

# The Commodification of the Public Service of Water: A Normative Perspective

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**Abstract.** This paper examines some key normative issues that arise from the commodification of the public supply of water. Since the end of World War Two, the provision of water for domestic consumption has, in most Western countries, been regarded as a fundamental public service and, as such, has typically been supplied by the State cheaply or free of charge to users. (Water for agricultural and industrial purposes has also often been so provided.) However, in recent times, in many parts of the world, water markets have been established. This clearly has distributive implications and, potentially, depending upon one's theoretical framework, raises problems of distributive justice. However, questions concerning the proper distribution of water have garnered little attention from political philosophers and applied ethicists, nor has there been much discussion of the moral permissibility of commodifying water. This is surprising given the centrality of water to human civilisation. In the early sections of the paper I outline several of the normative and conceptual puzzles surrounding water. I then explore a number of plausible objections that might be raised against commodifying water and consider what role they should play in our all-things-considered judgments about the moral permissibility of water markets. I conclude with some reflections on the role of philosophical inquiry in applied public policy-making.

**Key words:** commodification, water, distributive justice, public services, environmental values.

## I. COMMODIFICATION, WATER, AND PHILOSOPHY

Water is a fundamental human good that many contemporary governments supply for domestic use as well as for both agricultural and industrial purposes. Indeed, in the case of domestic usage, the provision of clean running water has often been regarded as a basic function of government. Water for domestic uses is widely regarded as a basic good that should be provided to everyone free of charge. This principle of *universal access* was enshrined in a great deal of the Keynesian policy-making that emerged after World War Two and has been a significant ideal motivating much recent water activism (see Bleisch 2006).

However, if the ideal of free universal access to water is one that has enjoyed widespread acceptance, it is nonetheless in hasty retreat right across the globe with the advent of water privatisation, water trading and large corporate groups buying the rights to what had previously been public or common goods. The pressures for such marketisation or commodification (I shall use the terms interchangeably) are both financial and intellectual. In the first place, water resources are becoming increasingly scarce and there are clearly great profits to be made in this area. But, equally, the intellectual climate in many government circles in recent times has favoured market solutions to resource allocation dilemmas, be they natural resources or social goods. The thought is that the most efficient way to allocate scarce resources is via the market. Unsurprisingly, given that the back-

ground ideal of universal access is still extant, marketisation has met with opposition in many quarters.

Clearly there are important *normative* issues here regarding the proper allocation of water. However, the just allocation of water is not a topic to which many philosophers have attended. Conversely, if one explores public policy debates in this area, which are dominated by economic theory and hydrology, there is little acknowledgement of the *fundamentally normative* nature of any inquiry into the allocation of this resource.

One might object that much of the foregoing could be said about the marketisation of *any* public good; if we look at, for instance, housing, roads, or education, where processes of marketisation have occurred, we soon discover debates between advocates of efficiency and advocates of universal access. Indeed the most common criticism of such marketisation is distributive; namely that marketisation undermines access to goods that previously had been universally available.

However, there are differences that render the water case distinct. First of all water is a complicated *object of analysis* since, when discussing these issues, it is difficult to focus solely on it *as a* public good. Any analysis of the marketisation of publicly provisioned water will inevitably lead to an analysis of water in general. (As we shall see below, in discussing this we will veer at times into discussions that might appear, at first sight, more properly located in environmental ethics). Secondly, *the process of marketisation* itself faces difficulties because of the idiosyncratic nature of water and the peculiarities of the hydrological cycle. It is hard to establish ownership rights over a good that is in a constant process of recycling. Thus, while many of the general normative issues are familiar, there are issues that arise because of the specific nature of water as a distributive good. Finally, although the normative concern is primarily distributive, there are other ethical issues involving aesthetic and environmental values that necessarily arise because domestic water cannot be separated off from the broader hydrological cycle.

Herein then I will examine the marketisation of water from a philosophical perspective and argue that:

1. There are significant normative and conceptual issues concerning water that require philosophical examination but which the dominance of hydrological and economic models obscures.
2. The question of how water is to be allocated needs to be reconceptualized as fundamentally a problem of distributive justice. Although I shall consider other questions of value (in particular of environmental value), I take distributive questions to be the most central.
3. The answers provided by philosophers to these questions primarily involve establishing the bounds of the *determinable* rather the *determinate*.

In pursuing these claims, I hope along the way to demonstrate the relevance of philosophical analysis in understanding both the marketisation of water and, indeed, water

policy more generally. The analysis will also highlight some of the idiosyncratic features of water as a public good.

