

Access to sufficient clean water is a human right¹, imposing a subsequent duty on governments. Yet, particularly in lesser-developed countries, there is an increasing prevalence of the privatisation of water, which notes a diminishing ability for governments to ensure that this fundamental human right is met. The very nature of water – being scarce, essential, and too often monopolistic – means that governments cannot and should not contract the supply of water to private companies. Developed nations counter this argument by suggesting that in such countries, the government is inadequate to manage such an essential resource equitably, however there is a plethora of cases in which the private company in fact appears to be more corrupt and less efficient. Making the situation more dire, however, is the fact that such private companies lack the accountability or regulation that a government would otherwise face. Instances of this appear to be particularly prevalent in Latin American countries, due to a vast history of political instability and the geographic location and subsequent appeal of such nations to American investors. As such, I will be limiting my argument to these nations, particularly the country of Bolivia. As per Freyfogle, property is a human creation, subject to and subordinate to the law.² In questions of the hierarchy between human rights and property rights, property rights simply cannot prevail.

Living in a neoliberal nation, which places particular emphasis on the private market, it is easy for many of us to rationalise and justify private ownership. However, there are many circumstances that create an environment where the private ownership is particularly detrimental to ‘the common good’ of that community, whatever it may be. One instance of this is the city of Cochabamba in Bolivia. Cochabamba was a particularly troubled area in Bolivia, with water shortages worrying the area for 50 years. Furthermore, such shortages were utilised by the government to pursue corporate interests. As such, it would stand to reason that an independent body, free from this corruption should manage the water. In 1999, the World Bank convinced the local government to privatise Cochabamba’s water system.³ Following this, ‘Law 2029’ was introduced, regulating the water use of the Cochabambans. The bill made communes, shared water resources, charitable subsidies and rain water tanks illegal, giving the private company a complete monopoly on the supply of water. Furthermore, the privatisation contract to *Aguas del Tunari*, stipulated that any independent water supply be handed over without reimbursement. Worse still, the contract guaranteed the company an average 16% rate of return, regardless of the quality or quantity of water supplied.⁴ Along with this, the Cochabambans faced an increase in their water bills – supposedly due to increased maintenance costs – in some cases by as much as 300 percent.⁵

An analysis of this situation not only clearly illustrates that this privatisation of water was by no means in the best interests of the community, but that it is in reality not justifiable by any other means as stipulated in Freyfogle’s article. The ‘first in time’ justification is not relevant as *Aguas del Tunari* was certainly not the first possessor of the water – they had gained possession through a contract with the government. Some justification can be

¹ World Health Organization. Water, sanitation and links to health.

http://www.who.int/water_sanitation_health/facts2004/en/. (Accessed 2/09/12)

² Freyfogle, Eric T. 2003, 'Justifying the landowner's power', in Freyfogle, Eric T., *The land we share: private property and the common good*, Island Press, Washington, D.C., pp. 107.

³ Taylor, D. A. (2004). 'Is Environmental Health a Basic Human Right?' *Environmental Health Perspectives* vol 112, p. 107.

⁴ Olivera, Oscar. (2004). ¡Cochabamba! Water War in Bolivia. *South End Press*, Cambridge. P 9.

⁵ *Ibid*, p. 20.

offered by the Labour Theory; the service offered by *Aguas del Tunari* was socially valuable, that is, the management and distribution of water. In Locke's theory, such individual ownership arose when a person mixed his labour with something from the 'common fund' and created something of value. In this case, the labour of the company would be that of management, distribution and maintenance of the water system. The crux of this theory is that therefore, it is only fair that the company would earn the fruits of their labour. However, the 16% rate of return regardless of the standard of their labour seems contradictory to this idea. Additionally, Locke established a number of limitations to the theory, which clearly discredit the use of the labour justification in this situation. Locke created the proviso that ownership will only be attained if there is 'enough and as good' of the same thing for others to use.⁶ In Cochabamba, the laws had removed all other water sources, creating the monopoly for *Aguas del Tunari*, and as such this proviso is clearly not met. The second limitation created by Locke was that it would be illegitimate to acquire surplus, a limitation that would clearly apply in this situation. Furthermore, *Aguas del Tunari* barely added value to the water, as it neither increased the access to water or the quality of it. As such, it is near impossible to justify the 300% increase in water bills that some Cochabamban's faced. In reality, the labour theory, alongside the personality theory can create a direct argument against this privatisation of water, as used by Karl Marx. He in fact transferred the two from 'a capitalist shield to a battleaxe'⁷, arguing that people need sufficient resources to live – notwithstanding private monopolies on resources. By increasing the price of water and removing alternative water sources, *Aguas del Tunari* cannot justify their ownership in this way.

