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Privatisation and the failed promise of free market theory in water services provision: towards developing an alternative theoretical framework

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Abstract:

Privatisation – or the practical method of taking what is 'public' and 'socialised' and making it 'private' – is the main instrument of neoliberal theory for the free market to prevail. While the instrument itself has been resisted, little has been done to contest the applicability of the underlying theory on water supply provision particularly in developing countries. This has resulted in the overselling of private sector involvement and the exaggeration of its benefits by the global donor community, leading to the blanket promotion and enforcement of private sector participation as the main element of water sector reforms in poor countries. This paper is an attempt to demonstrate not only the limits of free market theory as it applies to water supply provision, but also the inapplicability in poor countries of managing of water as an economic good using market-like and market-friendly instruments, where prices function as the chief mechanism that guide decisions on allocation, distribution and consumption. Cost recovery, subsidies and pricing mechanisms, as presently conceived, are generally insensitive to the complexities of poverty. Water markets typically don't exist or else are highly imperfect in developing countries. Furthermore, certain structural conditions – laid down by government action – are needed to make privatisation work. As such, a new theoretical approach is necessary – one wherein economic value and human rights can be reconciled, which measures costs in more poverty-sensitive ways, and which can be 'accountable' to the contexts on which it is applied. This new approach finds greater resonance in sociological theory and institutional economics. It moves away from methodological individualism and treats social institutions, rather than individuals, as the basic unit of analysis. Instead of assuming an 'invisible hand', it looks at how co-ordination emerges from organic solidarity. It also looks at the social embeddedness of economic transactions. Finally, it looks at the dynamics of collective action – how collective acts establish relations of rights, duties, no rights and no duties.

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1. Introduction

The privatisation of water is the subject of what is arguably the most contentious debate in current development discourse. Political battles on this issue are being fought from the halls of international conferences to the streets of cities where governments are increasingly reliant on private sector participation. At the core of these battles is a spectrum of positions, characterised by two fundamentally-opposed approaches[1]. On one hand is the idea of managing water as an economic good in an environment using market-like and market-friendly instruments, where prices function as the main mechanism that guide decisions on allocation, distribution and consumption. On the other is the idea of managing water as a common good, the property of all, to which access ought to be considered a human right that is respected, protected, promoted, and enforced by states and governments. In between these two are other approaches that strive to achieve a balance between the proposition of water as an economic good and of water as a human right.

There are many reasons why water privatisation has become highly contentious. Firstly, 'privatisation' is an intensely political phenomenon that creates new roles and new rules between state, market and civil society. There is a tendency to depoliticise PSP as simply a normal commercial transaction between a user and service provider, similar to the relationship between a plumber and a household owner. This is because 'water privatisation' is often referred to only in its technical sense of 'full divestiture' (or the transfer of ownership of assets from public to private), and is differentiated from the much more limited 'private sector participation' or PSP, ie forms of contracting like service contracts, leases, or concessions (See for example Blokland, et. al. 1999: 14). However, the reality is that "in shifting responsibilities from government to market, privatisation potentially alters the institutional framework through which citizens would normally articulate, mediate and promote their needs" (Feigenbaum and Henig, 1994: 185-187). Hence, it becomes intensely political.

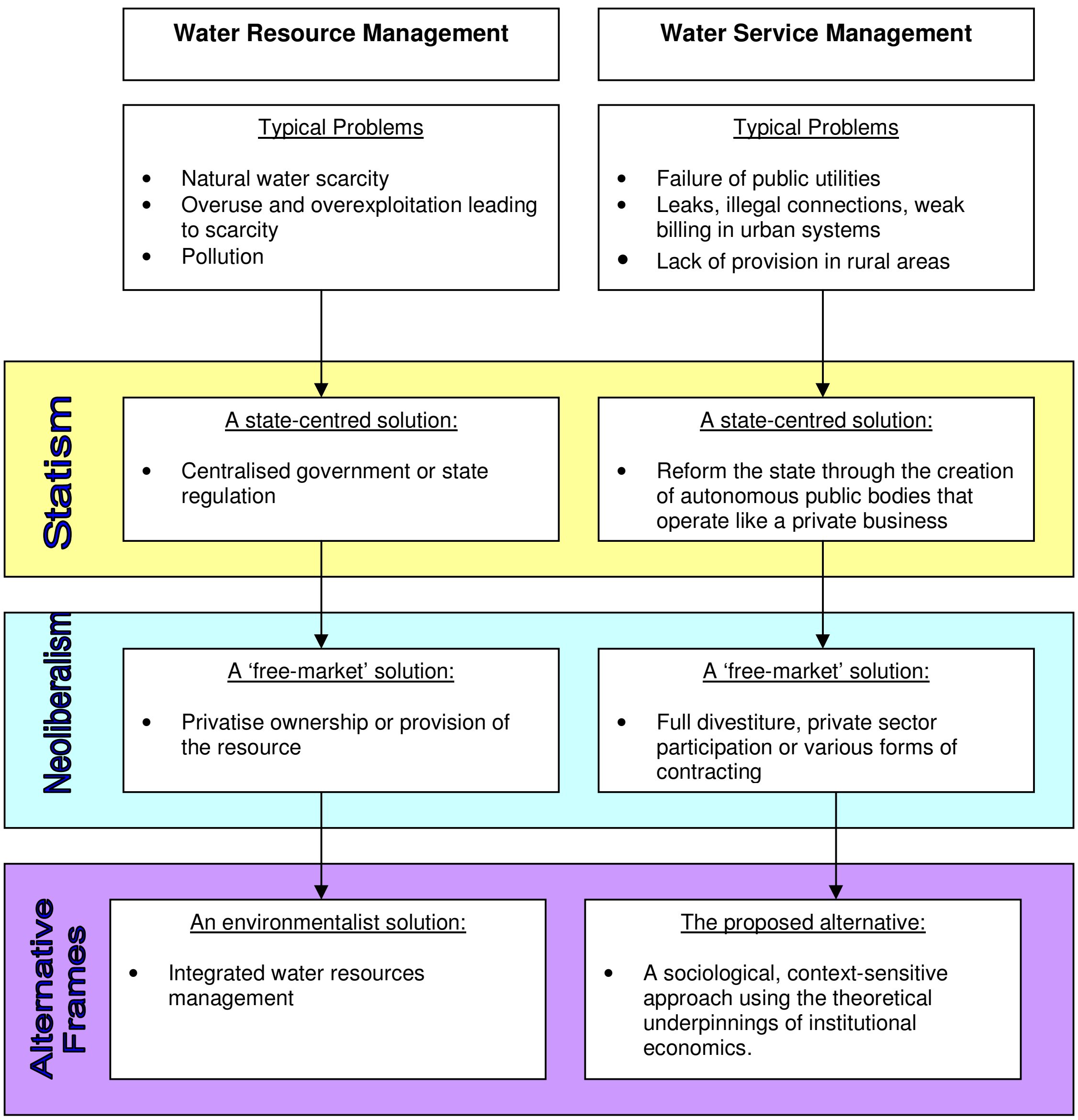
Secondly, privatisation is contentious because it leads to the creation of private property rights as a solution to resource management problems. Common pool resources like rivers, springs or groundwater have long been subject to overexploitation and misuse by the rational individual, leading to the 'tragedy of the commons'. The conventional solution is to impose centralised government or state regulation, or to privatise the ownership and provision of the resource (Hardin, 1968). Where privatisation is the option taken, a license to use water is created, which is a form of property ownership, or a usufruct in legal terminology. A most developed example of such system is the arid southwestern United States, where "whiskey is for drinking and water is for fighting". Here, not only is a legal system well developed, there also is a sophisticated market for water licenses. The legal system is developed around the doctrine of 'prior appropriation' where priority in accessing water goes to those with a superior right, ie an older license. And a 'Water Bank' (www.waterbank.com) has been established, where for example, a farmer whose water license provide for an excess 5,000 gallons of water a day may 'deposit' this excess to the bank so that it can be 'loaned' to others who may need it, who are then charged with the corresponding 'interest' rates (Interview, Turner: 2001).

As such, privatisation has been met by a great deal of opposition, like in recent major international conferences,[2] and in street confrontations as in Cochabamba and South Africa. While the opposition is spirited and sustained, there is however a basic limitation – the free market theory underlying privatisation has not been sufficiently contested, nor have

[1] The term "approach" as used in this paper is interpreted to mean as the theory as well as its application in practice.
[2] This includes the March 2000 Second World Water Forum in The Hague, the December 2001 International Freshwater Conference in Bonn, and the August 2002 World Summit on Sustainable Development in Johannesburg.

alternative frames been considered and put forward. This is due partly to the pervasiveness of neoliberal thinking around the world, and partly to the retreat of socialism and welfare statism. The idea of politics and the political process providing the solutions to social problems has today been replaced by the pervasive desire to let markets or market-like and market-friendly processes resolve the problems. This paper argues that this needs to be challenged and the role of both politics and markets reviewed. Water services provision provides an interesting case. Thus, this paper has two objectives – first, contest the applicability of free market theory on water provision in developing countries; and second, present a frame for developing an alternative. This alternative, as shown in figure 1, can be described as a sociological, context-sensitive approach using the theoretical underpinnings of institutional economics.

Figure 1: Different Frames in Water Resource Management and Water Service Management



Most critics of the free market economic approach offer quite a limited critique – their attacks are focused mainly on profit-making and the excesses of multinationals. The intensity of these attacks at first seems inappropriate, given that the entry of multinationals into water services provision is a complex government-regulated process, and that these multinationals serve only 5% of the global population with access to water services (Hall, 2001). The two biggest multinationals – Vivendi and Ondeo – between them claim to serve only 210 million customers worldwide. But these are in themselves evidence as well that the free market approach won't work. Under the best free market conditions – government will always be there as a gatekeeper regulating the entry of especially the multinational private companies. And the companies themselves reveal that they are unlikely to play key roles in the poorest countries where there is no commercial viability. Thames Water Plc, the third biggest multinational, says that their business plan assumes that the most they can do is increase customers from 70 million to 100 million worldwide until 2008, and this expansion will mostly be in developed markets (ie North America, Europe and medium-income countries). The two bigger multinationals do not radically differ from Thames Water in their projections[3]. This statement from a major multinational complements existing evidence that of the total private sector investments in the world financed by the World Bank, less than 1% go to Sub-Saharan Africa (Silva, et al, 1998).

The private sector as a key player in delivering water services to the poor therefore seems to be oversold. But the lack of commercial viability is only one, but not the main, reason why free market economics in water provision won't work in the poorest countries. The private sector – whether they are the multinationals, small-scale rural contractors or the individual water vendors in urban slums – is typically unprepared to deal with issues of poverty and underdevelopment. They are engaged in commercial-contractual relationships where they get paid for laying the bricks and mortar. They are not about building a community's 'sense of ownership' over a water project, or of engaging with poor communities in the longer term process of development. Another reason is that free market economic thinking typically comes across as insensitive to the complexities of poverty, particularly in its conception of value, costs and prices. For example, economic value is defined as "the maximum amount the user would be willing to pay for the use of the resource" (Briscoe, 1996). This widely-used definition assumes the homogeneity of "the user" and makes no distinction between slum dwellers in Africa with typical households in Europe. The way value is understood in free market theory is typically insensitive to the conditions and complexities of poverty. Costs and prices are conceived in similarly limited and mechanical ways. Costs of providing the service are measured, and are made to be reflected in prices. But the costs of *not* providing for water – what society spends in terms of lost economic productivity, health spending to treat diseases, or the cost of children not going to school because they are needed by their families for water collection duties – are not. Also not measured are the 'substitution effects' of price increases on the poor. Because of extremely tight budgets, poor families can afford price increases in water only by substitution – by sacrificing spending on other basic services like electricity, education or health.

Clearly, the theory of free market economics in water provision needs to be challenged and there have been attempts to do so. The problem is that these challenges are developed mainly from rights-based theories, which have inherent limitations in themselves. For example, these challenges maintain that water is a common good that should not be commodified (Barlow, 1999). The argument goes that since water is not like any other resource and because it is a source of life, it therefore should not be treated as an exchangeable, marketable commodity (GCWC, 1998). Access to water is a human right, and is therefore an obligation of states to respect, protect, promote and enforce. But most states in the developing world – the main guarantor, enforcer and implementer of rights –simply do not have the capacity to deliver this service. Also, water can remain a common good only when in abundance. As scarcity worsens, a litre one takes denies all others access to this litre. An alternative theoretical approach thus becomes imperative.

[3] From a speech by Jeremy Pelczer, Chief Operating Officer of Thames Water Plc, at the February 12, 2003 seminar organised by the |nstitute for Public Policy Research and WaterAid.

Sociology rather than economics provides the frame for this alternative approach. By conscious and consistent application of sociological theory, in particular the thought of Emile Durkheim, the economics and politics involved in water provision can be disentangled and then constructively engaged. The first component of this frame is a conscious move away from the methodological individualism of free market and rights-based theories – where the basic unit of analysis is the individual making rational choices in relation to the market or the state. In this alternative approach, the basic unit of analysis are social institutions. An 'institution' is defined as "collective action in control, liberation and expansion of individual action" (Commons, 1931). An institution may be a clan or a community, a state or a corporation, a cartel or co-operative association, or even mutually binding agreements between entities. The key, according to John R Commons, is that these institutions are collective acts that "establish relations of rights, duties, no rights and no duties" (ibid). Thus, economic transactions are not seen as the simple exchange of commodities, but rather, "the alienation and acquisition, between individuals, of the rights of property and liberty created by society, which must therefore be negotiated between the parties concerned before labour can produce, or consumers can consume, or commodities be physically exchanged" (ibid).