## II. COMMODIFYING A NATURAL RESOURCE AND COMMODIFYING A PUBLIC GOOD

By ‘commodification’ I shall simply mean the transformation of an object or practice into a market good (or a commodity), that is, a thing that is bought and sold. The canonical philosophical definition of a commodity comes from the work of Aristotle. In the *Politics* Aristotle notes that any object has two possible uses, namely as an object of use and as an object of trade or exchange (Aristotle, 1976 [1257a]). Thus an article that is sold on the market can be said to have both a use-value and an exchange-value, while an article that is made for consumption alone, is said to have use-value alone. Following this line of thinking, marketisation can be defined as the transformation of a thing with *only* use-value into a good with both use-value and exchange-value. A good comes to possess an exchange value when it is bought and sold in a market for money or some relevant equivalent.

This account is, for all intents and purposes, the standard definition of both the Classical economists (such as Smith and Ricardo) and Marxists. Modern economists, however, take a slightly different approach, focusing instead on the ability of a commodity to satisfy wants or needs rather than on its apparent two-fold nature. The term ‘commodity’ in this discourse simply becomes a general term for any marketable item produced to satisfy wants or needs and, accordingly, commodification here becomes the transformation of a thing into such an entity (see Milgate 1987, 546-49).<sup>1</sup> Such a definition fails to provide the grip on the normative and phenomenological significance of commodification that one gains through the use-value/exchange-value distinction.

Let us turn to water itself. If we follow the definition endorsed above then the commodification of water refers simply to the transformation of water into a good that has both use-value and exchange value and is bought and sold on a market, typically for money. Sometimes such commodification will involve water that was previously owned by the State (or some other collectivist public institution) and at other times it will involve water that was part of the commons and not subject to specific ownership rights. In both instances, whilst the water in question always possessed use-value, it now also possesses exchange-value. The case with which we are concerned involves the commodification of water for human use in towns and cities that was owned and governed by the State. (Notice that it could also involve water that was unowned prior to the marketisation.)

This is still rather imprecise, however, since the analysis covers a range of different possible social phenomena. The phrase ‘marketisation of water’ might naturally be

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1] There exists a common misunderstanding amongst some modern economists that the employment of the distinction between use and exchange value by Classical economists is central to their theory of how prices are formed. This is in part why the distinction is controversial. However, the view is odd since their theory of prices is one that focuses on labour. For an example of this, see Samuelson 1976, 438. For a discussion of the use of the term “commodity” in economics, see Milgate 1987.

thought to refer to any one of the following cases, each of which involves a shift away from the post-war consensus in which domestic water was conceived of as a publicly owned good that should be universally supplied free of charge. It might mean either:

- the provision of a pricing mechanism for municipal water or;
- the commodification of water utilities that provide municipal water or;
- the creation of full-scale water markets where water is bought and sold by commercial entities.

Let us take each of these in turn. The first category simply involves cases where state agencies decide to charge a price, with the aim typically of cost-recovery – that might or might not reflect the potential market value of the water – to citizens for the domestic water they consume. The second category refers to situations where state water utilities are privatised and become proper capitalist enterprises aiming to generate profits in their supply of municipal water or where private companies enter into the provision of water for citizens. The final category involves cases where it is not only municipal water and water utilities that are being bought and sold but where this is part of a broader pattern of marketisation of all (or at least most) water resources and in which water is a commodity in the fullest sense. (This would obviously incorporate the marketisation of publicly owned water as well as water that was previously unowned and not administered by any institutional grouping).

Now, given the nature of our initial question, it might well seem natural to restrict the discussion to the second category. But there are good grounds for examining the broader conception (which additionally means that questions of natural resource management will also arise). In the first place there is a ‘sociological’ reason for examining the broader question. The pressure for the marketisation of domestic water is not isolated to domestic water alone, but is part of much larger project of marketising water. As a matter of fact, the same commercial groups that wish to marketise agricultural water are typically involved in the marketisation of water for domestic usage. Further, in most cases the legislation required in marketising, encompasses water across the whole hydrological cycle. To be sure, this does not mean that the ethical issues for domestic water will be identical with those raised by the marketisation of wild rivers, but certainly many of the arguments given in favour of marketisation will be similar.

Secondly, the divisions between ‘kinds’ of water is, in many ways, artificial and, moreover, not always *normatively* relevant. Hydrologists often distinguish, for instance, between *ground* and *surface water*. But these are not different species of water, simply water located at different stages of the hydrological cycle. Similarly policy makers often distinguish between industrial, municipal and agricultural water but again this does not track any intrinsic features of the water itself but simply distinguishes types of human use of water.

