.

In light of this strategy, we must ask if situating resistance efforts in an institution and framework for human rights (i.e. the UN and UDHR) is an effective strategy. Will situating resistance struggles in the liberal democratic framework of the UDHR ensure non-market access to fresh water goods and services for everyone? Or, do the principles of the UDHR – those based on the idea of what it means to be human in a liberal democracy – perpetuate the unequal property relations that characterize class divisions?

As human rights and freedoms in the capitalist mode of production are first and foremost grounded in private property, a person's rights are exercised over and above other persons' rights or freedoms or lack thereof. Human rights are comprised of three categories of rights: civil, political and social. Although social rights affirm universal access to public goods and services, they are contradictory to the prevailing private property relations that govern the capitalist mode of production. Teeple notes, "social rights in a system dominated by corporate private rights always represent compromises to the prevailing principles. They are rights dependent on state regulation and provision of goods and services, and therefore they contradict the principles of private property" (Teeple, 2005, p.15). As social rights are subordinate to corporate rights, they are constantly under the pressures of privatization. The very existence of social rights, therefore, as Teeple points out, "depends upon class pressure and state legislation..." (Teeple, 2005, p.15). If rights to goods and services are increasingly seen as individual, we can argue that the limits of one's rights are comprised of another's rights. It follows from this that a person realizes his or her exclusive right or property, and/or freedom to use and dispose of this right or property, only in relation to other individuals' rights or non-rights. In a capitalist social formation, where the exchange of private rights or

property is mediated by free market mechanisms such as money, the promotion of human rights as individual exclusive rights perpetuates the very conditions that give rise to their contradictory articulation in the first instance.

The Consequences of the Commodification and Privatization of Fresh Water Goods and Services

As a result of economic globalization the commodification and privatization of fresh water goods and services is increasing on every continent. As such, the consequences of this phenomenon are equally as widespread. These consequences affect all people, irrespective of class; however, the impact of these consequences differentiates with respect to the material conditions of life as a result of class status. Whether it be an increase in water rates, the deterioration of public health, the increase in the incidences of bribery and corruption, the commercialization of the environment, unfair labour practices and/or the transfer of control over water to the transnational corporations, the consequences of the commodification and privatization of fresh water goods and services are far-reaching. The following section explores these consequences.

Increase in Water Rates

Once the ownership of fresh water goods and services is transferred from the public to the private sector, the dynamic of and incentive for delivering such services is significantly altered. By their operational mandate, corporations are accountable not to citizens, customers, communities, governments or the public at large. Instead corporations are first and foremost accountable to their shareholders for ensuring and maximizing returns on investments (Murray, 2003, para.13). Corporations are organized

in such a way that their motive of operation is to make and maximize profit (Grusky and Fiil-Flynn, 2004, p.3).

Whereas the public provision of services is based on achieving universal access for all citizens, the private provision of services is done so in a manner consistent with the principles of the free market whereby those willing or able to pay receive service. Those who are not willing or unable to pay receive inadequate services if any at all. Hall notes, with the private provision of fresh water services, “there is a profit-seeking dynamic which may, and often does, conflict with the public objectives of the water service” (Hall, July 2001, p.3).

The examples of corporate initiated price or user fee increases are numerous. One of the more noted examples is the case of Cochabamba Bolivia where in 1999 a World Bank loan was granted on the condition that the Bolivian government turn over Cochabamba’s water services to the private sector. After privatization the citizens of Cochabamba were forced to pay for water permits in order to access water services. Where the minimum wage was \$65 a month, water payments rose as high as \$20 a month (Grusky, 2001, p.19). Five years after the Cochabamba case, another Bolivian city, El Alto, privatized its water services. Water rates in El Alto rose by 35 percent. The Ecologist notes that at one point of the private service provider’s operational mandate, the cost for hooking up to water and sewerage services for the average person or family was “equivalent to more than six months’ of the national minimum wage” (Ecologist, 2005, p.10).

Much has been written about the privatization schemes in England and Wales where in 1989 the Thatcher government carried out the sweeping sale of all public water

services and began the process of full privatization (Scottish and Irish water systems remained public). The English and Welsh privatization schemes remain two of the only full privatization models in the world today. Referencing a Public Services International (PSI) report, Barlow and Clarke note, after full privatization in these countries “prices rose 106 percent between 1989 and 1995 while profit margins for the private water companies increased 692 percent” (Barlow & Clarke, 2002, p.90). At that time, thousands of people in England and Wales were disconnected for not paying their user fees (Swyngedouw, 2005, p.88). Still today, as Swyngedouw points out, water corporations in Britain are demanding the right to increase water prices by up to 70 percent even when “19 percent of the British households – 4.4 million citizens – are in arrears with their water bill payments (Swyngedouw, 2005, p.88).

In South Africa, where the national unemployment rate is approximately 43%, few can pay for water and electricity. Rowles and Bradberry report that between 1999 and 2000 in Cape Town and Tygerberg alone 75,000 people were cut off from water services. Rowles and Bradberry point out that this phenomenon is consistent in many townships throughout the country (Rowles & Bradberry, 2004, p.46).

These are just a few examples of price increases that characterize private sector provision. Insufficient financial wherewithal to withstand these water rate increases characterizes millions of peoples’ experience with private water corporations throughout the world.

Critics of water privatization articulate a common concern that increasing water rates force those who are unable to pay for these rate hikes to either make trade-offs between water and other basic needs (food, clothing, shelter etc.) or find alternative

sources of water (Luoma, 2004, p.54; Krisberg, 2003, p.15). As Rowles and Bradberry suggest, “disconnections and high rates make difficult lives even more precarious” (Rowles & Bradberry, 2004, p.44). The inability and/or unwillingness to pay for water services leads to a host of health implications that can be directly linked to the private control of fresh water goods and services.

The Deterioration of Public Health

Opponents of commodification and privatization point to the increasing incidences of public health issues with respect to the private provision of fresh water goods and services. These critics point to a number of concerns that directly link the commercialization of services to negative public health outcomes, including, service disconnection, lower water quality standards if any standards at all, and the lack of service expansion in low-income areas.

Hall notes that it becomes difficult to provide the poor with water once water services have become commercialized. He asserts, “if users have to be charged for the cost of the water they use...then the poor, by definition will not be supplied” (Hall, 2001, p.2). Infection rates of water-related diseases have significantly increased in the 1990s as a result of an inability to pay for services. For instance, as Gleick notes, the incidence and geographic extent of cholera concomitantly increased with the rise of privatization schemes in the 1990s (Gleick, 1998, p.500). Case in point is Rowles and Bradberry’s example of the situation in South Africa that led to thousands of service disconnections is. There, in Kwa Zulu Natal alone, more than one hundred thousand people were infected with cholera after turning to stagnant ponds and rivers for their water needs (Rowles & Bradberry, 2004, p.46). Several South African townships surrounding

Johannesburg, Durban and Capetown have experienced similar service disconnections and incidences of disease. Hall argues that the concomitant increase in cholera and commodification and privatization of water services exemplifies the direct link between the inability to pay and the cholera outbreak (Hall, 2001, p.2).