The second component of this alternative approach is the treatment of economic phenomena as moral facts. Adam Smith pinpointed the division of labour as the chief cause of the wealth of nations. It is a process that emerges from market relations, and creates that great paradox – that the pursuit of self-interest inevitably results in the greatest good for the greatest many, as if guided by an 'invisible hand'. Durkheim maintains that the division of labour is something other than a purely economic phenomenon. The division of labour has a moral character – it is based on what people exercising social relations regard as acceptable or not acceptable. Durkheim regards the division of labour as held together not by the rational decisions of individuals but by power relations, ideology and moral regulation. (Durkheim, 1973 (Bellah, ed.); and 1982 (Lukes, ed.)). For our case, in other words, the relations between state, business and civil society in water services provision is dependent on power relations, ideology and socially-negotiated moral decisions on what is acceptable or not acceptable.

Finally, the third component of this alternative approach revolves around Durkheim's argument that the purely contractual governance of economic transactions is problematic because contracts will always be incomplete, and that there oftentimes are implicit agreements 'within' the explicit clauses of contracts. The key is to look at the social embeddedness of transactions and actors (Durkheim, 1973: 86-113; and in Batenburg, et.al, 2000). Durkheim argued that "mutually beneficial economic exchange presupposes that trading partners follow non-contractual norms and moral obligations, such as norms of trust, reciprocity and solidarity, and implicit contracts that are partly unwritten, tacit and not formally binding" (quoted in Batenburg, et.al, 2000).

In developing such an alternative approach, it is important to first review the history of the state-versus-market debate. Firstly, such review will alert us to the theoretical issues on which critical reflection should be focused on. Secondly, it will situate the three components of the alternative approach more clearly. A brief review of the current competing theories on water provision is also presented.

The rest of this paper is divided as follows: Section 2 presents the history of the state versus market debate; Section 3 presents the competing arguments of water-as-an-economic-good and water-as-a-human-right; Section 4 discusses this paper's arguments against free market economic thinking in greater detail; Section 5 elaborates on the alternative theoretical approach; and Section 6 presents the conclusions.

2. State versus market: a genealogy of the competing theories

The starting point of any discussion on the debate on privatisation is what can be termed as the 'neoliberal' and 'statist' divide. The neoliberal perspective, it is claimed, is about full personal liberties, private property, and most importantly, freedom of commerce in free, unrestricted markets. The statist perspective, on the other hand, "is the notion that society's needs and problems are best addressed by politics and the political process" (Reed, 1997). Through most of the 20th century, statism was the dominant mode of thinking. This is demonstrated by the emergence of socialist as well as welfare states – where governments provide for almost everything. Governments engaged in business as monopolists, they commanded greater portions of personal income, and in some countries employed a majority of the work force. But since the 1970s, neoliberalism became dominant, reaching its peak perhaps in the late 1980s when developed countries embarked on radical reforms the most important of which was privatisation (ibid.).

Adam Smith's (1723-1790) propositions are the 'fountain' from which arguments in favour of privatisation are developed. In the *Wealth of Nations* (1776), he first established the desirability of markets over states in the modern creation of wealth. He pinpointed the *division of labour* as the chief cause of the wealth of nations – a social process that emerges from market relations (Book 1, Chapter 1-3). At the core of Smith's analysis is a great paradox -- that the pursuit of self-interest inevitably results in the greatest good for the greatest many. "It is not from the benevolence of the butcher, the brewer, or the baker," he said, "that we expect our dinner, but from their regard to their own interest. We address ourselves not to their humanity but to their self-love; and never talk to them of our necessities but of their advantages" (Book 1, Chapter 2). Smith's analysis led to the *invisible hand* thesis – that markets are self-correcting, self-regulating and self-sustaining in terms of what to produce, what to charge, and how to organise distribution, as if guided by an 'invisible hand.' Prices of commodities, levels of rent, and the wages of labour in free markets, he argued, will tend to settle at levels that are most socially beneficial[4]. Markets, Smith argued, are the *only* reliable mechanisms for achieving efficiencies in the production and distribution of goods in society (Book 1, Chapters 5-11).

However, a key structure prevented the realisation of free markets → government. Smith argued for a limited government. He was against government restraints on the economy of private people and criticised how public revenues are used in maintaining unproductive hands (Book 2, Chapter 3). He warned about government interference on how individuals should use their capitals, saying that such authority (to direct capital) could not be safely entrusted to a single person or council or senate (Book 4, Chapter 2). The profusion of government, he said, retards natural progress. Instead, he proposed a "system of natural liberty" whereby government will be limited to only self-defence, justice and public works (Book 4, Chapter 9).[5]

Smith's propositions went against the notion that 'socially beneficial results' are achieved mainly through government or state intervention. Prior to Smith, Enlightenment writers developed the idea of natural or human rights, in order to demolish absolutist claims and

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[4] Smith pointed to a distinction between natural and market price. The *natural price* of a commodity – that level that is sufficient to pay rent, labour, and the profits of the stock employed in raising, preparing and bringing the commodity to the market. The *market price* -- or actual price at which the commodity is sold – may be more, less or equal to the natural price (Book 1, Chapter 7).

[5] In an earlier work (Theory of Moral Sentiments, 1759), Smith asserted that morality is the product of man's nature, not his reason. That people are born with a moral sense, and that it is innate, not given by lawmakers or rational analysis, perhaps made Smith confident that individual self-interested actions could create socially beneficial results.

challenge then deeply held beliefs that life, liberty and property were subordinated to divine rights. Thomas Hobbes (1588-1679) asserted that people inherently had rights, simply because they are human beings. Rights therefore existed in the 'state of nature' – or prior to any action of the individual, and prior to the advent of any political order (Hobbes in *Leviathan,* and quoted in Glenn, 1979: 1057-1059). John Locke (1632-1704) developed and extended this theory. In a way, natural rights, or what is referred to today as human rights, needed to be invented, because it was a precondition necessary for freedom and the development of human beings. And government is the chief instrument to uphold, protect, enforce and promote those rights. An individual's right to life, right to liberty, and right to property can only be realised when governments are established. Stronger not weaker states appeared as indispensable to achieving social goals; reliance on markets was secondary. Furthermore, it seems difficult to accept Smith's notion that the unintended consequence of an unplanned social order guided only by the 'invisible hand' is the greater social good. So goes the argument, greater social good can only be planned and then enforced, and not left for market forces to deliver.

These human rights-based propositions laid the theoretical basis from where arguments against privatisation are drawn from. The two components of anti-privatisation arguments are: a) that water is a common good and the property of all, and that it could not be viewed as a commodity to be freely exchanged in the market, since water is also a social resource necessary for life; and b) that water therefore has to be managed by the state – access to this resource is a fundamental human right that the state has a responsibility and obligation to protect, uphold and deliver. Profit motivation is antithetical to rights and sustainable resource management, and excludes those who are too poor to become "paying customers".

At the height of Smith's writing, however, the concept of natural rights was subjected to intense criticism, sparking a crisis of this idea. At the forefront was Jean Jacques Rousseau (1712-1778) who pointed out that the cultural and social institutions as well as the conventions that evolve from social relations are where rights actually originate from, not from the metaphysical state of nature. Rousseau observed that "all men are born free, but everywhere they are in chains" to emphasise the importance of social conventions in the realisation of rights (Strauss, 1953: 252; Rousseau, 1754: 1-42). Georg WF Hegel (1776-1831) saw the person exercising his rights as not an especially attractive human being since, "to have no interest except in one's formal right may be pure obstinacy. It is uncultured people who insist most on their rights, while noble minds look on other aspects of the thing" (Hegel, quoted in Stillman: 1087). Morality becomes irrelevant, as persons do whatever they have a *right* to do, regardless of morality. The basic inadequacy of natural rights thus, is in its abstraction. Furthermore, while formal rights may entitle formal freedoms, the content of the individual's choice is given and prescribed by society. Thus, "in significant ways, (the individual) is not free." (ibid)

These criticisms may have provided intellectual space for Smith's theories: the Hobbesian state, a supreme coercive authority that imposed order and rights, comes out as less desirable compared to markets and the freedoms they engender. Smith talked of markets as social constructs where rules of exchange develop through time and the role of the state was to enforce these rules. Hence, the state was secondary to the market.

Jeremy Waldron provides a summary of the attacks on the concept of natural rights from the works of Edmund Burke (1729-1792), Jeremy Bentham (1748-1832) and Karl Marx (1818-1883)[6]. "All attack (natural) rights for their 'abstraction'; all focus on the theme of individualism versus community, though their respective conceptions of community are of course very different; and they all claim that the rights of man involve a radically

[6] Waldron selected these three thinkers to represent the great theories of Western thought -- conservatism, liberalism and socialism.

impoverished view of the constitution of human society." As a result of these attacks, continues Waldron, there was a decline in the philosophical and normative appeal of the liberal theory of natural rights (Waldron, 1987: 3; 151-156).

In many ways therefore, the desirability of markets over states was established. The 'new' liberalism of markets (as opposed to the 'older' liberalism of states) established a stronger case for freedoms and welfare over what the state can deliver. But despite the critiques, the idea of rights did not altogether disappear from view. Rather, a restatement of the case for rights was made by, among others, Jeremy Bentham, who was most influential on English jurisprudence (Waldron, 1984: 1-2).

Although Bentham strongly ridiculed the idea of natural rights by calling the 1789 French Declaration of Rights as "anarchical fallacies", he was no enemy of rights. He laid down an alternative framework on which the case for rights can be made and strengthened. His main argument was that the Declaration was primarily a justification for the insurrection that put the revolutionaries in power. "In justifying past insurrection, the revolutionaries themselves invite it. They sow the seeds of anarchy. They undermine all future (governments), their own consequently in number" (Bentham, in Waldron, 1987:47). Such undermining, he emphasises, is the most dangerous threat to rights: "We know what it is for men to live without government – to live without rights. No habit of obedience, and thence no government – no government, and thence no laws – no laws and then no such things as rights – no security – no liberty – no property" (ibid, 53) [7].

Bentham said that *wishing for rights* was not the same as *having those rights established.* "Want is not supply – hunger is not bread." Hunger (or the wish for rights) could not be satisfied if someone does not bake the bread (establish the rights). Declarations do not establish rights; they merely restate the proposition. As such, these were nothing but "simple, rhetorical nonsense – nonsense upon stilts" (ibid, 53). The problem that Bentham addresses therefore is how to bake the bread, or establish the rights.

Bentham also develops the concept of a "rational censor of laws." Slavery for instance, is a product of human laws, and the censor's role is to acknowledge it and repeal it. But the anarchist, "sets up his will and fancy, denies the law, calls upon mankind to rise up" and then justifies such act on the basis of a 'law of nature' in which all men are said to be free. In so doing, the anarchist may have removed the chains only to free the slaves into a world where there is no security – where no rights can be protected. The implication as well is that all future governments could not be entrusted with the determination of what rights shall be maintained, what shall be abrogated. What Bentham therefore opposes is the idea of *natural rights* as opposed to or in contradistinction to *legal rights.* He states that "natural rights" is merely figurative and should not be given literal meaning as this leads to error and mischief (ibid, 52-54). All known governments, "have been gradually established by habit, after having been formed by force. Whence is it," he asked, "but from government that contracts derive their binding force? Contracts came from governments, not governments from contracts" (ibid, 55).

Bentham had other important contributions to the understanding of rights. For instance, he opposes making certain rights imprescriptible or excluded from legal interference because without laws and governments to enforce, these inalienable rights are nothing but figurative expressions. He also clarifies that all rights are made at the expense of liberty. "How is a

[7] I am making this extended discussion of Bentham's contributions here in order to highlight that today, opponents of privatisation resort to making similar 'Declarations' that while having symbolic significance, actually do not create any binding force to enforce the rights to water that the declarations' authors wish to have. See for example the Global Water Contract spearheaded by Riccardo Petrella, or the declarations of the Council of Canadians and Maude Barlow.

property given? By restraining liberty. How is your house made yours? By debarring everyone else from the liberty of entering it without your leave" (ibid, 57). Rights therefore, could not be unbounded, they have to have limits, and Bentham clearly structured the relationship between rights, obligations and duties. This was the core of Bentham's framework of positive law.

In sum, even though the philosophical and normative appeal of natural rights declined, Bentham built a tighter case for rights through positive government. This can be described as another new 'Benthamite' liberalism.

There may be another reason why it was Bentham's rather than Smith's liberalism that became more dominant. During that period, the private sector and particularly corporations in England (the centre of the Industrial Revolution) had a rather dubious reputation. According to Bennett (1999), private, profit-seeking businesses in 17-18th century England were largely partnerships in which owners were personally liable for all actions of the partnership. To avoid personal liabilities, the fiction of the *corporation* was invented – a separate legal 'person' with its own date of birth and registration, and made up of a "joint stock" with individuals owning shares. Corporations were first used for not-for-profit entities[8] but soon became extensively used by for-profit entities. The result was all sorts of abuses. To stop fraudulent activity, the "Bubble Act of 1720" enforced controls on the creation of corporations. Constitutions for very specific purposes had to be drafted first, and then approved by government. If corporations acted *ultra vires*, that is, outside their constitutions, their actions can declared void and unlawful (ibid). Governments therefore developed in size and scope, while corporations – the main players in Smith's free market – had to contend with many restrictions.[9]

In the 1900s, the statist argument was further strengthened by the emergence of socialist and welfare states in Europe. Socialism in particular made governments big enough to be the *only* principal player in national economies responsible for production and employment. State corporations were simply created for any new economic activity that central planners thought was needed. Markets could not be trusted, since they create wealth from the exploitation of labour. Centralised economic planning wanted to demonstrate that it could achieve far better socially beneficial results than the market system.