Thirdly, in evaluating the *ethical standing* of the marketisation of municipal water, questions about water more generally are necessarily raised. Given the scarcity of water in many parts of the world, it follows that municipal use will affect water availability for other purposes. Domestic water use is often in competition with other human uses such as irrigation or industrial processing. Equally, domestic water use can affect the water available for maintaining sustainable and healthy freshwater ecosystems and, in such cases, value conflicts will arise between human needs and environmental values of ecological sustainability and environmental integrity. Such resource competition means that if marketisation has effects upon the demand for water or levels of consumption – as I believe will sometimes be the case – then it will affect the availability of water for other purposes such as environmental flows. Thus we soon find ourselves discussing natural resource ethics and not merely questions of the provision of a public service.

The project of marketisation of water also confronts various practical and conceptual difficulties that are *peculiar* to this good itself. For any form of marketisation, if the good is to become a fully-fledged commodity, then there are legal, practical and cultural obstacles that must be overcome. Here I have in mind such things as cultural resistance to *the very idea* of some good as a commodity or, alternatively, cases where the property rights that underpin the marketisation are difficult to enforce. In the case of water there are some special difficulties. Firstly, practical problems arise with respect to the so-called *security of the resource*. One might, for instance, buy the right to access certain quantities of water each year only for the occurrence of a drought to render the right meaningless. This makes for a highly unusual commercial right.

Secondly, if one is to charge for the use of a resource there is a justificatory requirement for that impost to be universal in the sense that if any person consumes the good they must pay for it. However, such universality is hard to enforce since, in many isolated regions, use of water is difficult to police and, further, not all interception activities are immediately obvious as interception activities. Many people in more remote locations are able to make significant use of water, free of charge, without that use being detected. Thus a rice farmer, living by a river in a remote region, might well be able to pump water into his fields without detection.

Moreover, not all uses of water that are financially beneficial are immediately obvious. Consider, for instance, the take-up of ground water by plantation trees in commercial plantations. Here ground water is being intercepted by the roots of the commercial trees and contributes to the overall profitability of the enterprise, yet, at first sight, this does not involve commercial interception. Nonetheless, the uptake affects water availability ‘downstream’ as it were. In order to ensure that all who gain commercial benefits from water usage pay for their usage, many governments have brought in licences for plantations that assess the amount of water consumed. Such licences are obviously contentious and often will not adequately capture all resource usage.

The third difficulty I shall consider concerns the so-called “unbundling” of land and water rights. Traditionally, in many jurisdictions, water that flowed through a portion of

land, or fell on it as precipitation, was considered lawfully the property of the landowner. Rights to the water of a plot of land were typically regarded as concomitant with the rights to the land itself. However, these sets of rights have usually been disconnected by legislatures (or “unbundled”) in the process of creating water markets. The water that runs off a property is regarded as being owned by the holders of the catchment title. In some places, such as, for instance, Arizona, landholders do not even have the right to collect the water that runs off the roofs of their houses since all such water is owned by those with downstream water rights (Western States Water Law: Arizona).

Unsurprisingly, such unbundling is often anathema to landholders who regard the water that falls on their properties to be rightfully theirs. Resistance to unbundling is particularly marked amongst traditional landowners, such as Indigenous Australians, for whom the idea that one could separate land and water rights, in this way, conflicts with their spiritual relationship to the land (Jackson and Altman 2009). This points to one plausible moral objection to the commodification of water; insofar as such commodification requires the unbundling of water and land, then it will be radically at odds with the spiritual values and relationship to land of many traditional peoples (Bhagwat 2009). Any process that imposes rules according to which land and water are to be treated separately might be said to ignore the spiritual values of traditional landowners.

Of course, while important issues are raised here, this is not the most common objection to the commodification of water. When assessing the moral permissibility of commodifying, the most commonly heard criticism concerns the *distributive consequences* of such commodification. The thought is – as we shall see in a later section – that by commodifying we discriminate against those with little economic power. We shall explore this objection from distributive access in greater detail below. But before doing so, let us turn our attention to the way in which a great deal of water policy-making excludes normative considerations.

### III. THE COMMODIFICATION OF WATER AND THE EXCLUSION OF NORMATIVITY

Water policy raises significant normative issues, especially in a political climate in which there exist great pressures to commodify the mechanisms for allocating water. These issues involve considerations of distributive justice, environmental values and religious and aesthetic values.