Yet, once water services are privatized local governments lack the political clout and financial and legal capability to promote and enforce acceptable water quality standards (Polaris Institute, 2003, p.8; Yaron, 2000, p.51). As Yaron notes, “this leaves the public in the position of having no effective institutional mechanism to ensure the quality and affordability of water (Yaron, 2000, p.51). This lack of public oversight calls into question the quality of privately delivered water.

With so much emphasis placed on the profit maximization, private corporations often look to cut operational costs, which may include and/or result in the lowering of product quality and standards. As Galiani et al. suggest, “private water companies may provide sub-optimal levels of service quality because they fail to take into account the significant health externalities that are present in this industry. If this is the case, privatization of water service may affect health outcomes negatively” (Galiani et.al., 2005, p.85).

Among other countries in which the private service provider Suez operates, customers in England, Germany and Spain, have not only experienced an increase in basic water rates but also a lower quality of water. In some cases, customers have received less than the legal standard (Llobatera, 2003, p.159). In 1999, Northumbrian Water (a Suez subsidiary that was rated the second worst company with respect to operational performance in England and Wales) was found to be delivering unsafe water

with high levels of iron and manganese (Polaris Institute, 2003, p.8). Similarly, in 1994, a Veolia subsidiary in France, Générale des Eaux, was prosecuted for delivering water that was unsafe for consumption. In May 2000, in the small Canadian town of Walkerton, where a private company was responsible for water quality inspection, seven people died and more than 2,300 of the town's 4,800 people became ill after the town's water system became contaminated with E-coli bacteria (Canada & the World Background, 2005, p.25). These are but a few of the numerous examples highlighting the maladministration of water services by private water companies.

Critics call into question not only the quality of water provided by private service providers but also the quality of service. Because water corporations operate on the basis of making a profit and because the poor, by definition, are unable to pay for water services, private sector companies have little incentive to expand their operations into low-income areas (Grusky and Fiil-Flynn, 2004, p.4; Bayliss, 2003, p.5). This suggests, as Barlow and Clarke note, that service expansion is "determined by the 'ability to pay,' rather than as a matter of public policy" (Barlow & Clarke, 2002, p.111). Poor service provision, or the lack of service altogether, amounts to an increase in negative health outcomes.

Unfair Labour Practices

Bayliss points out, although the impact of commodification and privatization on the labour force varies across industries "most evidence points towards reductions in employment after privatization" (Bayliss, 2003, p.10). The nature of competition amongst major private service providers leaves workers with little or no job security (Yaron, 2000, p.50). Indeed, transnational water corporations have a history of poor labour practices.

And although these poor labour practices are often regarded as externalities of the market (i.e. decrease in wage, job loss due to take-over etc.), some of these poor practices are more explicit. Yaron points out, “evidence in some operations points to discrimination against union members, selective hiring practices, disparity between domestic and foreign employees, lay-offs despite consistent growth and exorbitant executive remuneration” (Yaron, 2000, p.46). The International Labour Organization notes:

...the privatization and restructuring processes in water, electricity and gas utilities have in general resulted in a reduction of employment levels, sometimes affecting up to 50 percent of the workforce. Employment cuts appear to be more severe under certain forms of privatization, such as the contracting out of certain parts of the industry and total privatization, or where there is a combination of privatization and restructuring. Moreover, employment increases after privatization are rare and usually follow periods of large-scale retrenchment (as cited in Bayliss, 2002, p.616).

These unfair labour practices are symptomatic of a business environment where transnational water corporations compete with rival corporations in an increasingly deregulated global economy. As Swyngedouw points out:

The sustainability of market-led water companies can only be maintained via either productivity increases and/or price increases. But both are problematic. Productivity increases are generally capital and technology intensive and almost invariably lead to a rising organic composition of capital and a reduction in the work force (Swyngedouw, 2005, p.88).

Bribery and Corruption

It is widely reported that the procurement processes - whereby transnational water corporations gain private water contracts - are replete with bribery and corruption.

Bayliss notes, “privatization is widely associated with cronyism and corruption and can therefore contribute to a consolidation of economic and political power in an interest group that rarely represents the poor” (Bayliss, 2002, p.619). Barlow and Clarke have

documented in detail many close ties between corporate water executives and government officials throughout the world. Barlow and Clarke suggest that large water corporations are motivated to grow in part 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” (Barlow & Clarke, 2002, p.109). And as the World Bank itself notes, “corruption thrives in an environment where the power of individual members of society is measured in terms of access to people in power...” (World Bank; Corruption, Poverty and Inequality, para.3).

Transparency International – an industry watchdog - asserts:

Contracts are source of power to those who give them out, and targets of ambition for those who may receive them, making public contracts particularly prone to abuse at the expense of public need. The risk of corruption in public contracting exists even before the contracting process has started, perhaps even at the moment when public budgets are allocated, and it perpetuates beyond the awarding of a contract to its implementation (Transparency International, n.d., para.4).

The World Bank adds:

The distorting effects of corruption on projects take effect as early as the project design phase where project requirements are overstated or tailored to fit one specific company, they reach into the bidding process where collusion amongst firms or between public official and bidders renders competition ineffective, leading to assigning of contracts to under-performing firms at inflated prices. Furthermore, bribes are needed to release funds, kick-backs further persuade governments official to turn a blind eye to sluggishly implemented projects, staying behind contract requirements...Bribes also help to smooth financial and technical audits and to falsify bills and payrolls” (World Bank, n.d., para.4).

Bribery and corruption are a reality in a system where private firms compete for billions of dollars worth of procurement contracts. The extent of corrupt relations between private industry, government and nongovernmental organizations was made evident in an Independent Inquiry Committee (IIC) report on the Iraq Oil for Food

Programme. The IIC reported that more than 50 percent of the 4, 500 companies involved in the program were investigated for making illegal payments (Transparency International, n.d.).

Just as in various other public sector privatization schemes and procurement processes, corruption and bribery are prevalent within the privatization processes of water systems. There are numerous examples of corruption within the water industry in France, Germany and other parts of Europe as well as in South Africa, South America, and North America (Holland, 2005, p.87-88; 130). Holland argues, “globalization has created a climate that encourages the practice of bribery to secure contracts” (Holland, 2005, p.86). This corruption phenomenon is likely to occur not only because of the undemocratic nature that characterizes the privatization process, but also because of the high stakes of such large contracts. Corruption and bribery have come to play an integral part of securing monopoly concession contracts, which, in some cases, extend to 40 years and are projected to be worth billions of dollars (Holland, 2005, p.251).

Exploitation of Fresh Water Resources

Often citing Hardin’s “Tragedy of the Commons”, industry interests suggest that water privatization promotes greater efficiency and therefore has a positive outcome on resource sustainability (discussed in Chapter I). Opponents of the commercialization of fresh water goods and services question this claim suggesting that free market principles necessitate and facilitate increased consumption on the basis of profit maximization.

As Yaron suggests, “contrary to industry claims...privatization of water is, in fact, antithetical to sustainable resource development” (Yaron, 2000, p.10). She notes that in

order to attract investors, corporations are dependent upon increased consumption levels (Yaron, 2000, p.10). Barlow and Clarke report that in England, where fresh water services are fully privatized, “33 major waterways are losing volume as a result of overuse of water, and some are now less than a third of their average depth” (Barlow & Clarke, 2002, p.31).