Across the ideological divide, 'cradle-to-grave' welfare states emerged that provided many social benefits for their citizens, while allowing for capitalism to flourish. As such, notes Reed, from the 1920s to the 1940s, it became increasingly difficult to argue a free market position (1997). Milton Friedman confirms that the triumph of Benthamite liberalism – which regarded political freedom as a means to economic freedom – was followed by increasing intervention by government in economic affairs, a tendency that was greatly accelerated by processes leading to the two World Wars. "Welfare rather than freedom became the dominant note in democratic countries" (Friedman: 10-11).

As the 1900s proceeded, however, cracks in the all-entrenched statist argument began to appear, shifting the tide back in favour of Smith's liberalism. Big governments incurred huge debts, and state corporations were generally inefficient. In Russia, growth was made at huge human costs and the trampling of liberties. Restrictions and legal controls on corporations, notes Bennett, came to be increasingly relaxed, especially after top corporations became the principal engines of wealth that provided secure jobs to millions. Private profit-seeking

[8] Not-for-profit entities at that time included churches, schools, clubs, hospital or universities.
[9] It should be noted though that because of their flexibility and relatively more efficient decision-making, corporations were extremely adaptable to various situations. They were therefore, in general, able to deal with problems that the restrictions posed.

started to prove its social function. The work of Friedrich von Hayek (1899-1992) provided a new intellectual impetus to Smith's theories.

Hayek can be described as intensely anti-socialist as he is anti-monopolist and anti-protectionist. He clarified that the liberal pro-market position should not be confused with a laissez-faire attitude. His argument is about "making the best possible use of the forces of competition as a means of co-ordinating human effort, not (about) leaving things as they are" (Hayek, 1944: 36-41).

Hayek's attack on socialism was motivated by the rise of Nazism in Germany. He wanted "to determine the circumstances in the last 70 years that made possible the victory of a particular set of ideas that brought the most vicious to the top." Among these "circumstances" was the increasing veneration for the state; the belief that economic planning can be substituted for the competitive system; and the idea that economic life should be consciously directed. "The regimentation of economic life, the devices for the permanent supervision of private life created the prototype of the totalitarian party." In other words, he explicitly blamed socialism, and lamented the supreme tragedy that "it was largely people of good will, who, by their socialist policies, prepared the way for the forces which stand for everything they detest." (Hayek, 1944: Introduction)

Hayek describes the competitive system as "the only system designed to minimise the power exercised by man over man." It is "superior, not only because in most circumstances it is the most efficient method known, but because it is the only method which does not require the coercive or arbitrary intervention of authority." The system of private property, he said, "is the most important guaranty of freedom." Freedom is when the control of the means of production is divided among many people acting independently, because that is only when "we as individuals can decide what to do with ourselves." Concentrated in the hands of a few[10], economic power can be used to exercise complete control over men. In the hands of private individuals, "economic power can be an instrument of coercion, but it is never control over the whole life of a person" (ibid. 49-111). Hayek though is not fundamentally opposed to planning:

> "The question is whether the holder of coercive power should confine himself in general to creating conditions under which the knowledge and initiative of individuals are given the best scope so that *they* can plan most successfully; or whether a rational utilisation of resources require central direction and organisation of all our activities according to some consciously constructed 'blueprint.'" (ibid, 40-41)

Hayek requalified Smith's *invisible hand* with his idea of *spontaneous order* -- that society is far too complex to be deliberately planned and designed, and that free markets are the best mechanism to regulate economic activity and achieve the greater good. Hayek's influence "in helping a generation to understand the nature of liberal society and the errors of collectivism goes far beyond that of any writer of his period" (Butler, 1983: 4).[11] Neoliberalism started to gain dominance over statism.

As the case for markets started to win the ideological debate, the ascendant neoliberals faced a problem. They saw that in order for the free market to prevail, the vast infrastructures, systems and laws created by statism needed to be actually dismantled. As Reed put it, "practical methods of taking what was 'public' and making it 'private'" were needed and "what had been 'socialised' would have to be 'privatised'" (1997). Hence,

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[10] Hayek was referring to dictators and ruling parties. But we can also include in the list monopolists and technocrats.

[11] Hayek became the inspiration for Thatcherism in the 1980s, according to the BBC.

privatisation emerged as the chief 'practical method' – the main instrument used in order for the free market to prevail. Reed continues:

> "By the 1970s, the bitter harvest of statism was everywhere apparent: in bloated, overbearing bureaucracies, in crushing tax burdens, and in frightening burdens of debts and deficits. Public officials and private citizens alike began to look for answers. The case for freedom and free markets began to win the battle among intellectuals. Increasing numbers among the general public followed suit, electing public officials committed to stuffing the statist genie back into its bottle. The time for privatization had arrived." (ibid.)

International financial institutions, as well as 'northern' governments, took the neoliberal position. The term "Washington Consensus" was invented to refer to how liberalizing economic reforms from the 1970s were imposed by Washington-based institutions like the World Bank and the International Monetary Fund[12]. Neoliberalism was seen as the policy solution to the crises of models of accumulation and the best way to advance 'development.'

Margaret Thatcher was the most vigorous advocate and implementer of neoliberal policies. In a span of a decade, she sold off US$40 billion in state enterprises, seven major airports and one million units of public housing, thus relieving the British treasury of huge subsidy burdens. British households owning stock rose from 2 to 12 million (Reed, 1997). 'Thatcherism,' matched by 'Reaganomics' in the United States,[13] peaked as their ideological foes crumbled with the collapse of socialism. Welfare states in the west soon declined as well.

Alongside, the last restraints on corporations were dismantled with the "final demise of the doctrine of *ultra vires.*" In the UK for instance, the *Companies Act of 1989* made the constitutions of corporations into simple open-ended declarations needed only for pro-forma registration (Bennett, 1999). Once limited to particular purposes and subject to some form of government control, corporations gained even more great flexibility. The creation of *multiple corporate personalities* became possible with separate corporations owned by a parent corporation, all existing simultaneously. Subsidiaries, a completely separate legal person, can be created to take on all risky and dangerous operations of the business, in which the parent corporation cannot be held responsible. Subsidiaries can also be created owning no assets at all, and be made to assume all debts and obligations of the conglomerate, leaving the balance sheets of the parent company healthy. The era of multinational or transnational corporations became consolidated.

Soon, privatisation was prescribed aggressively to poor, developing countries where governments are often weak, over-stretched and deep in debt. Their public institutions were seen as inefficient and bureaucratic and subject to corruption, transient leaderships, inconsistent laws and public policy, or the lack of technical know-how. Development aid was considered as unlikely to work because of the lack of 'absorptive capacities.' Hence, privatisation was seen as some kind of panacea.

Today, the neoliberal argument has come to be dominant. Yet the debate is far from being settled. Within Thatcher's own party, for instance, senior member Peter Lilley once argued that Conservatives "must be defenders of the welfare state, tone down free market talk and

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[12] The inventor of the term 'Washington Consensus', John Williamson, originally intended it "as a synonym for what is often called 'neoliberalism' in Latin America, or what George Soros (1998) has called 'market fundamentalism'." (Williamson, 1999)

[13] 'Reagonomics,' according to Murray Weidenbaum, chair of President Reagon's Council of Economic Advisers from 1981 to 1982, was, among others, about the reduction of civil government and "the expansion of the role of the private sector at the expense of the public sector." See http://www.csmonitor.com/durable/1997/12/18/opin/opin.2.html

abandon the pipe dream of privatised health care and education"[14] (Economist, 22 Apr 1999). Elsewhere are discussions of a *Third Way* or a "renewal of social democracy" after "the dissolution of the welfare consensus and the final discrediting of Marxism." The question is essentially about how democracies can benefit from a competitive free market system while providing for 'those who fall behind' (Giddens, 1998). Pressure from the 'not-for-profits' also bear upon the discussions. International pressure groups, like the Bretton Woods Project and Jubilee 2000[15] are forcing a rethink of many of the basic propositions. They continue to grow in numbers and increase in influence, and have been called a 'sixth estate' with economic as well as political roles.[16] Thus, the debate continues.

The challenges to the Washington Consensus turned a point at the Ministerial Conference of the World Trade Organisation in Seattle in December 1999. Here, street protests by anti-globalisation activists brought downtown Seattle to a standstill for three days, capped by a walkout of trade ministers from developing countries in the conference itself, after a deadlock in the negotiations over different trade issues. Since then, nearly every meeting of the IMF, WB and WTO has been met by street protests and riots. The challenges being put up are also intellectual, like the "World Social Forum" of activists in Porto Alegre, Brazil, that parallels the "World Economic Forum" of the top 1000 corporations that meet regularly in Davos, Switzerland.[17]

There is a diversity of arguments against privatisation and some distinctions need to be made. First, there are those who present a qualified critique rather than a fundamental objection to privatisation. Then, there are those who fundamentally oppose privatisation but argue and work to strengthen the public sector. Finally, there are those who simply oppose.

Joseph Stiglitz[18] embodies the first group. His challenge is important because of his extraordinary authority and experience. In *Globalization and Its Discontents,* Stiglitz makes a sustained attack on the Washington institutions for missing out on their role as a stabiliser of financial systems and of confusing the means to greater economic welfare (fiscal austerity, privatisation and market liberalisation) as the ends in themselves. He maintains that there are some preconditions before privatisation can contribute to an economy's growth, but the IMF and WB "approached the issues from a narrow ideological perspective," and pursued privatisation rapidly. Hence the promised benefits often did not come. The IMF "simply assumed that markets arise quickly to meet every need, when in fact, many government activities arise because markets have *failed* to provide essential services." Many state-owned companies were privatised before adequate regulatory or competition frameworks were put in place, and without job-creating programs that can go in tandem with the inevitable job destruction that privatisation often entails." The result, he stresses, is that privatisation has come to be associated with decline, which undermined confidence in democratic and market institutions" (Stiglitz, 2002: 53-59).

The second group can be represented by Public Services International, the global federation of unions in the public sector. PSI questions the notion that markets automatically bring efficiency and reliability and points out to some efficient state institutions. It maintains that

[14] It has been suggested though that Lilley's speech was not about whether Thatcherism should be dropped but more on how it can be 'repackaged' to win back voters.
[15] For additional information on the activities of these organisations, their websites are: www.brettonwoodsproject.org and www.jubileeresearch.org
[16] Government, church, business, media, and trade unions being the other 'estates.'
[17] In 2001, a live Davos-Porto Alegre teleconference debate was held pitting the likes of billionaire George Soros with leftist intellectuals like Noam Chomsky. See www.weforum.org and www.forumsocialmundial.org
[18] Former chief economist of the World Bank (1997 to 2000), chair of President Clinton's Council of Economic Advisers (1993-1997) and Nobel Prize winner for economics in 2001.

building public sector capacity, not its undermining, is what is needed in developing countries. The market solution should only be secondary, especially in water and sanitation. As such, PSI has been pushing hard to build the "public-public" option in contraposition to "public-private partnerships". PSI's position supports the view that privatisation is largely political and could not simply be analysed in economic terms (see www.psiru.org).

The third group – those who simply oppose – can be represented by the Blue Planet Project. They are strong and increasingly effective in the condemnation of multinationals, but weak in terms of presenting alternatives. For instance, after the riots in Cochabamba, an offer from the American Waterworks Association to undertake a technical review of the problems of the city's water system was reportedly rejected, allegedly on the advice of Blue Planet[19].

It should be noted that the distinctions made here are simply for analytical purposes. The positions characterised constantly change and at times may blend or merge with each other.

In sum, the state-versus-market debate is far from being settled, that is, outside the Washington institutions where neoliberalism is firmly entrenched. There is a long history that underpins the competing arguments. The roots of the pro-market position can be traced back to Adam Smith, reinforced by Hayek, and now bannered by the Washington Consensus. The statist position on the other hand, had its origins in liberal rights theory, and reconstructed by Bentham. This strengthened governments, which grew vastly under socialism and welfare statism. Today, an 'anti-globalisation movement' has emerged presenting a diversity of opposition to neoliberalism.

This genealogy informs the two diametrically-opposed theories on how to govern water. Closer separate inspection of these two approaches reveals a number of important weaknesses and limitations. These are problems that necessitate a new analytical frame.

3. Water as an 'Economic Good' vs 'Common Good'

In 1989, Margaret Thatcher transferred the ten public English and Welsh regional water authorities to the private sector by floating their shares on the stock market with infrastructure, property, and water supply and sanitation networks intact (Bakker, 2001: 145). This marked the start of a new, aggressive global effort to transfer water and sanitation services delivery from the public to the private sector.

Developing countries are particular targets for expansion. Between 1990 and 1997, the World Bank provided financing worth over US$24 billion for 97 private sector water projects in developing countries around the world (Silva, et.al, 1998). But the most commercially viable markets are Northern America and Western Europe, where water systems still remain predominantly public. In the United States alone, market share of private contract operations remains at less than 5% of the US$35 billion that its government spent in 2000 on water and wastewater (Gutierrez, 2003: 5). In Europe, it is only in England and France where private operation is predominant (Hall, June 2002). Investors predict that the business of water will boom in the coming decades, and estimate that this is a US$200 billion market growing at 6 percent annually, in terms of population covered (Tagliabue, Aug 2002). However, by no means does this trend remain unopposed. In poor developing countries, a growing number of nongovernment organisations (NGOs) are not convinced that private operation is the

[19] To a certain extent, this predisposition of Blue Planet is expected from a campaigning organisation – it has a mandate different from that of organisations doing actual program work on the ground.

solution to the problem of connecting the estimated 1.2 billion people in the world without access to safe drinking water. For instance, a Coalition Against the Privatisation of Water has been established in Ghana while a Bantay-Tubig (Water Guardians) Coalition was set up in Manila. In developed countries, opposition to the private sector takeover of municipal water services is likewise increasing. Grenoble in France has remunicipalised as a result of corruption scandals. (Hall and Lobina, 2001). In May 2001, the non-profit company Glas Cymru owned mainly by individual water users took over Welsh Water (Glas Cymru, 2001). In general, challenges to expanding the roles for the profit-making private sector in water service delivery are as fierce as their promotion.