Let us begin with the distributive case. Water has, as a matter of historical fact, been subject to a wide range of mechanisms for allocating entitlements to its use. The three primary mechanisms have been riparian legal rights, state allocation and market allocation. Under a system of riparian rights, landholders who own property adjoining watercourses are granted rights to use: these rights are occasionally unlimited, but typically involve some constraints upon usage. The other two mechanisms involve the allocation of rights to use water either by the State or the market. In the former case water is usually owned by the State that then grants rights of use to citizens. In the latter case, allocation on the

market assumes private property rights in water: in order to be commodified, property rights in water must first be awarded.

The shift to a market system for the allocation of water – indeed a shift from any one mode to another – will affect the system of entitlements and this raises questions of distributive justice. Robert Nozick famously suggests in *Anarchy, State and Utopia* that if goods fell like “manna from heaven,” then they could be treated as public goods to be distributed according to some patterned theory of justice (Nozick 1974, 198). In one sense water does fall like manna from heaven and, in another, it does not. The water we consume in our homes typically did not just fall from heaven but was provided by government utilities. Equally the water used in industrial processes or for agricultural purposes has typically been made available through human intervention in the form of dams, channels and pipelines. The bucolic vision of water falling naturally from the sky and running wildly in rivers often obscures the fact that most of the water we use is a product of human intervention in natural processes. Given that water is both a basic necessity of human life and an important resource for agricultural and industrial activity, who obtains access for such purposes is a critical issue of social justice. It is not simply a matter of ‘climatic luck’.

Equally, water policy has significant implications for the environment and consequently for the environmental values we express through such policy. For instance, if a government increases the allocation of water to industry, then this might affect ecosystems from which that water is diverted. This, in turn, raises the issue of what value we place on ecosystem health as opposed to industrial outputs. Or again governments might well develop policies that would limit agricultural activities near sensitive riverine environments. But should we do so? How do we measure environmental values, such as river health, against the commercial opportunities that such bodies of water provide? For many people, certain water systems have spiritual and aesthetic values that commercialisation potentially threatens. If we increase the marketisation, to what extent will that impinge upon the health of our water systems? These are all significant questions that are fundamentally normative regarding our engagement with water systems and, furthermore, require philosophical reflection for their solution.

Despite the obviously speculative and philosophical nature of these problems, one striking feature is the lack of philosophical reflection in water policy-making. In part, this is a consequence of the lack of engagement by academic philosophers with water itself and, more specifically, with water policy. It is surprising how little philosophers have said on these issues. For instance, if one searches the *Philosophers' Index* in the period from 1991-2011, for articles which focus on normative issues concerning water one finds less than ten (depending on what one counts as relevant) and a number of these are, in fact, book reviews.

But it is also partly a consequence of the domination of water policy by economists and hydrological engineers that generates a remarkably anti-normative tone to much of the dialogue about water resources.

To illustrate these claims regarding the lack of normative reflection, let us briefly consider recent policy developments in Australian water management that have facilitated the commodification of water across the country. This involved not just domestic water systems, but the commodification of all water. In 2007 the Federal Parliament passed the *Australian Water Act*, whose explicit aim was to establish water markets; subsequently in 2008 the Australian Government National Water Market was established. The aim of the water markets that were established was to provide a forum for the trading of water resources between competing users. The National Water market not only allowed for the trading of water allocations but also ‘entitlements’ (which are the right to a water allocation). It must be noted that this is a *limited market* in that water can only be traded once so-called “Critical Human Water Needs” have been met.<sup>2</sup> The Critical Human Water Needs cover basic domestic uses of water so as to allow showering, cooking and some gardening activities, but not food production or agriculture. Clearly embedded within the legislation are *implicit* normative views about distributive priorities, with a key caveat being that market trading can only begin once basic human needs are met. However, what is striking is the lack of explicit discussion of some key ethical questions, such as:

Who should have access to water?

What if the establishment of water markets means some people are denied access for uses beyond mere domestic necessity?

How, in a market environment, might we balance financial demands against environmental requirements?

Such questions are not explored within the act, nor is there a substantive body of literature surrounding that legislation that explores them. The point is not simply that arguments for and against commodification were not explored when these legislative changes were made, but the very fact that they have normative significance is not at all acknowledged. What is required here is *inter alia* some recognition of the normative significance of transforming the mechanisms via which water is distributed. Of course, this is just one example of legislation in this area but I suggest it is symptomatic of much water policy legislation.