The rapid expansion and recent financial success of the bottled water industry is an example of the exploitation of fresh water. Clarke suggests that the bottled water industry continues to build a campaign to increase bottled water consumption based on claims that bottled water is safer than municipal tap water. Indeed these claims have contributed, in part, to the record sales experienced by bottled water companies all over the world, even in countries where the regulation of municipal water systems is more stringent than that of the bottled water industry (Clarke, 2005, p.44). Indeed, bottled water companies go to great lengths to secure market share and in doing so encourage an increase in bottled water consumption.

Some corporations encouraging an increase in water consumption engage in purification and desalination processes and/or the diversion and/or export of water. Yaron points out that these corporations are increasing the availability of water by unnatural means such as desalination, diversion, and export (Yaron, 2000, p.10). The artificial ‘channelization’ of fresh water has a significant impact on fresh water levels and local ecosystems in general (Barlow & Clarke, 2002, p.48). As Swyngedouw asserts, “while the water cycle operates on temporal rhythms that are part of the larger environmental and climatic system, the economic part of the ‘hydro social cycle’ is nevertheless

increasingly forced to operate under the standard discounting periods of corporate strategists and of economic cycles” (Swyngedouw, 2005, p.93).

The Polaris Institute has documented numerous cases where the profit motive of water corporations has led to significant environmental damage. Suez, Veolia Environnement and RWE have each been charged and fined for numerous environmental violations. Polaris Institute reports:

RWE’s new subsidiary, Thames Water, also has a poor track record when it comes to water loss due to leaky pipes. According to the British water authority, Ofwat, Thames lost enough water between April 1999 and April 2000 to fill three hundred Olympic size swimming pools a day. On another count, Thames Water pleaded guilty in court and was fined GBP 26,600 in August 2001, for allowing raw sewage to pollute a stream located within yards of houses in a British community. Other examples of environmental violations by private water companies include: In the U.K., water corporations have been among the country’s worst environmental violators. Between 1989 and 1997, five water companies [Anglian, Severn Trent, Northumbrian, Wessex (later Azurix) and Yorkshire (now the Kelda Group)] were successfully prosecuted 128 times. In 1998, the U.K. environmental agency ranked Wessex Water Co. the country’s fourth worst polluter, while Anglian Water was ranked the sixth worst polluter in 1999. Yet, governments have been largely ineffective when it comes to penalizing these water companies for such environmental violations. For the most part, their penalties have amounted to relatively small fines which are not effective deterrents (Polaris Institute, 2003, p.8).

As water corporations increasingly gain control over water resources, and as these corporations promote increased consumption levels, sustainable consumption strategies are increasingly overlooked or ruled out completely.

Transfer of Control

Critics of the commercialization of fresh water goods and services argue that the processes of commodification and privatization undermine democracy as these processes inevitably transfer power and control over fresh water goods and services from the

government or state to private corporations. Subsequently, as previously mentioned, decisions regarding fresh water goods and services are made with regard to the contours of the global economy and its capital markets and not in the interest of the public at large.

This transfer of power and control in fresh water goods and services is characterized by a displacement of decision-making capability and public involvement. Decisions regarding use, allocation and distribution are transferred from local officials who represent community interests to corporate executives who represent the interests of a private corporation. This transfer of power and control greatly reduces the state's ability to make decisions with respect to equitable access and quality of fresh water goods and services (Barlow & Clarke, 2002, p.126). It follows from this, as Yaron notes, that foreign corporations are "less likely to see their responsibility for supporting the general well being of the region in which they operate"(Yaron, 2000, p.55).

When control of fresh water is transferred to the private sector there are not only changes in the decision-making processes to do with the distribution of fresh water, but also, in the ways in which citizens receive critical information concerning fresh water goods and services, whether this information be health related and/or otherwise. Yaron points out, "unlike government, corporations have limited disclosure requirements in most countries; as a result, the public's access to information from corporations is restricted" (Yaron, 2000, p.11). Ultimately, as Swyngedouw asserts, "traditional channels of democratic accountability are hereby cut, curtailed, or redefined" (Swyngedouw, 2005, p.92).

The Nature of the Resistance

Everywhere in the World

Everywhere in the world, people are resisting the processes of economic globalization. As all forms of social reproduction are increasingly subordinated to corporate private property people are growing conscious of the ways in which economic globalization pervades and fundamentally transforms their lives.

Opponents of economic globalization consist of those who oppose its institutions and processes. These opponents include individuals, groups and peoples who argue that the supranational organizations and processes of economic globalization are responsible for corporate and/or state oppression as well as the increasing economic hardship of the world's working people.

Particular resistance movements, groups, or peoples, are commonly categorized generally with other opponents of economic globalization to constitute what is often referred to as the anti-globalization or global justice movement. These particular movements, peoples and groups consist of indigenous peoples, peasants, community groups, feminists, environmental groups, trade unionists, farmers, consumer groups, anti-poverty activists, human rights advocates, student organizations, political parties and politicians. The plethora of issues at the forefront of these resistances include: indigenous rights, labour rights, women's rights, children's rights, human rights and environmental rights. The tactics of such resistance movements include electoral politics, strikes, general strikes, civil disobedience, civil disturbances, marches, demonstrations, letter writing campaigns, legislative lobbying and armed uprisings.

Similar to the make-up of anti-globalization or global justice movements, resistance to the commodification and privatization of fresh water goods and services is widespread and diverse. Examples of such popular resistance movements are in the hundreds and well documented. Notably, however, as in the case of perhaps the most widely documented resistance, namely the Cochabamba resistance, these movements are increasingly characterized by the partnership and solidarity of various grassroots movements.

The Cochabamba resistance in 2000 was a rural-urban alliance led by the Coordinadora de Defensa del Agua y de la Vida (Coalition for the Defence of Water and Life) (Barlow & Clarke, 2001, pp.155). Many argue that what made the Cochabamba resistance unique is the fact that it was not a trade union movement. Instead, this organization was a coalition of peasant organizations, farmers, students, union workers, NGOs, professionals (including engineers and academics among others) as well as disenfranchised local residents in general, all mobilizing to protest the neoliberalization of the state-delivered water services. As previously mentioned, a 1998 World Bank loan required the Bolivian government to privatize the public water utility in Cochabamba. In 1999 Aguas del Tunari – a subsidiary of Bechtel, one of the world’s largest engineering, construction and project management corporations – took control of Cochabamba’s water services. A year of poor service and exorbitant price hikes led to an eight-day general strike in April 2000 led by the Coordinadora de Defensa del Agua y de la Vida. After thousands of protesters took to the streets the Bolivian government declared martial law on Cochabamba. Only after the death of one protester and hundreds of injuries, the Bolivian government rescinded its contract with Aguas del Tunari (Barlow & Clarke,

2001, p.155). In order to seek compensation for what the company deemed an “illegal termination of contract”, Aguas del Tunari pursued arbitration in the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) (Bechtel, 2005). Although the corporation was originally suing the Bolivian government for nearly US\$40 million, Aguas del Tunari, withdrew their claim after years of arbitration and settled with the Bolivian government out of court in January 2006 (Barlow & Clarke, 2001, p.91; Bechtel, 2005). The Bolivian government was relieved of paying any compensation to the corporation (International Centre for Settlement of Investment Disputes, 2006; Bechtel, 2006).