Leading one side of this debate are some sections of the World Bank arguing the case for private sector delivery of water[20]. Their goal is to facilitate the management of water as an economic good. At the policy level, this means creating competition and market-like incentives for water delivery through 'demand-driven approaches.' The central aim of their approach is not just to give a price to (or commodify) water, but to balance the value of water on one hand with its 'use costs' and 'opportunity costs' on the other (value = use + opportunity costs). That balance is said to be needed to bring prices to that appropriate level that provides signals on the most efficient allocation, distribution and consumption of water. As such, they favour private sector delivery in an environment of free markets where the value, use cost and opportunity costs are fully brought into play. A dictum that structures their approach is that "the less restrictions there are on water trades, the more the true opportunity costs will come into play." They are bolstered by how efficiencies are generally achieved by this route (Briscoe, Sept. 1996: 4; and Woicke, May 2001).

On the other side is a plethora of 'anti-globalisation' activists, who argue that viewing water as a commodity to be freely exchanged in the market is too simplistic, since water is also a social resource necessary for life. Profit motivation is antithetical to rights and sustainable resource management, and excludes those who are too poor to become "paying customers". Thus, they favour the management of water as a common and public good, and maintain that access to water is a fundamental human right that the state has a responsibility to protect, uphold and deliver. They attack the World Bank for "consistently privileging multinational water corporations and emphasizing that water should not be supplied to the urban poor unless it is profitable to do so" (Barlow, June 1999; Yaron, March 2000; Hall, August 2001).

According to Briscoe, water-as-an-economic-good is related to the market model of development, and the corresponding move to using market-like and market-friendly instruments for managing all elements of the economy, including water (1996: 22). Among such instruments is private sector provision of water services. On the other hand, water-as-a-common-good means its preservation in the public domain at all times. As Petrella stated, "Water belongs more to the economy of common goods and public wealth than to the economy of private and individual accumulation and other's wealth expropriation" (GCWC, 1998: 1-3).

There are many voices advancing each of the propositions, a diversity that sometimes brings less than consistent lines of arguments from each side. We will limit the focus of this paper to the writings of two sets of protagonists. For the 'water-as-an-economic- good' side, we will look at the elaborations made by John Briscoe, an economist who has held various positions at the World Bank including Senior Water Resources Adviser[21]. For the 'water-as-

[20] For example, the World Bank's Vice-Presidency for Private Sector Development and Infrastructure, through its water and energy department, has been active in the promotion of PSP in water services provision.
[21] Briscoe's publications though often carry the disclaimer that it does not necessarily reflect the World Bank's official position.

a-common-good' side, we will look at the work of two renowned anti-privatisation campaigners, Riccardo Petrella and Maude Barlow.

Water as an Economic Good

The economic valuation of water is the central, but also most problematic principle of the water-as-an-economic-good approach. A first problem, notes economists, is that water is often treated as if it was worthless, or that its value is not as immediately evident and observable as that given to oil, gold or beef (Water Issues Team, 1999). Where water is abundant and readily accessible, people typically flush their toilets or water their garden with little or no concern for the value of the resource they are using. Farmers who draw water for irrigation from aquifers at little or no cost will have no incentive to conserve the water and will see no profitability in sending the water downstream to urban households where it is valued more, because of the invisibility or 'non-observability' of both its intrinsic (what water is to the different users) and exchange value (the price actually paid that may or may not reflect economic value).

The objective of the economic approach thus is to make the economic value of water immediately evident and observable – and this can be done most easily when a price that reflects 'true value' is attached to water. This is achieved most easily where the market model of development is pursued, and where prices can become the mechanism that sends appropriate signals for everyday decision-making on allocation, distribution and consumption. According to the theory, in an environment of free markets, prices will be self-correcting and self-regulating – i.e. the forces of demand and supply will eventually move prices to settle on that level that achieves the greatest good for the greatest many. If a user values the water less than it is valued by the market, then the user will be induced to sell the water. And so on. The problem is, "markets for water typically don't exist or are highly imperfect" (ibid). Hence, the push for privatisation – the chief practical method to develop market-like and market-friendly instruments for the economic management of water.

The 1992 "Dublin Principles" of the International Conference on Water and the Environment is frequently cited as the source of the idea of water as an economic good. This inter-governmental conference, organised by the United Nation's World Meteorological Organisation, came up with "four guiding principles" for water management (ICWE, 1991): a) freshwater is a finite and vulnerable resource, essential to sustain life, development and the environment; b) water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels; c) women play a central part in the provision, management and safeguarding of water; and d) water has an economic value in all its competing uses and should be recognised as an economic good.

In September 1996, Briscoe came out with an elaboration of the fourth principle, as he observed that there was little agreement on what was actually meant by "water as an economic good." Briscoe's thesis is that to manage water as an economic good, the value placed on it by all competing users has to balance with its 'use cost' and 'opportunity cost'. Pricing based on this balance will send the appropriate signals on how water will be best allocated, distributed and consumed. An environment of free markets is where this balance can be best and most easily achieved (1996: 1-15).

Briscoe's contribution on this issue has proven to be influential as the economic approach is often structured around the idea of "full cost recovery" – which is the implementation of a tariff system on users that will recover the initial cost of installing water infrastructure and expenses associated with operation and maintenance. But Briscoe shows that common conceptions of cost recovery tend to overlook certain important aspects of the costs involved. For instance, the "cost" of refurbishment and extension of the Dar es Salaam piped water network to make it commercially viable is estimated at US$620 million (see WaterAid-

Tanzania, 2003). This, however, does not include the costs of financing -- at 5% interest, the actual cost doubles to a staggering US$1240 million in 20 years[22]. Also, by Briscoe's thesis, there is another type of cost that is often not considered – the "opportunity cost". As such, Briscoe's role has been to break typically limited conceptions of costs.

Briscoe divides the concept of cost into two aspects – "use" and "opportunity" costs. "Use cost" is defined as the amount needed for constructing and operating the infrastructure necessary for collecting, storing, treating and distributing the water. "Opportunity cost" is a less obvious cost – that which is incurred when one user uses water and affects the use of the resource by another user. Use cost can be analysed in more detail. Briscoe distinguishes between three types. When a water board constructs a dam (for example), they usually charge users that which is necessary to pay for the remaining portion of the debt incurred in financing the dam. This is called *historical cost* pricing, which mimics payments on a mortgage. But sometimes, accountants argue that historical cost does not reflect the true value of an asset. For instance, a car bought through a car loan may still have a lot of value even when the loan has been completely paid off. So pricing must be based on *replacement cost* -- what it will cost to replace the asset. Finally, the third concept is that of *marginal cost* – the cost of producing each new unit.

The management of costs, already contentious by itself, presents only one half of the equation. The other side, which is perhaps even more problematic because of difficulties to quantify, is the process/concept of how water is valued. Value is defined as the maximum amount a user would be willing to pay for the use of the resource. Value is notoriously difficult to pin down and quantify because of the many different uses of water. Water used in agriculture will have a different value than water used for industry or household use. Within these contexts, the value changes as well according to the time it is delivered, the season of the year, the location at which it is available, and the reliability of the supply. An important determinant of value is scarcity. As a result, a "hodgepodge of methods" are used to estimate value, resulting in crude and inexact figures. These, Briscoe warns, should never be used to make technocratic decisions on allocations and prices (1996: 5).

However, Briscoe found "striking and remarkably consistent themes"(1996: 5-8). For instance, value of water is universally very low for low-value crops and much higher for household purposes. Poor people put more value on reliable supplies, and value for industrial purposes is similar to that of supplies for household purposes. For environmental purposes (e.g. maintenance of wetlands), the value varies widely, but typically falls between agricultural and household values. But most important perhaps is that water is valued more highly where more developed markets exist (ibid). Briscoe looked as well on the elasticity of demand for water. He dispels the commonly held notion that demand for household water is inelastic (i.e., that consumption does not change when prices increase). Household consumption does change, but it is less than the percentage change in price – in technical terms, an elasticity of -1.0. Industrial or outdoor use are much more elastic.[23]

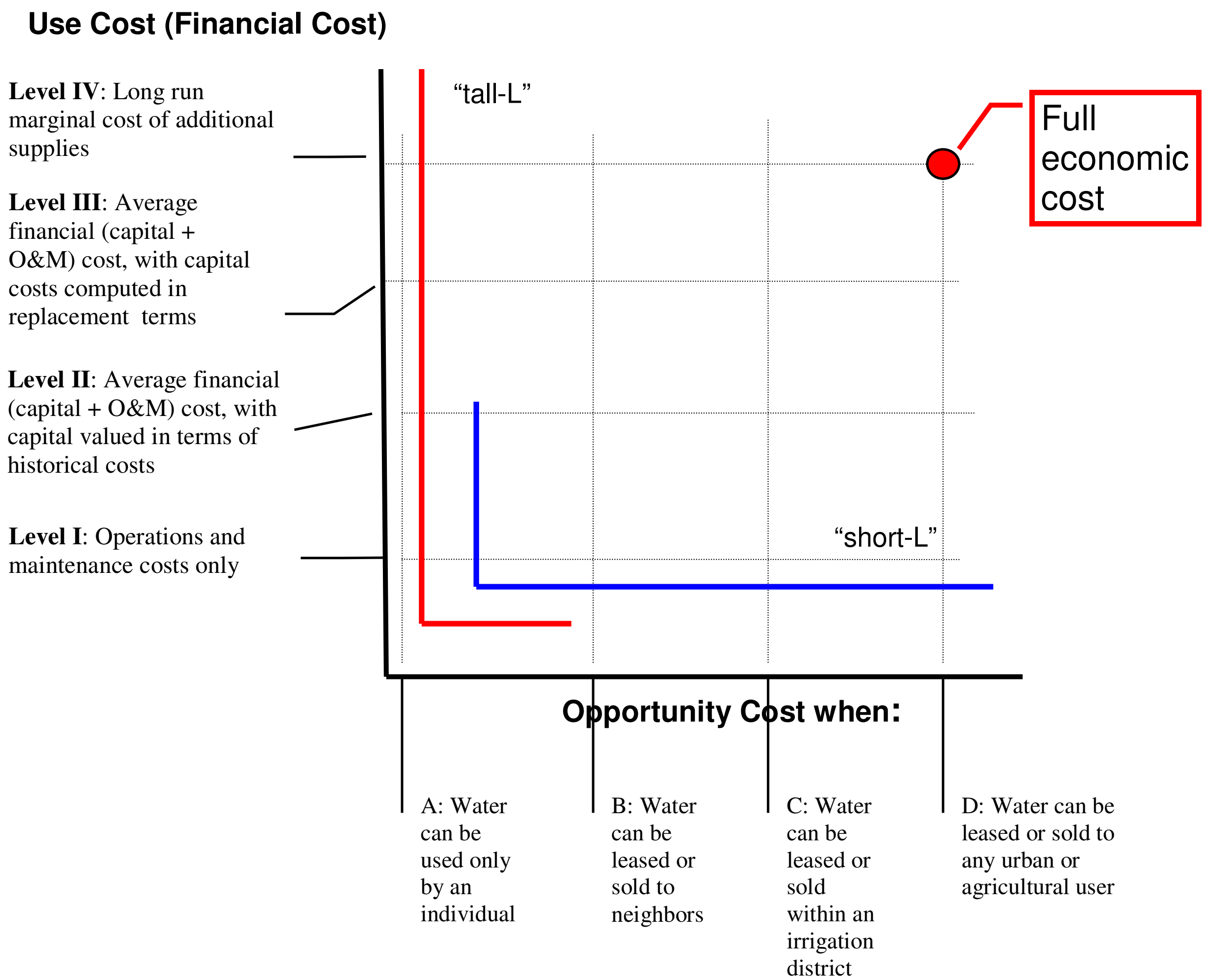
Briscoe presents a model of how to use these economic concepts: balancing value and costs essentially means finding that combination of use and opportunity costs which ensures that users take the full economic costs of using water into account. He then looks at the practice around the world, using a schematic representation of use and opportunity costs (See Figure 2 below).

Briscoe explains that in industrial countries, charges are at Levels III and IV, and that there typically is very little difference between these two levels. Opportunity costs for urban water

[22] "Soft" concessionary loans from the World Bank typically have a 2-3% interest.
[23] The studies he quoted found it difficult to determine elasticity in irrigation because these were typically subsidised, which cause a distortion when prices change. (8-9)

supply, typically small financially, are often not visible to the utilities. Hence the practice in developed countries when presented in the scheme would be like a “tall-L” (with a long arm on the use cost axis, and a short arm on the opportunity cost axis).

Figure 2: Schematic representation of the definitions of use cost and opportunity cost (Briscoe, 1996)



In rapidly growing cities of developing countries, incomes are increasing and industrial demand is growing – which means that new sources of municipal water have to be constantly found and developed. The consequence is that the costs of water from new sources are growing rapidly to such an extent that the cost of a cubic meter of raw water from a new project is typically 2 to 3 times more expensive than that from the last project. This means that, unlike in the industrial countries, the difference between Level III and Level IV costs are substantially greater. But the bigger problem, according to Briscoe, is that urban water supplies in most developing countries have been financed out of general revenues, which means that the charges to users are subsidised. Water tariffs cover only Level I costs (operation and maintenance). He concludes that the challenge in developing countries is two-fold – reduce costs by more efficient operation; and raise tariffs from their very low levels. He suggests that the first challenge can be achieved by the substantial involvement of the private sector, but offers nothing on how to meet the second challenge.