#### IV. CRITERIA RELEVANT TO NORMATIVE EVALUATION

I have claimed that despite the lack of explicit normative discussion concerning the commodification of water, there are serious normative concerns that need to be addressed, and in each case normative input from philosophers is required if the analysis is to be substantive.

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2] *Australian Water Act 2007*: Section 86A.

Let us begin by considering the implications of commodification for questions of distributive justice. Amongst other things, the market is a distributive mechanism for the allocation of goods. Markets allocate goods (ideally) to those who have the economic wherewithal to pay for them: in commodifying a good we transform the mechanism via which it is allocated, from some non-market mechanism to a mechanism which requires money for access to the good. When we fully commodify water, any person's ability to access this resource becomes a mere function of economic power.

Which particular system of water allocation exists prior to the commodification varies markedly. In some jurisdictions water has been owned by the State and access is thus determined by bureaucratic fiat.<sup>3</sup> In other jurisdictions legal systems of riparian rights were in place, such that those who owned land adjacent to watercourses had the right to use water either for domestic, agricultural or industrial purposes. This has been the tradition in the United Kingdom and much of Europe. In some cases there were Lockean caveats about 'enough and as good' left over.<sup>4</sup> The point is that access was determined by historically granted property rights that come with parcels of land themselves (exactly the kind of arrangement that unbundling attempts to overcome).

Commodification, as we noted earlier, involves a transformation of the mechanism by which water is allocated. There are a number of possible negative consequences of such a transformation, but below I highlight four, all of which demonstrate how the commodification of water might affect important moral values:

- a) *The Objection from Basic Need*: if the commodification of water leads those without adequate financial resources to be excluded entirely from access to water then it is morally objectionable;
- b) *The Objection from Exclusion*: insofar as the commodification of water leads those who have had access via prior systems of allocation to be effectively excluded from a good to which they previously had access, then this is *pro tanto* a bad-making feature of the process.
- c) *The Objection from Environmental Integrity*: insofar as commodification leads to decision-making processes that always favour the realisation of profits whenever a conflict arises between financial interests and environmental interests, then commodification is morally objectionable
- d) *The Objection from Expressive Violation*: insofar as the commodification of water leads us to look upon water systems which *should be regarded* in a non-instrumental manner, as mere means to the realisation of profit, then such commodification raises moral concerns.

Note that only the first two relate directly to domestic municipal water, whereas the final two concern environmental water more generally.

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3] Indeed this was the situation in Australia for over one hundred years.

4] See Nozick 1974, 175-76 for a brief discussion of this Lockean proviso.

Let us begin with the first objection. One significant moral value that many people endorse is the *right to basic access* to water for domestic purposes. Indeed in post-apartheid South Africa this right was taken so seriously that a right to water was enshrined in the constitution. The *Constitution of the Republic of South Africa*, adopted in 1996, states that everyone has the right to have access to an environment that is not harmful to their health and this includes a constant supply of clean safe drinking water. If we do characterise it as a fundamental and basic right, then any process or policy that leads to violations of that right (or potentially does so) is morally objectionable (see Bleisch, 2006). Given that the establishment of full-scale water markets potentially means some users will miss out, then when it does so, it clearly violates the right to access. If we take the idea of a right to domestic water seriously, then any markets in water would require the establishment of mechanisms (usually involving government intervention in the market) to ensure that everyone has their basic water needs satisfied (this was the point of the South African legislation). If one requires money in order to purchase consumption rights to water, then this will sometimes lead to a violation of the ideal of universal access.

In a real sense, the view endorsed here is in accordance with what, in the parlance of contemporary political philosophy, is referred to as “sufficientarianism”. According to the sufficientarian, justice requires that everybody obtain enough of the distributive good in question rather than requiring an equal distribution (Frankfurt 1987). The idea is that as many people as possible should have enough of the relevant good to pursue their life goals (Page 2007). All persons should be provided, where possible, with the resources (in the present case, namely water) to reach the threshold of sufficiency, where that sufficiency is defined in terms of what is required for one to realise one’s aims and aspirations. Sufficientarian accounts are regarded as rivals to their close relative prioritarianism, according to which a benefit has greater moral value the worse the circumstances of the individual to whom it accrues. Justice requires us to give *priority* to improving the well-being of those who are badly off (Arneson, 2000). I do not intend here to engage in a general defence of the sufficientarian approach. However, in the case of water the reasons for preferring it to prioritarianism are quite clear. With water, our aim is not so much to make the worst-off as well-off as we can since beyond the level of sufficiency more water will not necessarily improve the quality of a person’s life. Yet below that basic threshold, the lack of water resources will diminish the quality of one’s life.