Although the Coordinadora de Defensa del Agua y de la Vida were successful in their resistance efforts, the diverse nature and often conflicting goals of such coalitions can be a challenge to such resistance movements. As a result, an increasing number of resistance movements have taken to situating resistance efforts and struggles under the rubric of human rights; the Cochabamba resistance, as well as resistances in Ghana, India and Uruguay among many other countries, are examples of this trend. In light of this recent phenomenon, the remainder of this chapter will critically examine the nature of the human rights-based approach to fresh water issues paying specific attention to UN agreements that address the human right to fresh water.

The Human Rights-based Approach to Fresh Water Goods and Services

Indeed there has been local and global opposition to what Swyngedouw refers to as the “hegemonic logic of water privatization” (Swyngedouw, 2005, p.97). As noted above, amongst the various isolated movements, groups and peoples resisting the commodification and privatization of fresh water goods and services is a growing

resistance strategy whereby many of these movements, groups and peoples situate their resistance efforts in defence of the principles of human rights found in the UDHR and many other UN treaties and/or covenants. This is not to say, however, that all resistances can be categorized within this rights-based movement. As previously discussed, just as with the anti-globalization of pro-global justice movements, resistance to the commercialization of fresh water – in its geographic location, make-up and tactics – is widespread and diverse. This mainstream international movement to declare basic access to water as a human right, however, is growing as one of the only international actions against water privatization that addresses the processes of economic globalization. In light of this phenomenon we focus our analysis on this international movement.

International organizations that promote the human right to water, or those that are involved in this international movement include: Amnesty International, Blue Planet Project, Council of Canadians, Friends of the Earth International, Friends of the Right to Water, Sierra Club and World Development Movement, among many others.

Although there is a great deal of literature on advocacy issues surrounding the promotion of human rights with respect to fresh water goods and services in particular, little, if any of this literature, questions the very concept and/or nature of human rights as these rights relate to a genuine realization of adequate access to fresh water. Without any such analyses of human rights and without any viable or foreseeable alternative to the promotion and defence of such human rights declarations, treaties and/or covenants, writers, academics, activists, activist groups and movements, will continue to situate the struggle of achieving adequate access to fresh water goods and services in the defence of the contradictory and inconsistent principles of human rights. By way of critique, we may

draw conclusions concerning the enigmatic phenomenon whereby both opponents and proponents of privatization promulgate the human right to water. By presenting an analysis of one such group advocating the human right to water - the Friends of the Right to Water (FRW) - this analysis draws out the many contradictions and inconsistencies associated with human rights-based advocacy approach.

Friends of the Right to Water

Friends of the Right to Water (FRW) is an international civil society campaign dedicated to codifying the right to water as an alienable human right (FRW; Water is a Human Right, para.7). Initiated by the Council of Canadians and Blue Planet Project, the FRW consists of a number of NGOs, citizens groups and individuals opposing and resisting fresh water trade and privatization. The Blue Planet project describes the FRW movement as “a global initiative working with partners around the world to achieve the goal of water justice now. Water justice is based on the right to water and on the principles that water is a public trust and part of the global commons” (Blue Planet Project, n.d.).

The FRW bases its campaign on the UN General Comment No.15, adopted in November 2002 by the UN Economic and Social Council (ECOSOC) (Blue Planet Project, n.d.B). The FRW suggests, “a United Nations Treaty on the right to water, following on the right to water as set out in General Comment No.15, would serve as one of the tools that communities around the world struggling for adequate water can use...” (Blue Planet Project, n.d.B, para. 9). In addition, the FRW purports, “the treaty will be applied together with international human rights and environmental treaties. Human rights law is, and must be, paramount when there is conflict between human rights law

and international trade (including services) and investment treaties” (Blue Planet Project, n.d.B, para.11). The following analysis draws upon the concept and nature of human rights as set out by the UDHR and as understood and applied to fresh water related issues in the General Comment No.15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Short and Ambiguous History of Human Rights with Respect to Fresh Water

The human rights-based advocacy approach to fresh water related issues has become a mainstream strategy in the resistance to commodification and privatization. Besides the FRW, many other NGOs, citizens’ movements, academics and activists purport that the human right to water is a component element of all other human rights.

Those who support the human right to water, however, are concerned that the right to water has not been formally codified in the preeminent human rights document – the UDHR – or in many other human rights declarations, treaties and conventions for that matter. Some commentators, such as Gleick and Derman et al., suggest that although the right to water may not be explicitly included in all declarations, treaties and conventions, the right to water is a precondition to many other rights. Derman points to the General Comment on the Right to Health (2000), the Convention of the Rights of the Child (CRC 1989), and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW 1979) which all recognize, albeit implicitly, the right to water (Derman et al., 2005, p.1). Gleick notes, “guaranteeing the rights to food, human health and development, cannot be attained or guaranteed without also guaranteeing access to basic clean water...water like air, is thought to be a precondition to any other rights included under the codified principles of human rights” (Gleick, 1998, pp.490-491). He

concludes, “the right to life implies the right to the fundamental conditions necessary to support life” (Gleick, 1998, p.492).

The right to water was formally declared a human right for the first time in 2002. This declaration came in the form of the UN General Comment No.15 (Razzaque, 2004, p.17). Barlow points out that the General Comment “emphasized the right to water as the cornerstone for realizing all other human rights...” (Blue Planet Project, n.d.C, para.4).

General Comment No.15 claims:

The human right to water entitles everyone to sufficient, safe, acceptable physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements (UN, 2003, p.2).

General Comment No.15 is a mechanism for providing interpretation of the ICESCR - a treaty initiated in 1966 by ECOSOC. Currently (March 2007), the ICESCR has 155 state parties, however, only 66 of those states have ratified the covenant (Office of the United Nations High Commissioner for Human Rights [OHCHR], n.d.). In other words, countries such as Canada and the U.S. – two state parties that have yet to ratify the covenant – recognize the covenant but are not obliged to commit to “progressively achieving” any legal obligations (OHCHR, n.d.B, para.4). Furthermore, besides self-reporting, there is no mechanisms of enforcement to oversee state party obligations. As Alston and Quinn note, “in practice...considerable discretion is accorded to the state parties to determine for themselves which measures are appropriate and whether all such means have been pursued” (Alston& Quinn, 1987, p.162). Alston and Quinn suggest, “it is clear therefore that legislation is not mandatory under the terms of the covenant and

that it is a matter for each state party to determine whether or not it is needed” (Alston & Quinn, 1987, p.167). The UN concedes stating “the ultimate effectiveness of this instrument is contingent on the measures taken by governments...” (OHCHR, n.d.B, para.105).