Briscoe then goes on to look at irrigation, where "the great distinction is not between industrialised and developing countries, but rather between publicly- and privately-financed irrigation schemes." In irrigation, the practice is the opposite of the "tall-L" -- there are more opportunity costs rather than use costs. Farmers who financed their own irrigation seldom face any opportunity costs – the only costs they incur are those they use to build their schemes. These farmers have no incentive to use water sustainably – they can pump until the aquifers are dry. In irrigation systems that are publicly-financed, opportunity costs are considered best where a "market" system operates, with water allocated in a period to the highest bidder. This results in greater efficiency as well as equity as compared to the "turn" and "rotation" system of allocating public irrigation water.

Briscoe's model can be summarised using a simplified example of an upstream farmer availing of public irrigation and sharing water supplies with downstream urban households. In a situation where water supplies are abundant, good economic management is relatively simple – charge both farmer and households at the average costs. When water starts to become scarce, charges have to be increased to Level IV to cover marginal costs – the price of producing an additional cubic metre. Marginal costs become more expensive if producing an additional unit means recycling water or even desalinating. Where water is really scarce, opportunity costs should be made more visible. The consequent price will tell the farmer whether it will be more useful to allocate water for irrigation, or allocate and sell more water downstream to urban users.

In this theory therefore as in general neoclassical economic theory, prices play a central role in sending the appropriate signals on which decisions on allocation, distribution and consumption of water should be made. But prices are accurate only where real markets exist. Briscoe himself admits that around the world, "markets for water typically don't exist or are highly imperfect." The United States for example, is not a good market, because of heavy government intervention. The most often cited example of a good market is Chile, where well-regulated river basins exist and where user behaviours are generally determined not by the financial cost but by the opportunity cost (Briscoe, 1996, 21; Gomez-Lobo, 2001:1-6).[24]

Water markets like perfect competition are rare, or where possible, take decades to shape up. There are therefore major problems related to getting the theory of managing water as an economic good off the ground and applied. Hence, Briscoe uses the phrase, "developing market-like and market-friendly instruments for the economic management of water."

Water as a Common Good

There appears to exist no single comprehensive elaboration on the idea of water as a common good. What is available are basically statements of principle made as a reaction to the water as an economic good theory, and objections to the price hikes that would take place if Briscoe and the World Bank would have their way. Presented here are statements from two influential campaign organisations: the Committee for the World Water Contract and the Council of Canadians. Riccardo Petrella is secetrary of the Committee, and has published the book "The Water Manifesto". Maude Barlow is chair of the Council of Canadians, and author of "Blue Gold."

[24] In Chile, if the user values the water less than it is valued by the market, then the user will be induced to sell the water. This came about when Chile began an overhaul in the late 1980s of its legal, economic and institutional structure in water and sanitation. Land rights were separated from water rights, thus paving the way for the emergence of markets. A new tariff setting methodology was put in place to raise water prices to its true economic cost. And to protect vulnerable households from the large rate hikes, water companies do not charge poor households for 25-85% of their consumption (of up to 20 cubic meters a month) and instead receive a reimbursement from government. (Briscoe, 1996, 21; Gomez-Lobo, 2001:1-6)

The Committee for the World Water Contract declares itself a "citizen's initiative" that gathered in 1998 "with no other legitimacy or representativeness than that of being citizens concerned by the fact that 1.4 billion people on the planet do not have access to drinking water, the fundamental source of life." It has attracted attention mainly because of the prominence and prestige of some of it members, in particular Mario Soares (former President of Portugal), Raoul Alfonsin (former President of Argentina) and Prince Laurent of Belgium. The Committee laid down the principles on which a theory of water as a common good can be based (GCWC, 1998: 3; 4-15):

- Water "the source of life" belongs to all the inhabitants of the Earth in common. No one, either individually or as a group, can be allowed the right to make water into private property. Water is not like any other resource; it is not an exchangeable, marketable commodity.
- The right to water is an inalienable individual and collective right. Water belongs to the community, where everyone should have a share rather than being a source of private wealth and profit for individuals. The right to water is a part and parcel of the basic ethics of a good society and a good economy.
- Like income, freshwater resources are unequally distributed on the earth. This should not mean that people rich in water and income can make use of the resource as they please, or even sell it or buy it abroad to derive maximum profit or pleasure. There are still too many water-related wars ongoing on our Planet because most States continue to use water as an instrument in support of their geo-economic strategic interests as regional hegemonic powers. It is necessary and possible to make water free from the influence of a hegemony-oriented State. Water is a *res publica*.
- Water is the citizen's business. Creating the conditions necessary to ensure the most effective and sustainable access to water is everybody's concern. The citizen must be at the centre of decision-making. The integrated and sustainable management of water belongs to the sphere of democracy.
- Water policy implies a high degree of democracy at the local, national, continental and world level. By definition, water calls for decentralised management and transparency. The existing institutions of representative democracy must be strengthened. When necessary, new forms of democratic government have to be created. Participatory democracy is unavoidable.
- Access to water requires real local/national/world and real public/private partnership. Partnerships subject to the logic and interests of private actors for market conquest could do harm to the objective of access to water for all and global integrated sustainability.
- Financial responsibility for water must at once be collective and individual according to the principles of responsibility and utility. Society must collectively assume all costs related to collection, production, storage, distribution, use, conservation and recycling of water, in view of supplying and guaranteeing access in quantities and qualities considered as the indispensable minimum. The financing must be ensured by collective redistribution. Pricing must be progressive. All abuse and excesses of water usage must be considered illegal.

In order to achieve these principles, the Committee is proposing the establishment of a "Network of Parliaments for Water," since parliaments are the principal organs of political representation. The network would modify existing legislation and apply the above-mentioned principles. The goal is to enact a "World Water Treaty" that will establish water as a vital heritage, common to all humanity by law, and which would exclude water from all international commercial conventions, such as those within the framework of the World Trade Organisation. To support the network of parliaments, a World Observatory for Water Rights is to be established "to collect, produce, distribute and disseminate the most rigorous and reliable information possible on water access from the point of view of individual and collective rights." (GCWC, 1998)

Across the Atlantic, Barlow and the Council of Canadians call attention to the global water crisis characterised by how demand will far outpace supplies across the planet, and warns that,

> "Governments around the world -- under pressure from multinational corporations – are advocating a radical solution: the commodification and mass transport of water. Proponents of commodification, and subsequent privatization, say that such a system is the only way to distribute water to the world's thirsty. But, in fact, experience shows that selling water on the open market does not address the needs of poor, thirsty people. On the contrary, privatized water is delivered to those who can pay for it. Water flows uphill to money." (Barlow, 1999)

Barlow criticises that the future of water is being determined by those who profit from its overuse and abuse. She cites the 1999 World Economic Development Congress, where corporations and financial institutions met with government officials from 84 countries to discuss issues like overcoming obstacles to water investments. "The agenda was clear," she emphasizes, they want water to be "treated like any other tradeable good, with its use determined by market principles." At the same time, she continues, "governments are signing away their control over domestic water supplies by participating in trade treaties as the North American Free Trade Agreement and institutions such as the WTO that effectively give transnational corporations the unprecedented right to the water of signatory countries." (ibid)

The Polaris Institute, an allied Canadian organisation, published their own research, *The Final Frontier,* which details the work of the top ten global water corporations. They criticised the World Bank for helping spawn a bewildering array of front organisations on water, including the World Water Council, the World Commission on Water for the 21[st]t Century, and the Global Water Partnership. The Business Partners for Development, set up as a multistakeholder body to look into how government, business and civil society can successfully work together, was identified as an "industry association". WaterAid was equally criticised as the "citizens' front group for the major water corporations." (Yaron, 1999: 66-74)

Barlow presented her own ten principles to help protect water:

- Water belongs to the earth and all species
- Water should be left where it is wherever possible
- Water must be conserved for all time
- Polluted water must be reclaimed
- Water is best protected in natural watersheds
- Water is a public trust to be guarded at all levels of government
- An adequate supply of clean water is a basic human right
- The best advocates for water are local communities and citizens
- The public must participate as an equal partner with government to protect Water
- Economic globalization policies are not water sustainable

The differences and polarity then between the idea of water as an economic good and water as a common good are quite obvious. The former follows economic analysis, while the latter is much more political. The former is a much more developed theory that corresponds to the market model of development. The latter stops short of explicitly arguing for any particular model of the development, but clearly emphasises the central role of the state.

Most critics of the free market economic approach offer quite a limited critique – their attacks are focused mainly on profit-making and the excesses of multinationals, not on the problems associated with value[25]. It should also be noted that the economic approach, contrary to

[25] Aside from Barlow (1999), there are others who follow this line of argument, like more recently, Aegisson (2002).

what its critics say, is not entirely devoid of a moral viewpoint. At the heart of economic theory is the idea that using markets, prices, and allowing for profit-making can be acceptable and justified because the pursuit of self-interest inevitably results in the greatest good for the greatest many.

It also appears that Barlow and Petrella are finding difficulty distinguishing between the consequences of unequal property ownership and the consequences of market exchange. Barlow's *Blue Gold* in particular confuses water resource management with service management problems. It is quite evident that Barlow and Petrella have not provided a sufficient critique of free market theory. What they have done is merely to consolidate and develop a set of principles that contradict the fundamentals of free market theory. But the limits of free market theory can be unravelled and explained, as attempted in the following section.

4. Arguments against the Free Market Economics of Water Provision in Developing Countries

The key contention of this paper is that because water is not a 'normal' commodity that can be freely exchanged in an open market, the theory of free market economics does not apply to the provision of this resource. But neither do human rights-based theories that maintain the primacy of politics and the political process in the solution of problems on the provision of water. Rather, we find that an alternative frame within sociological theory and institutional economics may be possible. In this section, we will examine in detail the arguments on not only how free market economics does not apply, but may also even complicate problems in water provision in developing countries.

In a typical market where a spot exchange takes place, a producer or seller offers a product or service for sale to consumers where price is the key mechanism governing the exchange. If consumers value the product sufficiently that they are willing to pay the price being asked by the producer/seller, then a transaction is made. If not, producers adjust their price accordingly. With perfect competition, there are many producers and many consumers constantly negotiating with each other on price.

In the case of water supply provision, no such spot exchange exists (except perhaps in the case of the small-scale water vendor offering water to customers). There are also layers of intervening social and political relationships that prevent a purely economic exchange from taking place. This is what makes Briscoe's theory – which despite being perfectly consistent and logical in itself – extremely difficult to implement in the developing countries. Where private sector participation has been introduced, the market operates *not* in the provision of the service, but in the competition on who gets to supply to the service. The opportunity to provide the service (or portions of it) is bidded out by the government, on behalf of its constituents. So instead of individuals making rational choices, what we typically have in urban and rural water provision is an institution (government) making choices on who gets to become the suppliers. In urban settings, the chosen service provider – whether a public or private body – then assumes the operation of a natural monopoly where price is negotiated not through market exchange but through regulation. Because institutions (not individuals) are involved in a rather lengthy transaction process, free market economics becomes inappropriate. H.M. Trebing observes that to be effective, markets must satisfy the following conditions:

- Every relevant market must be vulnerable to the rapid/free entry by competitors, ie no public or private barriers to entry exist, no niche markets with captive customers exist, nor corporate dominance, nor tight oligopoly.

- There is effective competition with at least 5-6 firms of approximately equal size and each acting as ‘price takers’.
- Information and transaction costs are minimal.
- Market prices must reflect both private and societal costs.
- Access to the network must negate management’s incentives to foreclose part of the network.

We examine how the water services market does not fulfil these conditions laid down by Trebing, and other issues that make free market economics irrelevant to water services provision in poor countries.

a. There is no rapid or free entry of competitors in a water ‘market’

It is quite clear that there can be no rapid or free entry of competitors in water services provision, particularly in urban areas, and except during bidding process, and on condition that in such bidding the transaction managers are committed to fairness and that no asymmetries of information exist. Because of the nature of water systems as natural monopolies in urban areas, a competitor could not just freely and rapidly come in and offer a choice to consumers.

Another problem is that the water market has an inherent propensity towards concentration. The French water services market, for example, arguably the most developed in the world, emerged from more than a century of municipalities contracting small private companies in public-private partnerships. Over these years, these small companies merged with each other to form what today are the world’s biggest water multinationals – Vivendi (formely Generale des Eaux) and Ondeo (formerly Suez Lyonnaise des Eaux). These two companies control 75% of the world’s privatised water services market (Hall, 2002). In England and Wales, this propensity towards concentration has been prevented by the adoption of a regulation that disallows the 10 English and Welsh companies from merging or taking over each other (Green, 2003). This according to regulators is a key to keeping water services in England and Wales competitive – but only between those companies that are already in existence and not those who may want to enter the field as competitors.

b. There is no effective competition between water companies, especially in developing countries

Where biddings have been called in developing countries to privatise water services, the tendency is for the bidding to be won by the big players who have greater economies of scale and better credit-worthiness to access financing for a capital-intensive sector. This reinforces the inherent propensity towards to concentration.

Furthermore, the mechanisms adopted to introduce some form of competition in developing countries have not really worked. One such key mechanism is dividing a concession into at least two areas, with each awarded to a different company. This was started in Paris, but has since been adopted in Manila (East and West Zone concessions) and in Buenos Aires (three separate concessions for greater Buenos Aires). The idea is that regulators can measure the performance of one private service provider against the other. Experience so far shows that it has been difficult to make such comparisons. In Manila, the performance of the two service providers against each other could not be made because the two zones are so starkly different – for example, the west zone provider was made to assume 90% of the debts of the public utility, amounting to US$800 million. When the concession contracts were signed, one dollar bought 26 pesos. By the end of that year, the peso depreciated in value by almost 100% as a result of the 1997 Asian financial crisis (Esguerra, 2003). Similar difficulties have been observed in the Buenos Aires concessions. One concessionaire, part of the Enron conglomerate, simply abandoned their concession when the mother company crashed. One other concessionaire, Aguas Argentinas (partly owned by

Ondeo), is seriously thinking of pulling out as well in order not to sustain any more losses (Almansi, et.al, 2003). Competition could not take place when the business involving the big players is failing.