It must also be remembered, at this point, that the commodification of domestic water does not (typically) occur in isolation, but is usually part of a larger project of commodifying *all available water*. A general project of commodification means, amongst other things, that water for agricultural and industrial purposes also becomes tradeable, and consequently is subject to market pressures. If this occurs then demand for industrial and agricultural water might have a significant negative impact on the availability of water for domestic purposes. It is quite plausible to assume that in many instances industrialists and agriculturalists might use their economic power to command a greater portion of the water than had previously been the case. In such circumstances, the general commodifi-

cation of water might well affect domestic users by reducing the amount of water available for all domestic users. It was precisely this kind of concern that lead Australian policy makers, when establishing rules for water trading, to create the previously-discussed category of Critical Human Water Needs. The idea is that the water needs of domestic users – however those requirements are determined – must be satisfied before water is made available for trading. Before any water trading can occur, all of these critical water needs must be met. What we have here is a *hierarchy of uses*, with domestic water usage given such a high priority that satisfying it to some basic degree requires taking a certain proportion of the available water resource out of the market.

The preceding distributive concerns have no *historical dimension* in the Nozickian sense that the history of access and ownership of the resource has no effect on claims about how it should be distributed. The claim defended here is that every member of a society, no matter what has gone before, should have access to water for domestic use and that any failure to meet such needs is a form of injustice. However, there are also claims based on traditional access. Accordingly, if the commodification of water reduces access to water that some individuals or groups previously enjoyed, then it might well be argued that this also is a form of injustice. This is the *Objection from Exclusion*.

The argument here is grounded in the normative claim that if people *have had* access to a good, and subsequently this access is removed, then this is *pro tanto* a bad thing and requires justification. The claim has greater force where groups have had a long-standing tradition of access to a good and where such access has cultural significance. Of course, there will regularly be cases where there exist sound reasons for the good to be distributed elsewhere; for instance, the needs of other persons or groups might well be far greater than those who have traditionally had access. This normative claim does not rule out the possibility of the historical claim being overridden. It simply says that loss of access is, as a first approximation, a bad-making feature of an action or process and, hence, must be normatively justified.

What is the relevance of this to the commodification of water? There are a number of ways in which such commodification might reduce or (in extreme circumstances) remove access that previously had been extensive. For instance, if the establishment of water trading involves revoking riparian rights, then clearly according to the foregoing normative claim, this would count as a *pro tanto* form of injustice. It is not that individuals' basic needs are no longer being met but previous privileges have been abolished. We see similar consequences with respect to so-called "unbundling" that is arguably a necessary concomitant of the establishment of water trading. One consequence of unbundling is that landowners no longer have the right to the water that passes through or falls on their property.

This is the essence of our *Objection from Exclusion*: individuals and groups are excluded from access to a good to which they previously had access, and the concern upholds regardless of whether their basic needs are being met. This might seem especially unjust

in cases where a group of say traditional landowners has had effective control of a water resource that passes through their lands for many generations.

The focus thus far has been on *human use* of water. However, commodification also impinges upon significant environmental values and ideals. (Notice, in this way, water is significantly different from other public services, such as housing, which do not impinge so directly on environmental issues). Water policy-makers are often forced to choose between allocating water for human consumption and allocating it for the maintenance of healthy ecological systems; such conflicts are often highly contentious.<sup>5</sup> For instance, in Australia in the Murray Darling River Basin, the diversion of water away from fruit production and other agricultural industries towards so-called environmental flows over the past ten years has been extremely socially divisive. On one side of the debate are those who wish to save an ecological system that is on the verge of breakdown: the river is heavily-salinated and fish numbers are in decline (which we might view as symptomatic of the near collapse of the ecosystem). On the other side of the debate are those who support the agricultural industries and communities that rely on that water for agrarian production. This is just one example of the conflict between commercial human uses and environmental uses of water.<sup>6</sup>

Commodification – especially when undertaken within free market conditions – is likely to favour human uses over environmental values. I shall refer to this as the “*Objection from Environmental Integrity*.” In the absence of government intervention in the operation of the market, then environmental goals, such as the maintenance of healthy environments for non-commercial aquatic life, are likely to be threatened. However, this will not always be so. In some instances, governments have bought allocations on water markets and redistributed them for environmental purposes. This is, however, a politically divisive (and highly expensive) exercise and probably not the most likely way of successfully realizing such environmental goals. Commodification will, in most cases, be at odds with commonly endorsed environmental values and will limit any government’s ability to act in an environmentally sensitive and sustainable manner.