The fact that countries abstain from ratifying UN treaties and covenants raises concerns not only over the legitimacy of these treaties and covenants, but also over the extent to which they have any legal significance whatsoever. Commenting on the legal insignificance of the General Comment No.15 – an agreement that the FRW paradoxically supports - the FRW asserts, “countries can ignore their responsibilities because there is no effective means of holding them to account” (Blue Planet Project, n.d, para.9).

Indeed the legally insignificant status of many UN declarations, treaties and conventions is due in part to the unwillingness of participating states to ratify such treaties or conventions. For the most part, UN declarations, treaties and conventions that have legal binding status require voluntary state participation. And even if and when a state party recognizes such a treaty or convention they must ratify the agreement before they are obligated to meet treaty or convention targets (OHCHR, n.d.B, para.5). As Desmond notes, even “one of the most authoritative documents on human rights (UDHR)... is simply a statement of intent and is not legally binding even on those who signed it” (Desmond, 1983, p.66). In fact, with respect to the UDHR, the UN itself states, “the term (declaration) is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations” (U.N., n.d.). Thus, according to the UN, human rights, as stated in the world’s preeminent

human rights declaration, amount to a set of aspirations, not a set of legally binding obligations.

The argument we present here is two-fold. First, the failure to meet UN human rights aspirations is indicative of the nature of most UN declarations, treaties and conventions that not only require voluntary participation, but also do not have the appropriate mechanisms of enforcement that would ensure legally binding status upon nation states. This, however, is only part of the argument. In addition, and perhaps more importantly, we argue that human rights - as set forth by the UDHR and defined in subsequent human rights treaties and conventions – are a set of inherently inconsistent and contradictory principles that are historically particular to the capitalist mode of production. It follows from this that the concept of human rights is based upon a representation of what it means to be human in a capitalist social formation; that is, as an individual possessor of private property. Moreover, the inconsistent and contradictory nature of the principles of human rights leads to their invariable and inevitable violation, thus the inability of states and other international actors to uphold and abide by international human rights law.

Yet, despite persistent violations of human rights by governments, corporations and other individuals, resistance movements continue to promote and defend human rights. By exposing the inconsistencies and contradictions of the principle of human rights the following section calls into question the merit of the human rights-based advocacy approach to fresh water related issues as well as the very notion of human rights.

Human Rights

Human Rights are Time-bound

Historically, the concept of human rights is a product of the 18th century French and American revolutions. The principles first received global recognition in the form of the 1948 UDHR. As Kennedy points out, the concept and understanding of human rights is a “product of a particular moment and place...” that is, of the capitalist mode of production (Kennedy, 2002, p.114). Furthermore, as Teeple notes, “human rights as spelled out in the Universal Declaration of Human Rights are not human rights – that is, they are not elemental, inherent, or universal, but rather time-bound and relative to a particular mode of production” (Teeple, 2005, p.2). It follows from this that the principles of the UDHR are grounded in the prevailing private property relations that give the capitalist system its impetus – those relations that give rise to and are characterized by the preeminence of transnational corporate private property.

Human Rights are Exclusive Individual Rights to Private Property

The prevailing property relations and therefore the concept of human rights are based on an idea that the human is first and foremost an individual unto itself (Desmond, 1983, p.92). As Watson notes, “the discussion of any form of liberalism, and particularly the liberalism that bears on liberal democracy, begins and ends with its conception of individuality” (Watson, 1999, p.92). The notion of the individual, as understood by liberalism, is one that separates a person from his or her community.

In this context, rights or property (as discussed in Chapter I) are held in the form of exclusive individual rights. It follows from this that in a system of individual rights,

individuals, including corporations as fictitious albeit legal individuals, are possessors of exclusive rights in the form of private property. All rights accorded to the individual under international law and/or by human rights declarations, treaties and/or covenants, therefore, arrive in the form of exclusive individual rights to private property.

In liberal democracies, all that is common or publicly shared is increasingly transformed into individual rights, claims or entitlements. The increasing commodification and privatization of fresh water goods and services is a pertinent example. Social relations are fundamentally transformed into what Teeple refers to as “external, contractual and self-interested” (Teeple, 2005, p.21). Moreover, as Teeple suggests:

The human in the context of human rights, then, is nothing but the way the human appears in a society based on contractual relations; it is the human defined as isolated individual, as whole unto itself, as singularity, as an unrelated atom; it is not the human as a social being, as a product of social relations, whose chief characteristic is relations to others (Teeple, 2005, p.21).

As previously mentioned, the struggle for access rights to water throughout the world has taken many different forms and has led to varying outcomes. Indeed, what unites these struggles is their opposition to commodification and privatization. Interestingly, however, the desired outcomes of these resistances, though rarely articulated, are varied and often conflicting. This conflict - defined by the irreconcilable difference between collective and individual rights - occurs as a result of varying conceptions of not only water rights, but of rights in general.

Collective rights can be seen as a threat to individual rights as they confront the prevailing property relations that define the global economy. In light of this conflict,

however, many NGOs have successfully universalized the struggle against commodification and privatization under the banner of human rights. For example, calls for collective rights, like those by indigenous groups involved with Coordinadora de Defensa del Agua y de la Vida in Cochabamba, were subordinated to the calls for human rights. The question then arises whether or not rights, as defined by liberal democratic nation-states and international declarations such as the UDHR, are compatible with indigenous or collective rights to common resources. We argue here that they are not. Moreover, by promoting human rights, the commons themselves are being reduced to a set of individual claims of rights.

The conceptualization of rights as private human rights, as found in the UDHR, is antithetical to calls for collective property relations and to indigenous rights to self-determination (Teeple, 2005, pp.92). The promotion of private human rights, therefore, is tantamount to excluding all forms of collective ownership and/or collective control of commons resources, and, for that matter, any form of group self-determination whatsoever. Moreover, by definition, human rights do not address collective or common property relations, nor do they address the property relations attached to the commons.

Human Rights are Abstract Principles

Human rights represent abstract principles of what it means to be human in the capitalist social formation. Human rights are neither absolute nor universal; they represent rights relative to a given system. As Kennedy points out, they are not absolute because “rights take on meaning only when they are realized in a person in a particular time and place” (Desmond, 1983, p.41). Furthermore, they are not universal because not everyone has the necessary means to exercise exclusive individual rights. Moreover, the

realization of these rights by specific groups, (children, indigenous peoples and women, among many others) has been inconsistent and in some cases non-existent.

Claims or entitlements to goods and services are realized by the possession of private property, or in other words, private rights. The allocation, distribution or exchange of private rights/property, however, is mediated via money in the marketplace. As Teeple suggests, “administration of these rights has always been skewed in favour of some...” (Teeple, 2005, p.1). Not only is it the case that not everyone has the necessary or sufficient financial means to participate in the free market, but also the free market is not universally recognized as the means by which socially necessary goods and services are allocated, distributed or exchanged. It follows, then, that private rights are not universal. Kennedy purports, human rights “are not universal nor are they equally possessed. These rights are a set of rights that characterize an individual in liberal democracy – a system characterized and built on the unequal distribution of resources” (Kennedy, 2002, p.111).