Another mechanism, already discussed earlier, is the system adopted in England and Wales where mergers and takeovers of water companies assigned particular areas are prevented. Here comparisons can be made on prices, water quality, customer care and environmental performance. But it should be remembered that this requires a capability that most developing countries do not yet have: sufficient and competent regulation, which in turn is based on well-developed information systems (Green, 2003). As such, effective competition is unlikely to be seen in developing countries.

c) Information and transaction costs in water services provision is high

Information and transaction costs – those that are needed to reach agreement – will always be expensive in water services provision. For urban water services, information can never be exact for the simple reason that there typically exists no sufficient inventory of the assets buried under the ground. A key example again is the Manila water concession, billed initially as a most successful and the world's biggest privatisation. The bidding documents and information were prepared by consultants from the International Finance Corporation (who were paid a massive sum of US$6.2 million) (Dumol, 2000). Still, their information was not correct. The west zone contractor based their income and cost projections on IFC-supplied data that there were about 2000 kilometres of pipes in that zone. The company found out later (after the contract has been signed) that there actually were more than 3000 kilometres, meaning that they had to invest substantially more for repair, rehabilitation and maintenance[26].

There are also certain information that could not be officially disclosed for political, not technical, reasons. The main supply pipes for the Dar es Salaam water system, for example, has been described as a 'porcupine' for the number of illegal connections, many of which provide water to the shambas (family farms) of reportedly influential and powerful Tanzanian figures (WaterAid-Tanzania, 2003). Bidding documents, for obvious purposes, do not provide such information, which is crucial to the success of any private sector takeover of the system. Prospective private operators will have to spend more to avail or verify the needed information independently.

Both Manila and Dar es Salaam cases entailed large transaction costs. The Manila contracting process took two and a half years to conclude, and this was prompt because no less than the Philippine president took a direct hand in pushing the process to conclusion. The president certified as urgent a bill that was passed through Congress that authorised the contracting out of the Manila water concessions (Esguerra, 2003). In Dar es Salaam, the bidding process has been so complicated. It started in 1998; had two failed attempts to award the contract; and finally in November 2002, a contract was awarded but to a lone bidder which makes the integrity of the process suspect (WaterAid-Tanzania, 2003).

Huge transaction costs are not limited to urban areas. Transaction costs in rural areas in developing countries are equally high, in relative terms. Devolution mandates that local governments take responsibility for awarding contracts for water projects to private contractors. But many of these local governments are unprepared to take on these new roles, much less to supervise the work of the contractors implementing the projects. Local government water departments typically have only one staff member with no vehicle in areas where public transport is at best irregular. (For more detailed information on the lack of capacity of rural local governments in developing countries, see Estamos, 2003 on Mozambique; Barungi, et.al 2003 on Uganda; and Pronet, 2003 on Ghana)

[26] This is a legitimate complaint, but it should be pointed out that the company could not have signed the contract without any knowledge that such risks exist.

d) Market prices do not reflect private and societal costs because costs are not yet fully understood in water services provision.

The “private and societal costs” in water services provision are not yet fully understood and are typically measured in ways that are insensitive to the complexities of poverty. For example, let us examine the debates on cost recovery and capital cost contributions.

Prices are often based on simple, mechanical measurement of obvious costs. One result is that the computations often become blind to the phenomenon of poverty and insensitive to its complexities. Table 1 below is a comparison of the prices paid by a typical developing country urban household, compared to what an average London household pays:

Table 1

Household	**Water expenses yearly in actual figures, converted into dollars**	**Water expenses as a percentage of household income**
London household of four, with two income earners	US$ 194.36, paid to Thames Water plc	00.22%
Accra, Ghana household of six, with one income earner	US$ 156.95, paid to a neighbour with a connection to the water utility	22.40%

It would first appear that the London household value water more, because it pays US$37.51 more for its annual water consumption than the Accra household. But when water expenses are measured as a percentage of income, the Accra household turns out to be paying 102 times more (22.4% divided by 0.22%) than the London household! The measurement of water expenses as a percentage of income rarely figure in the computations of most decision-makers, hence, obscuring the enormous burdens placed on the poor by most decisions on water pricing[27].

Also, neither is the “substitution effect” considered (Hilary, 2001). Because of extremely tight budgets, the poor can afford water only by sacrificing spending on other important services like health, education or electricity. It could be that the Accra household may not be sending one child to school because they already spend 22.4% of their meagre income on water expenditure.

Furthermore, the costs of *not* providing for water rarely figures when cost recovery and prices are discussed in purely free market economic terms (Bond, et al, 2001). This is crucial, especially because many least-developed countries spend considerable resources in fighting off disease, and pay in terms of lost economic productivity, or when children are not able to go to school because they are needed by their families for water collection chores or to bring livestock to water sources.

Another criticism against the free market economic approach at cost recovery is that it is almost exclusively about quantitative measurement. There are certain values or costs that are better measured in qualitative terms. For example, Misra Kedir from the parched Iteya

[27] The comparison made here between the London and Accra household is made only to illustrate the point. As pointed out by Gary Wolff, income is not the best measure for comparison, since the Accra income earner may be working longer hours than the London income earner. Wolff suggests time as a better measure for comparison – i.e. the hours required to obtain water – the time needed on the queue as well as to earn US$194.36 or US$156.95 spent on the water. I am grateful to Gary Wolff for pointing this out, but have not had the time and resources to actually do this kind of measurement.

Shaki community in Hitosa, Ethiopia, once described to WaterAid the experience of not having water available at childbirth. “I will never forget how I suffered,” she said, “There was no water to wash the baby and myself. I was embarrassed by the unpleasant smell, especially when neighbours, including men, came to visit me.” By the third day, her parents managed to prepare the *atmit* – a special fluid prepared from cereal products that helps both the mother and newborn to resist infection. But by then, it had been too painful for her to drink as her dry throat ached for not having fluids for so long (WaterAid, June 2001). The value of water to Misra, or the costs of not having had it during her first childbirth, could simply not be reduced into simple quantitative measures. These are best understood qualitatively, as with other more qualitative social factors like changes in social status, gender roles, family relationships, or educational and recreational opportunities that come with reliable water supply provision.

Another World Bank economist states that “the surest test that water services are so valued (as an economic good) is that users are willing to pay at least as much as the economic cost of providing them” (Garn, 1998). Simple as it may seem, opponents of privatisation regard this principle with utmost suspicion – it is seen as the driver of price increases and as a heavy-handed tool for forcing the poor to pay unaffordable levels of water tariff (Fact-Finding Mission, 2002).

There are therefore important limitations of the free market economic approach. But the principle of cost recovery could not be rejected outright, because in the end, it will be financial sustainability that determines a system’s long-term ability to deliver the human rights to water. Opponents of privatisation could be faulted for being quick in their rejection of the principle of cost recovery, without stating their own commitment to making the water system financially viable and sustainable. A major flaw of their approach is the lack of detail in the appreciation of costs and their apparent reduction of the problem into a simple issue of affordability. For example, distinctions ought to be made between different types of costs – i.e. distinguishing between operations and maintenance costs (what is paid to whoever will operate the system), construction and capital improvement costs (what is paid to whoever will repair the current network and expand the system to unserved areas), and financing costs (what is paid to the banks and lenders). Such a distinction will show the real drivers of the price increases, and therefore allow for a finer and more nuanced approach at finding solutions. As the costs become more specific and itemised, it will be easier to devise ways of how to reduce them, or how to pay for them – whether it should be user fees, private sector investments, taxes, or donor grants that should pay for these specific costs. As the exercise goes further, wider costs such as pollution and other environmental costs (or negative externalities) can be brought into the discussions.

There are two types of less obvious costs that are crucial but often missed -- marginal costs (the cost of producing each new unit) and opportunity costs (that which is incurred when one user uses water and affects the use of the resource by another user). Marginal costs are important, because as pointed out by Briscoe, in rapidly growing cities of developing countries where new sources of municipal water have to be constantly found and developed, “the costs of water are growing rapidly that water from a new project is typically two to three times more expensive from the last project” (Briscoe, 1996). But the tougher nut to crack is opportunity cost, especially because of difficulties of how it can be observed and managed. For example, take a situation where water can be sold to neighbours by a single household with a connection. If the owner of the connection uses up all the water, it will incur opportunity costs on the neighbours who will have to look (and thus spend) for other new ways to get their water. Economic theory suggests that if opportunity costs are included in the price to be paid to the owner of the connection, this owner will be induced to sell water if he values it less than the market does. There has been little accessible discussion in the literature on how to manage opportunity costs, and how it will impact on the principle of cost recovery. On one hand, bringing marginal and opportunity costs into the picture may sharply increase costs. But on the other, this in itself can be an argument for the social rather than the market management of water. With so many costs to consider, it is urgent that more stakeholders get involved in more formal, deliberate and political decision-making, rather than through unregulated market transactions.

Understanding the nature of the costs and having a sufficient grasp of the levels of costs is a pre-requisite especially in the management of water as a human right. Certain human rights (like the right not to be tortured) can be delivered for free; rights to water in urban societies will always entail costs. A pro-poor design of subsidies that are economically and socially sound and which will not affect long-term financial sustainability (and therefore hurt the poor's interest in the long run) is something that could not be made until a full accounting of the various costs have been considered.

e. Economic valuation tends to disregard the human right to water

As shown in the preceding point, there is tension between economic valuation and human rights. This polarity between value and human rights is best illustrated by the difference between the consumer and the citizen. Value is to the consumer as human right is to the citizen. A consumer is one who sufficiently values a commodity such that there will be willingness to pay for that commodity. A citizen, on the other hand, is one who inherently has human rights, and as such is a member of that "public" which is the ultimate owner of the resource. As a co-owner of water, a citizen is entitled to it, and this entitlement is not based on any willingness to pay. Thus, the fundamental question is whether it is economic value or human rights that should be considered as a starting point of discussions for the management of water. Should individuals be treated primarily as consumers, or as citizens, in decisions over water allocation, distribution and use?

The problem is that an individual is both a consumer and a citizen at the same time, and that these two identities could not be held separately. As pointed out by Esteban Castro[28], we should be careful not to assume that the "citizen" is a given. To start with, the citizen is a western-born concept that barely has empirical reference in most developing countries, especially Africa and Asia. The poor, for example, in most developing countries remain invisible – squatters are not found on any electoral register; subsistence farmers in far-flung areas are not part of the national statistics. They therefore could not exercise the traditional rights of a "citizen". Furthermore, we cannot assume that the citizen is always a co-owner of water. The question of rights (that citizens enjoy) has to be qualified. As Bentham argued, it is one thing to formalise rights in a charter and quite another to have those rights universally enforced and protected.

Economic value is typically defined in the literature as "the maximum amount the user would be willing to pay for the use of the resource." But as pointed out by Gary Wolff, defining economic value only in this sense of willingness to pay is incorrect (Gleick, et al. 2002 and personal correspondence). Willingness to pay measures only one type of economic value – the value to someone who does not own something. Willingness to accept is another definition of value – the value of something, perhaps a resource like water, to someone who already owns it. Willingness to accept can be defined as "the minimum compensation payment one must receive to be indifferent to the loss of something that was owned but has been taken away." Whereas, WTP can be no higher than ability to pay, WTA can be infinitely high. A poor family who already have enforceable property rights to at least enough water to meet their basic needs will never be prevented by their poverty to let go of this right because they will have very high WTA (ibid). The WTP-WTA distinction, according to Wolff, shows how one can make the idea of human rights operational within a market economy – by assigning property rights that reflect the minimum quantities that a society's notion of human rights says each party should have. This has been done in some ways in South Africa, where law

[28] Comments provided to a first draft of this paper.

provides that households have a right to have their first 60 kiloliters of water each month for free.

Wolff also makes the distinction between intrinsic value (what water is to the different users) and exchange value (the price actually paid that may or may not reflect economic value) in order to further understand the tension between economic valuation and human rights. The tension between providing water as a human right and achieving market efficiency is a tension between different sets of intrinsic values. Some people value water only as a human right, and not value market efficiency at all. Others value market efficiency and are unconcerned with the human rights to water. This, notes Wolff, is a political problem that needs to be resolved.

Therefore, a key point to analyse is whether it is possible to make economic value and human rights not mutually exclusive. Is it possible to value water in an economic way, and not violate rights? Or, is it possible for the economic valuation of water to deliver rights? Closer inspection of the arguments of the contending sides reveals that the underlying theories are not entirely mutually exclusive of each other. Proponents of water-as-an-economic-good emphasise that the idea is related to generating "broad-based participation by civil society in decision on water management which were previously often treated as the province of technocrats alone" (Briscoe, 1996). Adam Smith himself explained that markets are the products of social conventions – that rules and standards in the market, and most particularly prices, are the results of constant social negotiations. Proponents of water-as-a-human-right on the other hand, are also not entirely opposed to commodification if it is to be used for environmental purposes, in reducing wasteful consumption and to subsidise poorer households (Bond, et.al, 2001). One idea that has been put forward is that it is possible to keep water management (not water itself) public even where expanded roles are given to the private sector (Ministry of Foreign Affairs, Sweden, 2002).