When we consider environmental issues, it is not only values of sustainability and ecological integrity that might be threatened by the commodification of water. Many environmental activists believe the *modes of regard* associated with the market to be inappropriate to the natural world, in general, and to water in particular (Bhagwat, 2009). For such critics there are spiritual and aesthetic values associated with various bodies of

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5] Oddly, water systems have not received the same attention from environmental ethicists as has, for instance, the idea of wilderness.

6] In order to defend the idea that the commodification of water might well have negative consequences for the ecological integrity of water systems, one need not enter into debates over whether the value of such systems is at base human or whether nature has intrinsic value. All that is needed for this argument to hold is the assumption that environmental integrity matters, no matter what the source of that moral considerability.

water – be they lakes, springs or rivers – that will be undermined or violated by the norms associated with the market.

We might explicate this line of objection, making rather liberal use of Elizabeth Anderson's idea of there being expressive values associated with goods and activities that the market will sometimes violate (acknowledging, of course, that Anderson does not apply this moral approach beyond the human realm).

Anderson's is a non-consequentialist account of value that focuses on the ideals we express in our treatment of things. For instance, Anderson argues that our personal relationships involve norms of love and respect for which the norms of the market, which involve use and instrumentality, are entirely inappropriate (Anderson 1993, 141-67). This is what makes commodification in such cases morally wrong. I suggest we can apply this framework to water. With respect to the commodification of water, then it can be argued that *to regard* certain bodies of water, such as perhaps a wild river, as mere resources for the realization of financial profit *expressively violates* them. This is, in part at least, what is troublesome for indigenous groups about the so-called 'unbundling' of land and water. To regard water as a resource that can be divorced conceptually from the land on which it flows is to fail to hold the correct attitudes towards the environment in which one lives.

So any economic or political system, including a market system, which treats water as a commodity necessarily involves a violation of the norms of respect that should be directed towards at least some bodies of water.<sup>7</sup> Let us call this the "*Objection from Expressive Violation*." To be sure, the market is not the only distributive mechanism that might treat water as a *mere resource*. Government water regulators clearly are resource managers and if water, which was previously managed by governments for resource allocation, is commodified, then it is unlikely that the attitudes towards that water will change for the worse with respect to the framework of values that those who endorse this objection recognise. Nonetheless, there are two factors worth noting here. Firstly, legislation to commodify water typically covers all water in a jurisdiction and, hence, will also cover those bodies of water that are not currently treated primarily as a human resource. If those are bodies which should not be regarded as mere resources then the objection stands. Secondly, the fact that other systems involve treating bodies of water that have some aesthetic or spiritual value as mere resources does not eliminate the concern with commodification.<sup>8</sup> Finally, the demand for profits that is associated with the market means that the likelihood of non-financial values being taken into account in the all-things-considered judgments of public decision-makers is low.

The point is that insofar as a body of water is one that should be regarded according to norms that are *fundamentally non-instrumental*, then the use-valuing necessarily associ-

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7] Note that in order to criticise the commodification of water on these expressive grounds, one need not hold that commodification necessarily leads to a violation of the norms. For an account that treats the violation of norms as *causal* rather than *constitutive of* commodification, see Walsh 2001.

8] Although obviously not all forms of human engagement with water involving treating bodies of water as mere means of realizing human ends.

ated with the market gives rise to serious moral concerns. Assuming that one endorses the idea that there are particular modes of regard appropriate to parts of the natural world, then this provides a further moral criticism of at least some forms of the commodification of water. The reason for my hesitancy here is that there will be cases where human needs are such that we must – given we accord some kind of priority to human needs – trade-off the mode of regard for the well-being of human beings.

The final normative issue we must consider here concerns the force of these objections with respect to public policy. Do they furnish grounds for rejecting commodification entirely? Do they mandate state ownership and provision of water services? At first sight one might think so, however, closer examination reveals a much less clear-cut picture and I suggest that these objections in many cases provide grounds for caution rather than outright prohibition. What I have outlined are *possible pitfalls* associated with commodification rather than necessary consequences and, as such, endorsing these objections need not commit one to ‘market abolitionism’ in water.