Ultimately, as Kennedy suggests, “human rights promotion propagates an unduly abstract idea about people, politics and society” (Kennedy, 2002, p.111). He adds, “rather than enabling a discussion of what it means to be human, of who is human, of how humans might relate to one another, it crushes this discussion under the weight of moral condemnation, legal adjudication, textual certainty and political power” (Kennedy, 2002, p.111).

The Promotion of Human Rights Defends the Status Quo

As discussed in Chapter II, from its formation in 1945, the UN's mandate is to promote a global system of liberal democracy. As we established in Chapter I, liberal democracies are founded on the basis of unequal property relations. As the prevailing property relations are those defined by private property and characterized the preeminence of transnational corporate private property, then, the UN implicitly promotes a system based on unequal property relations – one that is defined by the subordination of all other forms of property/rights to transnational corporate private property.

It follows from this that human rights are the representation and outcome of contested property relations. In other words, human rights, as defined in the UDHR, are the articulation of unequal class relations. As Teeple notes, they are the “abstract expression of the economic, political, and ethical principles of capitalist nations...” (Teeple, 2005, p.28). This is precisely the case with respect to the property relations that govern fresh water goods and services. As Perreault notes, “it must be recognized that resource laws and policies are themselves subject to contestation and may contain internal contradictions that reflect processes of negotiation between competing interests (Perreault, 2005, p.266).

The UN General Comment No.15 does not oppose the free market as the means by which goods and services should be distributed, nor do any other UN declarations, treaties or conventions for that matter. As previously stated, the UN promotes active state participation within the global economy; in other words, the UN promotes the liberalization of trade as well as the deregulation and privatization of national economies.

In fact, supporting the prevailing claim that water is an economic good, the General Comment No.15 states, “water should be treated as a social and cultural good, and not primarily as an economic good” (U.N., 2003, p.5). Though the Comment recognizes competing interests’ claims that water has both a social and cultural value, its claim that water is an economic good upholds the status quo: that fresh water is to be viewed as an economic good. The UN itself, in a report entitled *Water for Life and People*, proclaims the relevance of the Dublin Statement, including the assertion that water has an economic value. The report explicitly suggests that there is a need for increased private sector participation with respect to fresh water goods and services, including an increase in market mechanisms, private investment and distribution.

We can conclude, then, that human rights, as defined by the many UN declarations, treaties and conventions, do not challenge the inequities produced by a system based on private property relations. As Desmond asserts, “we have defined as fundamental human rights those rights which can be accorded to people in our society without posing any threat to our socio-political system” (Desmond, 1983, p.23). Human rights, in some instances, may highlight problems of the system, however, they are defined within the parameters of the system; human rights are not meant to challenge or change the system. The promulgation of human rights provides no means by which the oppression of people - be it state oppression, corporate oppression and/or otherwise – is addressed.

In fact, many human rights critics argue that the principles of human rights, with such an emphasis on private rights or property, do more to obscure the nature of oppression than to put an end to oppression. These critics argue that the promotion of

human rights actually obscures the structural inequalities that characterize the capitalist social formation. As Kennedy suggests, “the human rights movement practices a systematic lack of attention to background sociological and political condition...” (Kennedy, 2002, p.110).

Yet, as Teeple notes, the development and global extension of human rights is progressive in that it represents “a watershed in human history and consciousness” (Teeple, 2005, p.4). However, without critical analyses of the concept and nature of human rights as they are presented in UN declarations, treaties and covenants, there is no means by which these rights, which currently hold little if any legal significance, may be put to test and/or contribute to any genuine social change. Kennedy concludes:

Whether progressive efforts to challenge economic arrangements are weakened by the overwhelming strength of the “right to property” in the human rights vocabulary, or by the channeling of emancipatory energy and imagination into the modes of institutional and rhetorical interaction that are described as “public,” the imbalance between civil/political and social/economic rights is neither an accident of politics nor a matter that could be remedied by more intensive commitment. It is structural, to the philosophy of human rights, to the conditions of political possibility that make human rights an emancipatory strategy in the first place, to the institutional character of the movement, or to the ideology of its participants and supporters (Kennedy, 2002, p.109).

It follows, then, that situating resistance to the commodification and privatization of fresh water goods and services in UN declarations, treaties or conventions is enigmatic. The inconsistent and contradictory nature of human rights not only renders these principles legally insignificant for the most part, but also, the nature of these principles is such that they represent the vindication for the unequal material conditions that characterize the capitalist mode of production.

Conclusion

The impacts of commodification and privatization, as detailed in this chapter, are far-reaching. For this reason, opposition to economic globalization is widespread and diverse and takes root in a plethora of issues. Increasingly, however, an increasing number of movements opposing the commodification and privatization of fresh water goods and services are situating their resistance efforts in a human rights-based approach. Without critical analyses of the contradictions and inconsistencies that define human rights principles, however, we are left with a set of legally insignificant and ineffective aspirations of what it means to be human in the capitalist social formation. Not only is it impossible for states and corporations to uphold such aspirations, but also by asserting individual rights to the possession of private property, these aspirations perpetuate unequal property relations that ultimately give rise to transnational corporate private property, thus revealing the contradictory notion of human rights.

CHAPTER V – IMPLICATIONS

Introduction

As discussed in this thesis, the global economy provides the legal and institutional means by which transnational corporations gain access to fresh water goods and services.

Although these political and economic processes remain highly contentious and controversial, little attention is paid to the sociological implications of privatizing the commons. Moreover, as the privatization and commodification of fresh water goods and services mark a significant transformation in the way in which people meet their water needs, even less attention is paid, at least from a theoretical perspective, to the question of property. In fact, analyses of property relations associated with the fresh water goods and services are almost non-existent. Instead, fresh water analyses, by and large, favour unceasing documentation of the many privatizations including those occurring in other sectors such as health care, energy, and education. Though this documentation is important insofar as public awareness is concerned, a theoretical analysis of the processes of commodification and privatization, including an examination of how property relations affect these processes, enables one to discover the essence of the fundamental transformations that affect the way in which people meet their means of subsistence.

Paying critical attention to the transformation that occurs in property relations associated with the fresh water commons, this final chapter will draw out a series of broad implications with respect to the issues of access and exclusion. Furthermore, this chapter proposes a set of key principles, which, with the help of further research, could

constitute a global commons authority whose primary mandate would be the defence of the global commons.

The Right of Exclusion

The distinguishing feature and primary concern with respect to the enclosure of the fresh water commons is the transnational water corporation's power and right to exclude people from fresh water goods and services. The right of exclusion implies that a property owner can exclude others from the resources owned and that others have a legal obligation not to infringe on this right (Reed, 2004, pp.487-488). This right lawfully allows private owners of goods and services to exclude those, who for whatever social or economic circumstance, lack the necessary means to gain access to these resources. The right of exclusion, as Anton notes, constitutes the "institutional basis of the market", or, in other words, the way in which goods and services are transferred in the marketplace (Anton et al., 2000, p.8).

The transformation of the fresh water commons into transnational corporate private property implies an exclusive relationship between the corporation and fresh water resources. As transnational corporate private property, fresh water, or more specifically access to it, becomes the exclusive right of the transnational corporation. If, as Reed suggests, the essence of private property is its single negative right of exclusion, then, transnational corporate private property is the corporate right to exclude anyone or everyone access to fresh water. As Assetto and Stevis note, the right of exclusion is "the incentive to undo or enclose commons and other non-capitalist arrangements" (Assetto & Stevis, 2001, p.113).