In the case of Cochabamba, the common good was simple to determine. The need for drinking water affected the entire population, and is crucial for survival. Half of the population was not connected to the water supply, while the remainder was charged up to 75% of their income per month.⁸ As the United Nations has stipulated, the right to sufficient affordable, safe, acceptable water is a human right,⁹ and under the privatisation contract, none of the population were having this right met. However, as Freyfogle points out, it can be complicated to determine what is in the best interests of the population. For example, perhaps, if *Aguas del Tunari* was in fact a Bolivian based company, and thus stimulating the economy through revenue and employment, then perhaps privately owned water would be in fact be for the common good of the nation *as a whole*, in spite of one small city not having sufficient access to water. Who is to decide which interests in water prevail? Will it be that for drinking, agriculture (which, in many nations, is the greatest single use of water), domestic use, or will conservation efforts prevail? Moral law should tell us that access to drinking water should be the most important priority, however what jurisdiction is there to enforce that? Such human rights need to be entrenched in legal documents to have any real mandate, which is something that nations, particularly LEDC

⁶ Kramer, Matthew K. (1997). 'John Locke and the origins of private property', *University of Cambridge Press*, Cambridge. P 42.

⁷ Freyfogle, Eric T. 2003, 'Justifying the landowner's power', in Freyfogle, Eric T., *The land we share: private property and the common good*, Island Press, Washington, D.C., pp. 124.

⁸ Olivera, Oscar. (2004). ¡Cochabamba! Water War in Bolivia. *South End Press*, Cambridge. P 7.

⁹ United Nations Economic and Social Council, Committee on Economic, Cultural and Social Rights. The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/a5458d1d1bbd713fc1256cc400389e94?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/a5458d1d1bbd713fc1256cc400389e94?Opendocument) (Accessed 5/09/12).

nations are extremely reluctant to do. A rare example of this integration is in the state of Hawaii, where the human right is entrenched in their constitution.¹⁰

In light of the practical failure of water privatisation as evidenced in Bolivia, the question must be asked, why then do developed nations tend to advocate for such private ownership? The answer lies in an understanding of the theoretical underpinnings of the concept. Academics often argue that private ownership of water is essential in nations such as Bolivia in order to avoid the corruption inherent in the government. However, the *Aguas del Tunari* could also be argued to be corrupt. In Cochabamba most people's water bills indicated water use had increased from 5 cubic metres to 20 cubic metres in spite of many still having access to water for only two hours per day.¹¹ Additionally, the World Bank continues to argue that meeting this human right requires the efficiency and ingenuity that the private sector has to offer. Some argue that privately owned water utilities have existed in Northern America for centuries, with a strong record of accountability, efficiency and health safety.¹² However it needs to be noted that such utilities were regulated by the U.S. Environmental Protection Agency and other bodies to ensure fair customer rates. The issue with privatisation in less developed nations is that too often, as in the case on Cochabamba, the governments lack the institutions to regulate the private market. It is also argued that such privatisation is a way to make up for a lack of public financing for infrastructure. As valid a point as this is, however, it needs to be noted that a lack of public resources itself is a result of policy choices; tax revenue is roughly 15% less of the GDP of Latin American nations than developed nations.¹³ In assessing whether any of this theory has translated to practice, an investigation of the public health outcomes after privatisation is necessary. Several studies have suggested that the increased capital did not lead to greater access to water, with water coverage at the end of the investigation remaining greater in non-privatised localities.¹⁴ However privatisation was a successful venture for the main part in Chile and Argentina, suggesting that its abysmal failure in some nations may depend on the socio-political situation within the nations themselves.

Stemming from an increase in conservation efforts, I strongly advocate a wider adoption of precautionary principles to humanitarian cases: one must prove that their endeavour must cause no harm *prior* to commencing their work. It is extremely troubling that property rights are prevailing over human rights. It has been evidenced that the privatisation of water is a minimalist approach to public health; assessing an essential resource in terms of economic viability rather than human need. Here, private ownership flies in the face of the common good, and as such, private ownership should not be afforded over scarce resources at the expense of humanitarian outcomes.

¹⁰ Taylor, D. A. (2004). 'Is Environmental Health a Basic Human Right?' *Environmental Health Perspectives* vol 112, p. 1006- 1009. <<http://dx.doi.org/10.1289/ehp.112-a1006>>

¹¹ Olivera, Oscar. (2004). ¡Cochabamba! Water War in Bolivia. *South End Press*, Cambridge. P 7-9.

¹² Ugaz C. Consumer participation and pro-poor regulation in Latin America. Helsinki: UNU/WIDER; 2002. Available from: <http://www.wider.unu.edu/search/search.htm>

¹³ De Ferranti D, Perry G, Ferreira FHG, Walton M. Inequality in Latin America and the Caribbean: breaking with history. Available from: <http://lnweb18.worldbank.org/LAC> [Web site]. (Accessed 5/09/12).

¹⁴ Galiani S, Gertler P, Schargrodsky E, Sturzenegger F. The costs and benefits of privatization in Argentina: a microeconomic analysis. Available from: http://www.iadb.org/RES/index.cfm?fuseaction=Publications.View&pub_id=R-454 [Web site].

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Ugaz C. Consumer participation and pro-poor regulation in Latin America. Helsinki: UNU/WIDER; 2002. Available from: <http://www.wider.unu.edu/search/search.htm> (Accessed 2/09/12)

United Nations Economic and Social Council, Committee on Economic, Cultural and Social Rights. The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). Available from: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/a5458d1d1bbd713fc1256cc400389e94?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/a5458d1d1bbd713fc1256cc400389e94?Opendocument) [Web page]. (Accessed 5/09/12).

World Health Organization. Water, sanitation and links to health. Available from: http://www.who.int/water_sanitation_health/facts2004/en/ (Accessed 2/09/12).