If we reflect upon the *Objection from Basic Need* we soon discover that the goal of ensuring commodification does not undermine basic access to water, can be achieved via options other than absolute prohibition. One might, for instance, allow trading in water but also establish a voucher system that ensures all have basic access. Alternatively, one might establish markets in surplus water once basic needs have been met (this is the thought behind the establishment of the so-called Critical Human Water Needs).

Nor is it the case that the *Objection from Exclusion* provides grounds for prohibition of markets. In the first place, whether or not those who previously had access come to have no access after the establishment of markets in water is an entirely contingent matter. Markets might well be established and no single person is excluded from goods to which they previously had access. Where markets do give rise to exclusion – and where we take such exclusion to be morally significant – then it is possible for the State to intervene so as to ensure that access is maintained. Such solutions do not involve a ban on commodification.

Even more complicated are the implications of the third and fourth objections listed above – i.e. the *Objection from Environmental Integrity* and the *Objection from Expressive Violation* – for the moral standing of water markets and for the provision of alternative arrangements for distribution. Such objections can also be directed against state ownership and provision since state exploitation of water in vulnerable environments is quite possible (and has often been the norm). While one can plausibly argue along the lines outlined above that such outcomes are more likely under market conditions, this does not necessarily make state provision significantly more palatable for those who are concerned with either environmental integrity or appropriate attitudes towards water resources.

The upshot of this discussion is that endorsing these four objections does not necessarily commit one to the conclusion that all water should be owned and allocated by the State or some other non-market institution.

## V. CONCLUDING REMARKS ON THE DETERMINATE AND THE DETERMINABLE IN WATER ALLOCATION

In a recent interview the political philosopher Debra Satz (2010) suggested that no philosophical theory could provide determinate answers regarding the degree to which we should rely on the public sphere or on altruism for the provision of such things as health care and education. For Satz, these are political questions not problems of political philosophy. Similar constraints on the scope of philosophical analysis might be thought to apply to discussions surrounding the provision of water. She continues:

The political philosophy question is to try and point out the constraints on the domain of decision-making. What values ought to constrain our decisions? What values are important to promote in our institutional designs? But even once we have set those constraints, there are going to be a lot of close-to-the-ground empirical factors that have to be taken into account, and there is going to have to be some room for publics to reasonably disagree about different trade-offs. (2010, 85)

Much of what Satz says here seems applicable also to the formation of water policy. Philosophy can outline the values – such as the right to basic access to water – that should constrain any moves towards the commodification of water. In this case there is probably a wider spread of relevant values that need to be taken into account than perhaps will be the case when we are considering, for instance, housing, since the commercialisation of water not only affects the users of water but can well have serious environmental impacts. Water is not just a public service but is also part of the ecological ‘web of life’ and, as such, the trade-offs that need to be discussed in the public domain involve a wider range of normative considerations than is typically the case with other public services. Debates about how those trade-offs are to be determined will be topics, as Satz suggests, for public disagreement and political negotiation rather than philosophical proclamation.

But at the same time Satz undersells the role of philosophy, at the very least when it comes to water policy. Consider the following three roles that philosophical reasoning can uniquely play here.

Philosophers can identify and assess the normative assumptions beneath arguments both for and against various forms of water policy to be pursued by governments. Here the focus is on the *identification* of the specifically moral nature of public policy dilemmas.

Philosophical analysis allows us to identify the normatively-salient features of processes such as, for instance, commodification and nationalisation and, in so doing, work towards some kind of *solution* to the problems identified. So, for instance, Satz’s focus on noxious exchanges and her account of what makes an exchange noxious or Nozick’s moral focus on the historical nature of goods would both count as examples of the process of identifying normatively-salient features of a social phenomenon.

Philosophers can explore the connections between possible empirical outcomes and their moral consequences. One need not be a utilitarian to see that different empirical outcomes will have different moral consequences. For instance, if commodification does, as a matter of empirical fact, lead to a diminution of access to water then clearly this has moral significance. Exploring that moral significance is a matter for philosophical analysis.

I make no pretence that this list is in any way exhaustive, it simply illustrates the point that philosophical analysis, while typically *determinable* rather than *determinate*, has much more to offer to the morality of marketisation than Satz's characterisation might suggest.<sup>9</sup> In particular, if we look at the commodification of the public service associated with water we see, as this paper hopefully demonstrates in some small way, that philosophy not only allows us to reconceptualise such commodification as a normatively significant issue, but also enables us to identify the central normative features of the debate and, in so doing, opens up new and important areas for debate.

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9] Here I follow W.E. Johnson's use of the distinction where colour and shape are determinables and red and circular are determinates. See Johnson 1921.

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