Implications of the Right of Exclusion

The implications associated with the transnational corporate private property and its right to exclude are three-fold. First, the right of exclusion contradicts the essence of the commons. Second, the right of exclusion implies exclusive transnational corporate control of the commons. Third, those without the means to access fresh water as private property will be excluded from its use and benefits. These implications are detailed in the following sections.

The Contradiction of Privatizing the Commons

Many contradictions surface as a result of the enclosure of the commons. However, the definitive contradiction, which sheds light on the paradox that is enclosure, is the transformation of the commons into private property. In other words, what defines the commons is the principle of non-excludability, whereas, and in contradistinction, what defines private property is the right to exclusion.

The right of inclusion to the commons constitutes an entitlement not only to use the commons but also receive the benefits that flow from the commons. As the commons are a form of property, albeit social, common or collective property, people – be it whole populations or smaller subgroups – hold social, common or collective rights to the commons. Equal access to the commons, then, includes the right not to be excluded from the use and enjoyment of common social resources (Anton, et al., 2000, p.23).

It follows, then, that by definition, private rights, are contradictory to the notion of the commons (Bollier, 2002, pp.178-179). As a result of the historical and contemporary enclosures that have encroached on the commons, however, the notions of common

property or common or collective rights in the 21st century global economy, become a contradiction in terms. Macpherson points out, “when we enter the modern world of full capitalist market society... the idea of common property drops virtually out of sight” (Macpherson, 1978, p.10). The notion of the commons becomes obscured by the preeminence of private property.

Transnational Corporate Control of the Commons

The second implication is situated in the contradiction between the exclusive transnational corporate control of the commons and broader social objectives. As the transnational corporation gains increasing control over the fresh water commons allocation of these essential resources is carried out in a manner that is consistent with its own private interests. These interests are not conducive to social or environmental objectives but are based solely on capital accumulation and profit maximization.

The primary aim for any corporate enclosure is the private control of the commons with respect to two outcomes: the first being new arenas for ongoing capital investment, and the second, an adjunct of the first, capital accumulation. Both of these outcomes facilitate a process whereby surplus value can be extracted from the commons allowing for realization of profit from these resources. Korten comments on the corporation’s right of exclusion noting:

(Corporations use their exclusive rights as an) instrument to deny the economically weak the most fundamental of all human rights – the right to live – by denying them the right of access to means of living. The conflict between the person’s right to a means of living and the presumed right of the corporation to the security of its property and profit is perhaps the ultimate confrontation between the natural rights of living people and the rights that the institutions of capitalism have presumed for themselves... (Korten, 1999, p.183).

Access to and Exclusion from the Commons

Once the fresh water commons have been transformed into transnational corporate private property ordinary people require private rights in order to gain access. To obtain private rights, those having the financial wherewithal enter into a contractual relationship with the corporation where the former purchases rights from the latter via money exchange. This contract guarantees a certain level of access to fresh water goods and services. As Mehta and Madsen suggest, this position implies that the right to water is therefore defined by “the contract and that the defining characteristic of such a contract is the consumer’s ability to pay for the service...” (Mehta & Madsen, 2005, p.156).

As the global economy is increasingly defined by uneven wealth distribution, however, not all people share equally in the possession of private property. The unequal distribution of property presupposes the unequal distribution of socially necessary goods and services. The question of private property, therefore, becomes one of access to the free market. McMichael notes, “20 percent of the world’s people who do have consumer cash or credit consume 86 percent of all goods and services, while the poorest 20 percent consume just 1.3 percent” (McMichael, 2000, p.xxvii). Additionally, almost half of the world’s population is subsisting on \$2 or less a day, and of this number, an estimated 1.3 billion live on less than \$1 a day (Hannahoe, 2003, p.17). These statistics point to the direct relationship between financial wherewithal and access to socially necessary goods and services. Those consuming the majority of the world’s goods and services, who are in fact the minority of the world’s population, are those who have the financial wherewithal to gain rights to access privatized and commodified goods and services. Those experiencing inadequate access to socially necessary goods and services – those making

up the majority of the world's population – are those lacking the financial wherewithal to gain sufficient access. Hannahoe reports:

60 percent of the 4.4 billion people in the Third World lack basic sanitation, a quarter of them do not have access to clean water, 800 million are chronically malnourished, two billion lack food security, one billion lack adequate shelter, 880 million have no access to health services and 90-95 percent of Third World sewage and 70 percent of its industrial wastes are dumped untreated into surface waters, polluting drinking water (Hannahoe, 2003, p.18).

Increasingly our reality is one where all goods and services are privately owned and where all relationships are mediated by the logic of the market. As fresh water goods and services are commodified and privatized our relationship to water is subordinated to the rules and regulations of the free market. That is to say that an individual's access to water is determined by their financial wherewithal on the free market. Effectively, an individual's lack of consumer cash or credit becomes the grounds for life without fresh water. Gleick notes, "those who cannot afford clean water must suffer the many ills associated with its absence" (Gleick, 2002, p.37). Alexander concludes, "the simple, seemingly innocent concept of alienable and transferable property rights has put most of the world's resources at the disposal of the wealthy through the market mechanism" (Alexander, 1996, p.187).

A Global Commons Authority

In response to their increasing commodification and privatization there are calls to defend the commons. "What unites most of these calls," McCarthy notes, "is not so much a coherent vision of common property regimes, as their assertion of collective ownership and rights against relentless privatization and commodification" (McCarthy, 2005, p.11).

Interestingly, however, there are few calls for the development of global commons authority, at least any in which the agency would act independently of the existing capitalist global governing institutions. Indeed, one could make the argument that the absence of a global governing institution representing the interests of ordinary people and the commons is a failure of the left. The absence of such an institution has created a geopolitical climate where the expansion of transnational corporate private property goes, legally and/or institutionally, unchallenged. Although the formation of a genuine commons authority may be a difficult undertaking in light of the ambiguous and contentious nature of the commons, the need for a global commons authority increases as the processes of economic globalization continue to enclose what is left of the global commons.

Though it is beyond the scope of this thesis to propose a viable structure for a global commons authority, this project would be incomplete without at least suggesting a possible elemental framework, or, at very least, the principles of such an authority. Because the idea of a global commons authority is, in part, made up of the critique of the political economy of fresh water, it is by way of conclusion that we map out the following principles.

As recent statistics point to the growing inequality with respect to access to fresh water goods and services, a global commons authority would have to address the implications of differential or denied access. And if, as we argue, the source of inequality is private property, a global commons authority must be grounded in principles that stand outside that of the capitalist relations of production. Indeed, the configuration of a global commons regime requires radical political thought and action; the framework of such an

authority cannot be situated in any pre-existing global governing institutions for no other reason than these institutions seek to expand the scope of capital's control of the commons. Capitalist governing institutions do not represent the interests of the politically, economically and socially marginalized majority; instead, they contribute to their marginalization. These governing institutions are dedicated to the global expansion of private property. It follows, then, that the contradiction between capitalist property relations and the commons is structural and therefore, this contradiction cannot be remedied by the system in which this contradiction occurs (Austin & Phoenix, 2005, 28-29).