Managing water as a right that keeps into consideration its economic value is thus possible. What is not clear are the particular ways of making economic valuation and rights compatible. The Pacific Institute has recently come out with its principles and standards for privatization. They suggest the management of water as a social good, but using sound economics, and where strong government regulation and oversight is maintained. This means that water should be managed so that it meets basic human and ecosystem needs, subsidies that are economically sound are provided for the poor, rates are fair and reasonable, rate increases are linked with improvements in services, and where private companies clearly demonstrate the efficiency gains they deliver. The Pacific Institute argues that "once extensive stakeholder participation leading to institutional change has become part of the economic analysis, more opportunities to manage water as both a social and economic good becomes available" (Gleick, et. al, Feb 2002). These principles are important starting points that can provide guidance, but will still need to be 'fleshed out' when applied to specific contexts.

f. The privatisation of water services does not happen overnight, especially in developing countries

The enforcement of policies that push developing countries to privatise their water services needs to be evaluated against the experience of France and the United Kingdom on one hand, and the United States on the other. Particular conditions enabled France and the UK to become the only two Organisation for Economic Cooperation and Development (OECD) countries where private provision of services is dominant. These conditions are not seen in the United States -- the world's leading centre of free market thinking where water utilities remain, ironically, predominantly public. Such conditions are not seen as well in developing countries, which is why the expectation that poor countries can privatise their water services through the enforcement of policies alone appears misplaced[29].

Over the last 100 years, France is the only OECD country that has retained and grown a private sector big enough to be able to take over public utilities. Many big cities in the United States, like Chicago and New York, started in the 1800s with having water utilities run by private companies (reference?). But as the cities and their public authorities grew and became stronger, the municipalities took over the privately run utilities. As a result, only a few of these private companies remained. In contrast, private companies grew in France, on the strength of concessions and leases from municipalities, in what are now called "public-private partnerships". The municipalities retained ownership of the assets while the private companies were given the task of operation, maintenance and investment. The multitude of private water companies merged and acquired each other through the years, creating up to four big private water companies, who now manage the water supply delivered to 78 per cent of the French population, and collect and treat the wastewater of 32 per cent. It is therefore not surprising that, by the 1990s, French multinationals are the biggest in the world: Vivendi, which emerged from Générale des Eaux, and Ondeo, which was formerly known as Suez Lyonnaise des Eaux (Hall, June 2001 and Blokland et al 1999).

The story in the United Kingdom is quite different. In 1974, the UK government consolidated the provision of water supplies, the management of water resources (like rivers), and sewerage services – previously delivered by municipalities and different public bodies – into single regional water authorities (Bakker, 2001). Thus in 1989 when Margaret Thatcher's government made the decision to sell off these water systems, proprietary rights over the pipe systems, treatment plants and other assets were clear and uncontested. It was from this sale of regional water authorities with clear ownership rights that the multinational British water companies, such as Thames Water Plc and Severn Trent Plc, emerged. This so-called full divestiture or complete privatisation has not been replicated on such a scale anywhere else in the world[30].

In contrast in the United States, the water industry is fragmented. For example, in the Washington DC area, pipe networks, treatment plants, pumping stations, etc. are owned by different municipalities. There are layered and overlapping responsibilities between local, state and federal governments. Even if all these bodies were to cooperate, a sale of assets or full divestiture would be extremely complicated. Furthermore, the Clinton administration had a different view of privatisation. He wanted government to deliver improved services at lower cost, using market-oriented techniques, but was not an avid asset seller (Gutierrez, 2003).

Thus, it can be seen quite clearly that the United States is not ready for the privatisation that happened in France and the UK. The French and British privatisations should be contrasted with the kind of privatisation that took place in developing countries. Some developing countries in the late 1980s laid the groundwork for privatisation as a result of donor pressure for structural economic reforms. The Philippine government set up the Committee on Privatisation in 1986, and by 1992 had sold off 122 government-owned and controlled corporations, worth about US$2 billion, as part of its debt restructuring and structural adjustment programmes signed with the International Monetary Fund – World Bank (IMF-WB). The Philippines successfully awarded the Manila water concession to private companies in 1996 – identified by the WB as the world's largest water privatisation (Dumol,

[29] We define a utility as 'public' when a government agency is the majority owner and the utility operates under public law, even when it enjoys a certain degree of autonomy including freedom from the coverage of civil service laws.
[30] It should be noted that after privatisation, 12 per cent of the UK's population still received their water and sewerage services from public bodies. It was only in England and Wales, and not in Scotland and Northern Ireland, where the privatisations were implemented (Green, 2002).

July 2000). Mozambique, one of the poorest countries in the world, started its own privatisation programme in 1989, also as part of the structural adjustment package with the IMF. By 1998, it had sold off some 1,200 small and medium enterprises, and 58 out of 68 large parastatals, to the private sector. It finally privatised the water utilities in its seven largest cities in 1999 (FT, 2000).

Overall therefore, there has been no dramatic rush to privatisation in the US such as that seen in the UK and France. In 2000, market share for private contract operations of municipal utility systems remained at less than 5 per cent of the US$35 billion that government spent on water and wastewater. Surveys now show that there will be increasing growth in water and wastewater privatisation in the United States in the next five years, (RPPI 2001) but other recent reports from both academics and consultants conclude that public sector provision is likely to remain the dominant form of water provision in the USA, with privatisation remaining around the long-term historic level of 15 per cent (WSTB 2002) and that any growth in privatisation is likely to be slow (Farkas and Berkowitz 2001).

The experiences in these three countries thus show that the privatisation of water services does not happen overnight, and is dependent on certain structural conditions – such as the development of a dynamic private sector and the clarification of property ownership of water assets – to be laid in place first.

We can therefore conclude this section by reiterating that free market economics is inapplicable to water services, particularly in developing countries. The strengthening of governments in the poor countries is necessary for market relations to emerge. In the same way that statism was dominant in the west throughout most of the modern period, good government is a prerequisite in developing countries before market-based economies can emerge. As Trebing concludes, public utilities are characterised by three factors that impede free market performance – the inherent propensity toward concentration; behavioural strategies associated with high concentration, and the fallibility of primary and secondary markets (Trebing, 2000).

5. Developing an Alternative Theoretical Framework

Free market economics as first developed by Adam Smith is based on the notion that the individual pursuit of self-interest results in the greatest good of the greatest many, and the basic unit of analysis is the individual making rational choices. An invisible hand emerges that settles prices, wages, and profits from capital at that level where it is most socially beneficial. A free market, it is argued, is the most appropriate mechanism there is for the allocation, distribution and use of society's resources. Friedrich von Hayek added his idea of *spontaneous order* -- that society is far too complex to be deliberately planned and designed, and that free markets are the best mechanism to regulate economic activity and achieve the greater good. It is today difficult to argue against these theoretical formulations, but a case can be made against its applicability on the water sector in developing countries. But what is important though is to highlight that there is an alternative to this theoretical frame, which can be developed from institutional economics and sociological theory, and using new thinking that is now emerging from the work of many water sector professionals and practitioners working in the poorest areas of the world.

Sociology provides the theoretical frame that can be an alternative to free market thinking and which allows for a clearer understanding of transactions and institutions. There are three key components drawn largely from the work of Emile Durkheim, considered by many as the founder of modern sociology. The first component is about the need to consciously move away from the methodological individualism of free market and rights-based theories, where the basic unit of analysis is the individual making rational choices in relation to the market or the state. This means looking at institutions as the basic unit of analysis. The second component is the treatment of economic phenomena as moral facts. Durkheim maintains that the division of labour is something other than a purely economic phenomenon. The division of labour has a moral character – it is based on what people exercising social relations regard as acceptable or not acceptable. Durkheim regards the division of labour as held together not by the rational decisions of individuals but by power relations, ideology and moral regulation. (Durkheim, 1973 (Bellah, ed.); and 1982 (Lukes, ed.)). Finally, the third component revolves around Durkheim's argument that the purely contractual governance of economic transactions is problematic because contracts will always be incomplete, and that there oftentimes are implicit agreements 'within' the explicit clauses of contracts. The key is to look at the social embeddedness of transactions and actors (Durkheim, 1973: 86-113; and in Batenburg, et.al, 2000). Durkheim argued that "mutually beneficial economic exchange presupposes that trading partners follow non-contractual norms and moral obligations, such as norms of trust, reciprocity and solidarity, implicit contracts that are partly unwritten, tacit and not formally binding" (quoted in Batenburg, et.al, 2000).

In this section, we present the outline of the institutional economic and sociological alternative. We also present some of the new thinking emerging from the ground that supports this alternative. It should be noted that this section is largely a work in progress, and that further work and reflection needs to be done on the ideas presented here.

First component: recovering the lost role of institutional economics

If in free market economics the individual making rational choices is the basic unit of analysis, in institutional economics the focus is on the role of institutions, i.e. the basic unit of analysis is the transaction. The term "institution" is understood in many different ways. But John R. Commons, the pioneer of institutional economics, defined it as "collective action in control, liberation and expansion of individual action." An institution may be a state or a corporation, a cartel or a co-operative association, a trade union or an employers' association. It can also be a joint trade agreement between two associations, or a stock exchange. The key, says Commons, is that all these institutions are "collective acts that establish relations of rights, duties, no rights and no duties." (Commons, 1931)

Thus, to an institutional economist, economic transactions are not seen as the simple exchange of commodities, but rather, "the alienation and acquisition, between individuals, of the rights of property and liberty created by society, which must therefore be negotiated between the parties concerned before labour can produce, or consumers can consume, or commodities be physically exchanged." Commons described transactions as having three types -- the bargaining, managerial and rationing transaction. From the bargaining transaction emerge four issues – competition, discrimination, economic power and working rules. The assumption in bargaining transactions is that there is equality between willing buyers and willing sellers, by which the ownership of wealth is transferred by operation of law. Managerial transactions on the other hand, assume a transaction between superior and inferior, where the universal principle is efficiency. Rationing transactions differ from managerial transactions in that the superior is a collective superior while the inferiors are individuals. (ibid)

'Institutions' therefore can be defined as simply 'the rules of the game.' The World Bank itself can be seen only as an organisation, not an institution in this sense, but in many ways it is responsible for laying down the 'rules of the game' that are inherently based on free market economic thinking. The understanding of 'institutions' has to be revisited and redefined, especially because it will only be through institutional change (a change in the rules of the game) that intrinsic values can be reconciled[31]. Commons' different categories of transactions are also most useful – water transactions could be categorised under the managerial or rationing transaction, but not under the bargaining transaction which may be the assumption in free market economics.

The need for a shift in thinking from the rational individual to institutions where transactions are the basic unit of analysis is most eloquently made by Marcel Mauss, the French sociologist who was the nephew of Durkheim. Mauss studied the system of "economic prestations[32]" which commonly take the form of the "gift" in societies whose "exchange institutions differ from our own." (Mauss, 1954:2-3). Mauss studied the forms of exchange and the economy of gift-giving in several Polynesian societies. But also included in his book are references to Northeast Siberian, West Alaskan and North American Indian societies. Mauss's elaboration on the idea of the gift shows us how the so-called free market is actually a sociological phenomenon guided by norms of morality, unwritten rules of exchange, and customs developed through time.

A gift is, in theory, voluntary, disinterested and spontaneous. But Mauss pointed out that gifts are in fact obligatory and interested. There is an accompanying behaviour around gifts that is "formal pretence and social deception, while the transaction itself is based on obligation and self-interest." (1954: 1-2) Looking at how gifts circulate in Melanesia and Polynesia, how return-gifts are assured, and how these are exchanged side by side with other material objects leads Mauss to a critique of legal and economic theory. "Imbued with modern ideas," he said, "current theory tends towards *a priori* notions of evolution and claims to follow a so-called necessary logic; in fact, however, it remains based on old traditions." He cites for instance, how economic theorists think of direct sale and credit as phenomena of more advanced societies. "In fact the origin of credit is different. It is to be found in a range of customs neglected by lawyers and economists as uninteresting: the gift, which is a complex phenomenon especially in its ancient form of total prestation." (1954: 34) The gift, he said, is a "mechanism of exchange not yet couched in terms of purchase and sale." Markets therefore existed even before the development of merchants and currency, and functioned before they took the modern forms of contract and sale and capital. Hence, it is essential to examine the moral as well as the economic features of these institutions. Such examination simply does no more "than lead us to old problems which are constantly turning up under new guises" (1954: 1-5; 63).

Mauss suggests that certain modern social innovations are "gifts" that keep society intact. For example, he pointed out that French legislation on social insurance "are inspired by the principle that the worker gives his life and labour partly to the community and partly to his bosses." The return 'gift' the worker gets from the bosses is his wages. From the State, he gets a certain security against unemployment, sickness, old age and death. In Great Britain, he noted how "some distinguished economists and captains of industry saw that industries themselves should organise unemployment savings and make the necessary sacrifices. They wanted the cost of the workers' security to form part of the expenses of the industries concerned." Such ideas and legislation he said, is the dawn and realisation of professional morality and corporate law. The only flaw of such compensation funds is that their administration is in the hands of the bosses. But all this constitutes a return to "group morality." "The theme of the gift," he concludes, "of freedom and obligation in the gift, of generosity and self-interest in giving, reappear in our own society like the resurrection of a motif long forgotten" (1954: 65-66).

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[31] I am grateful to Gary Wolff for pointing this out, and sending me in the direction of looking at institutional economics.

[32] "Prestation" appears to be not an English word. A translation of the French *prestation* is service; while the Spanish *prestacion* means benefit.

Mauss's model of gift-giving illustrates a number of points. First, that the typical economic exchange is not based on what has been assumed as the rational choices of individuals. Rather, as shown by the complex phenomenon of gift-giving, there are certain social institutions mostly unwritten but widely practiced that govern exchange. Hence, these institutions (or rules of the game) rather than individuals ought to be the focus of analysis. These unwritten rules of exchange have inherent and implicit moral judgements, so that economic exchange ought to be analysed as moral phenomena.[33]

Hence, the uninteresting and seemingly innocuous *gift* can actually be the starting point for the development of an alternative frame to free market thinking. A gift given or received presupposes layers of moral judgements, and customs developed through time between gift-giver and gift-taker. Gift-giving is simply, a transaction in its most basic form – without the modern instruments of credit, currency and written contracts that now govern most economic activity. Looking at economic transactions as simply more complex forms of gift-giving allows us to look into the sociology of transactions, and disabuses us from the prevalence of free market thinking.