If we were to have a global commons authority its institutional formation would closely reflect the inclusive nature of the commons. That is to say that the proposed principles that form the institutional basis for this governing authority flow out of the commons themselves. Its formation, then, would take place according to a common and strategic framework for managing common property resources. This framework is made up of five key principles.

The first principle of the global commons authority is concerned with governance of the commons. If, by definition, the commons are inclusive, the governance of these resources would reflect this characteristic. Governance, then, would involve a form of democratic social governance contingent upon an informed citizenry. That is to say that as the commons belong to everyone, knowledge of the commons would be made accessible to all. Moreover, decisions concerning their management would be a collective enterprise. It is of great importance, therefore, that decisions concerning the commons be made collectively, democratically and on the part of an informed citizenry. Although the

proposed global commons authority would be structurally inclusive, or, in other words, accessible to all citizens of the world, governance would be carried out by local, municipal, regional, national and global commons representatives. The commons are characterized as local, municipal, national, regional or global goods and services, and, therefore, jurisdictional representation would reflect these geographic similarities and differences. Some representatives would oversee the production and distribution of the commons in their respectful jurisdiction, and others would oversee the governance of transboundary or global commons. All, however, would share relevant knowledge and problems associated with the commons within and outside of their jurisdiction. Critically, this jurisdictional representation and management would take place within the broader context of a global framework for managing the commons. Protecting the commons is a global phenomenon, and, therefore, it is of critical importance that the operation of the global commons authority retains a global perspective, authority and mandate. The collective capacity to affect change globally and contribute to the successful production and distribution of the global commons would be the strength of this proposed global commons authority. Legal and legislative powers, then, would be centralized in the global commons authority itself.

Second, the institutionalization and legalization of the commons by means of the global commons authority would not be based on open access arrangements – those property conditions that create the ‘tragedy of the commons’ referred to earlier by Hardin. Instead, a set of global strategically planned and regulated common property rights would guide the principles of commons production and distribution. In other words, clearly defined and formal common property arrangements would regulate

common use of the global commons. All rights overseen by the global commons authority reflect the principal right of the commons – the right of inclusion.

For this to happen, all levels of production and distribution processes associated with the global commons would be based on the third principle of the global commons authority: the production of use-values. The current system of commodity production – based on private property and exchange value – perpetuates and increases inequality and exploitation with respect to the consumption of the commons. Under the current system, once goods and services are commodified, financial wherewithal determines access to the commons. Instead, with the appropriate distributional mechanisms and governance structures in place, producing goods and services as use-values alone would address the needs of all of humanity. It follows, then, that the exchange value of the commons would be subordinated to the use-value of the commons and not vice-versa (Kovel, 2005, pp.3). As Andreasson suggests, “more imaginative means of distributing resources based on need rather than ability to pay would make possible more efficient resource utilization, thus diminishing the need to, in all cases, base improving living standards on increased production and consumption” (Andreasson, 2006, p.18).

Fourth, producing and distributing the commons as use-values would allow the proposed global governing authority to consider both social and environmental objectives with respect to the use of the commons. By definition, the commons are the shared inheritance of humankind; therefore, production and distribution mechanisms would genuinely consider not only the social and environmental consequences of their use, but also the generational impacts. Production and distribution in the current system of commodity production is guided by short-term monetary gain that increases and

perpetuates unequal material conditions and environmental destruction. As Lowy notes, “the current mode of production and consumption, based on unlimited accumulation...can never be extended to the planet as a whole without causing a major ecological crisis. The economic system is thus predicated on the maintenance and exacerbation of blatant inequality...” (Lowy, 2002, pp.129). It follows, then, that by taking social and environmental objectives into consideration, production and distribution, as Lowy notes, would be a “function of social needs and the requirements of environmental protection” (Lowy, 2002, pp.129). Management, production and distribution of the commons, then, would reflect the direct relationship between humans, presently and generationally, as well as the interconnectedness of humans and nature. We may conclude, then, that inasmuch as the management, production and distribution of the global commons include social and environmental objectives, sustainable production and equitable distribution satisfy each objective.

Finally, formalized rights to the commons would be consistent with each of the aforementioned principles. Access rights would be based on institutionalized universal access. This is not to say, however, that there would be unlimited access to the commons; as previously mentioned the global commons authority would regulate free access rights so as to satisfy both environmental and social objectives. Access to the commons, then, would be based on equity and sustainability and not financial wherewithal, profitability or accumulation. By using non-market mechanisms for allocating rights (i.e. allocation based on political decisions and the corresponding production of use-values), access would be limited insofar as the rights take into consideration environmental limitations, whilst, at the same time, satisfying humanity’s needs. The production of use-values and

democratic governance, therefore, would ensure that the commons are not squandered, but instead, sustainably produced and distributed so as to satisfy the immediate and long-term needs of humanity and nature.

Although these principles set out merely the elements of what a global commons authority would look like, they also represent a platform for future research objectives related to the commons. The lack of conceptualization of a global commons authority represents a gap in the commons literature. Indeed research in this area would serve as a tool not only for other commons researchers but also for those defending the commons. Future research could bridge this gap by investigating attempts and failures in developing a global commons authority. Enclosure of the commons is a global phenomenon, and therefore future research to do with the defence of the commons and the establishment of a global commons authority must follow.

Conclusion

The commodification and privatization of fresh water goods and services are part of a process whereby transnational corporate private property increasingly encloses all forms of social reproduction. The commodification and privatization of the fresh water commons, though an extremely important issue as detailed throughout this analysis, is just one of the many contentious issues with respect to the increasing power of the transnational corporation.

As all social relations are increasingly enclosed by transnational corporate private property and as privatization increasingly becomes the norm, privilege, based on access to private property, becomes the benchmark by which people access the very means of

life. Because access to capitalist property requires the financial wherewithal, however, people are denied the right to the commons on the grounds of being poor.

Private property is more than an abstract idea. It forms the way in which we live and relate to one another and the environment. Private property is the essence of alienation. A world dominated by the preeminence of transnational corporate private property, is a world of estranged relations where all rights, including the right to life, is eclipsed by the successful expansion and operation of capital.

If we acknowledge that we live a globalized world based on the unequal property relations that define capitalism, then, we must not only take into consideration the implications of commodifying and privatizing the commons but also the implications of not acting. That is why we propose a global commons authority whose mandate is to defend the commons in the common interest of all of humanity.

People are increasingly unable to meet their fresh water needs not because they lack income, but because they are excluded from the wealth of the commons. If, as we argue, the source of global inequality is private property, then exclusion to the commons is the consequence of the conditions of our oppression – private property. As transnational corporate private property increasingly defines humanity's relationship with the fresh water commons, access is increasingly defined in terms of privilege. That is to say, increasingly, to satisfy fresh water needs, one must have the financial wherewithal to purchase private rights from the transnational corporation on the free market. To assert and/or justify private property rights over fresh water goods and services is nothing less than to vindicate this latest form of social exclusion.

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