Second component: understanding and developing moral agreements

The second component of the alternative frame states that relations between state, business and civil society in water services provision is dependent on power relations, ideology and socially-negotiated moral decisions on what is acceptable or not acceptable. What this tells us is that water services delivery could not simply be reduced to a purely economic phenomenon – as what proponents of water-as-an-economic-good tend to imply. Rather, there is a need to extend the analysis into the moral dimension, which most often, inform judgements on intrinsic values. What needs to be developed is less of the economic issues involved, but more of the moral problems and the complications of finding and forging moral agreements. In other words, the bigger problem is not the technical determination of true price that reflects all costs and true value but the process of how such a price is accepted and made morally defensible.

The key problem that the economic approach addresses is that water is often treated as if it was worthless, or that its value is not as immediately evident and observable as that given to oil, gold or beef. This results not only in the gross undervaluation of water, leading not only to the inefficient allocation and unsustainable use of the resource, but also to the treatment of water services as something that is expected as free. Up to this point, there is nothing wrong with the economic approach. The problems emerge when the jump is made that price should be made to reflect the true value of water. The free market economic approach says that ultimately price should be used as the mechanism to determine allocation, distribution and use, without a discussion of the moral dimension. Thus, the proposition comes out as a blatant disregard especially of the rights of poor people.

Price could not simply be enforced without any form of social negotiation. There is nothing new in this proposition, since the price of water in most cases is set through some formal process of regulation. The setting of prices by regulation can be seen as more socially-beneficial than when price is negotiated between poor consumers and unregulated, small-scale informal water vendors, who often sell at five times the cost that the public utilities provide (as in Accra and Dar es Salaam). But still, there is opposition to regulation in many developing countries because it is seen as not fair, and that decisions are made in favour of the profit-making companies. Regulation is often seen as simply a legitimisation of existing power relations where the will of the wealthy and the powerful prevail. This is often compounded by the lack of transparency, which often take the form of discussions couched in inaccessible economic language. Thus, the moral problem that needs to be addressed is

[33] I am grateful to my dissertation supervisor, Sami Zubaida, for introducing me to the book of Marcel Mauss.

two-fold. First, there is need to develop standards for judging what is a right and fair price. Second, there is a need to constantly ensure transparency and accountability, given that those who are poor and powerless often end up having the rough end of any deal.

The development and wide acceptance of standards are critical in finding the right price. For example, if prices are made to reflect environmental costs or to ensure that future generations will have more or less similar access to water resources and services, there will be less opposition even from the likes of Maude Barlow and Riccardo Petrella. Other standards are also being developed. In Kathmandu for example, NGOs are proposing a two-step pricing system. The first step price will only be applied to low volume consumers, which in theory includes the poor. They are made to pay only the operation and maintenance costs of the water service, which is estimated to be about 3% of the average per capita income of the poor in Kathmandu. The second step price is applied to high volume consumers. This price includes not only operations and maintenance costs, but also the capital investments and infrastructure costs, the financing costs, as well as the tax that goes to the benefit of the Melamchi Valley residents, where the water is sourced from. This two-step pricing is seen as a mechanism that addresses the economic issues, but also ensures that the rights of the poor are not violated (Etherington, et. al, 2003).

The need to ensure transparency and accountability is best exemplified by the debate in the privatisation of Ghana's water services. Because of the perennial failure of its urban water services, Ghana's government, with donor encouragement, sent into motion a privatisation process. Built into the process were certain steps to minimise opportunistic behaviour, such as the creation of "business units A and B" that grouped together potentially profitable as well as generally problematic urban water services. The idea was to prevent bidders from 'cherry-picking' i.e. to bid only on those towns and cities that they see as profitable. Also, a Water Services Restructuring Secretariat was created to provide technical advice and ensure that government actually reaps the benefits of privatisation. However, because the process was largely out of the public domain and limited to a few bureaucrats and technocrats making decisions, suspicions emerged from various sectors about corruption taking place, about an unfair deal being made at the expense of the poor, or about inappropriate donor pressure on the government to privatise. Christian Aid, a UK-based nongovernment organisation, criticised the UK's Department for International Department for making a contract signed with a private operator a precondition for the release of a £10 million grant and loan for the rehabilitation of the Kumasi water system. (Kumasi is Ghana's second largest city). Amidst all these controversies, a Coalition Against the Privatisation of Water (CAP of Water) emerged opposing the scheme, and getting support from trade unions, churches and some nongovernment organisations (Pronet-Ghana, 2003).

The debate has become too politicised and has collapsed into a propaganda war. Mudslinging has been resorted to – CAP of Water has been painted as infiltrated by communists and ISODEC, the main organisation behind the coalition, has been linked to Osama bin Laden. CAP of Water, on their part, organised their own "Fact Finding Mission." But disagreements emerged among mission members themselves. One prominent member, the British Member of Parliament Dr. Jenny Tonge, openly disagrees with much of the report. Dr Tonge opposes any return to public management, saying that there is no capacity within the Ghana Water Company Limited at the moment to implement the needed reforms.

It is now difficult to have a realistic discussion of solutions because the debate in Ghana has essentially turned into a battle between two contending moral positions. And Ghana is just one example. Similarly contentious battles have erupted across Latin America, as well as in Manila, where only a few years ago, a most successful and the 'world's biggest privatisation' was being bannered. And there is no straightforward solution in sight, because of the lack of standards with which to evaluate the acceptability of the different privatisation options taken.

It is in this light that at the Bonn International Freshwater Conference in December 2001 endorsed the idea of a 'multistakeholder review' of PSP. The process envisioned is similar to the review process undertaken on dam construction through the World Commission on Dams. The object of the multistakeholder review process is two-fold: to review the impact of PSP; and to develop a set of standards and guidelines that could be made binding on all stakeholders. It goes without saying that the key to the success of this review process is to get buy-in from all the concerned stakeholders. It is a positive development that NGOs and trade unions have taken the initiative in this regard.

Processes like a multistakeholder review underpin the need to formalise agreements around a set of rules that will guide the behaviour of stakeholders. It can be described as the foundations on which future market relations can be built. Because after all, it could be that that opposition to the privatisation of water services is some kind of breakdown in the basic relationship of gift-giving. The challenge for business is to recover trust, the challenge for the state is to show that conflicting interests are being mediated, and that agreement is arrived at and enforced. The challenge for civil society opponents of privatisation is to accept that business has a role to play.

Third component: social embeddedness and non-contractual issues

The third component, which is key to explaining economic environments around water, is Durkheim's idea of the *social embeddedness of transactions* and how it affects the outcomes of economic exchange. This looks at relevant agents as ultimately embedded in their society, that the market itself is a social construction and that the link between men could not only be that of an absolutely free exchange (Durkheim, 1973: 86-113). This applies most poignantly to water services provision. As explained in the previous section, contracts on water services provision entail huge information and transaction costs. The implication is that relationships on water governed purely by the formal, legal contract will not suffice. Mutually beneficial exchange between (public or private) suppliers and users of water will presuppose that they follow non-contractual norms and moral obligations.

Transaction cost theory in economics support the need for social embeddedness, and a focus on non-contractual norms. Durkheim pointed out that the purely contractual governance of economic transactions is problematic because contracts will always be incomplete, and that there are implicit 'agreements' within contracts (Durkheim, in Batenburg, et.al, 2000). There will always be unforeseeable contingencies, or issues that may arise which contracts do not cover. Making these transactions work will therefore need to rely on the 'implicit' agreements on non-contractual issues (Batenburg, et.al, 2000).

When the World Bank was busy promoting water concessions around the world as the ideal form of PSP contracting, there was little discussion of the fact that private companies, right after the signing of contracts, almost immediately call for a renegotiation of contract terms. This happened in Buenos Aires (Almansi, et.al. 2003) as well as in Manila (Esguerra, 2003). Both cases met the unforeseen contingency of massive currency devaluations that suddenly made the concession contracts as originally stipulated unprofitable for the companies involved. Renegotiation of contract terms to cope with unexpected contingencies may be unfeasible or prohibitively costly. Renegotiations, furthermore, offer "incentives for opportunistic behaviour since an unexpected contingency will often strengthen the bargaining position of one of the partners while weakening the other." As such Durkheim argued for "mutually beneficial economic exchange that presupposes that trading partners follow non-contractual norms and moral obligations, such as norms of trust, reciprocity and solidarity. Transactions will need to rely on *implicit* contracts that are partly unwritten, tacit, and not formally binding." (ibid.)

In PSP contracting, a government that is more socially embedded is a government that does not limit its role to being mere facilitators and supervisors, which is the standard advice provided by the World Bank. A government's role in PSP contracting can be to ensure that rights and entitlements are protected and enforced. It can insist that pipes be laid first in the poorest communities before any additional expansion is done elsewhere. This ensures that it is government mandate, rather than price that ensures access to water services. Contractual provisions stated by government can also specify rate structures that ensure subsidies to specific target groups that the government wants to support.

There is always some tendency in free market economic thinking to constrain what government should be able to do. For example, subsidies are generally shunned. But a government subsidy targeted for the poor, or authorised cross-subsidies can be consistent with full cost recovery for the private sector. It can even improve the creditworthiness of the private company involved[34].

Social embeddedness can also be measured in terms of the trust a community bestows on a private company. For example, there is a great deal of opposition to the entry of multinational corporations in developing countries not because they provide a bad service, but because they are foreign, and that their entry is often at the expense of local companies that may enjoy a better amount of trust from the local communities. Certain mechanisms have been put in place to ensure more social embeddedness, like the requirement of setting up a 'private operating company' in PSP deals. In Manila, the companies that won the concessions were private operating companies owned by local business and multinational corporations. In Tanzania, there is a provision that the private operating company to be set up should have at least 20% of its capitalisation open for local Tanzanian investors. But social embeddedness goes beyond mere local ownership of private companies. If there is a sufficient amount trust between a government, a company and the local communities – i.e. there are denser layers of relationships where issues can be settled – a complex contracting structure may not even be necessary.

This is where not-for-profit entities and nongovernment organisations enjoy comparative advantages. They are in theory more socially embedded than private commercial companies. The question is whether the not-for-profits are capable of achieving comparable reform and efficiency gains as the for-profits, and under what conditions they are able to do this. Are there financial, technological or sustainability advantages with not-for-profits that the for-profits could not deliver? The answer is yes. A case study comparing a PSP scheme with not-for-profit activity in the Philippines concluded that collective action that results in durable co-operative institutions that are organised and governed by the resource users themselves present a viable and sustainable alternative to public sector provision on one hand and private sector participation on the other. At the preliminary stage, this requires the desire for collective and cooperative action by the resource users, and support from government or donors in terms of providing start up funds or risk investment. This is then consolidated by agreements on rights and duties on resource use and service delivery forged through open, collective discussion. Once these agreements on rights and duties are in place, the co-operative institution can achieve greater sustainability through capacity-building and by adopting the principles of sound economic management for the enterprise. This whole process is described as 'social privatisation' (Capistrano and Gutierrez, 2003).

The more socially-embedded 'social privatisation' process succeeds because the relationships that are put in place are what can be classified as 'solidarity relationships' which is in contrast to the commercial-contractual relationships that emerge when the PSP option is taken. This paper argues that solidarity relationships are more appropriate in the poorest countries. As noted in a WaterAid research, there are a number of difficulties in the commercial-contracting approach. First, contracts are rigid and hence limit innovation to suit local conditions and address particular needs. Second the creation of contract standards

[34] I am grateful to Jude Esguerra for his comments on these points.

applied across all projects work against poorer communities who have face more complex problems – i.e. they are located farther away from water sources; they do not possess land tenure and formal real property registration that in most cases is a pre-requisite for a water connection; or they have little ability to pay and are more vulnerable, and therefore require more investments in time and money than what contractual agreements allow. The study warns that the contracting approach, which is designed to achieve efficiencies, may actually weaken civil society innovation and the community-based approach that respond to conditions not foreseen by standardised delivery (Clayton, 1999).

Today, there is a lot of practice emerging from the ground supporting the need for an alternative frame, but their value is not that well-received and appreciated because of the dominance of free market thinking. Some examples are presented in the next section.

New thinking from practice supporting an alternative frame

More experiences from developing countries are now emerging that support a rejection of free market economic thinking and show the need for a more sociological approach. For example, the idea that profit-motivation and self-interest is the main driver of efficiency can now be challenged.

Rights as a driver of efficiency

A fundamental and classic proposition of free market theory is that profit-motivation and self-interest can be harnessed and utilised as the drivers of efficiency. This is the underlying reason why the private sector participation has been prescribed as the key element of water sector reform in developing countries. But rights can be a driver of efficiency as well, as shown by the experience of the National Water and Sewerage Corporation of Uganda. Until recently, the NWSC was a loss-making public corporation in Uganda. It had a high unaccounted for water at 59% and billing and collection efficiency of only 60%. In 1998, the government of Uganda appointed Dr William Muhairwe as managing director to turn the NWSC around. In five years, Muhairwe's reforms reduced unaccounted for water to 39% and improved collection efficiency to 92%. The crucial element for this success, according to Muhairwe, was that they measured performance in terms of meeting the rights of consumers. The NWSC declared that consumers had certain rights to which NWSC staff are individually and collectively accountable. For example, is there is a complaint about the service, there is an obligation of the part of NWSC to respond. Delayed or non-action meant a breach of the right of the consumer, which was basis for disciplinary action on the staff concerned. To set the example, Muhairwe advertised his home and mobile phone numbers, asking consumers that they can phone him directly if they have a complaint or an issue with the NWSC. Efficiencies were achieved, consumer confidence was boosted and now NWSC's turnaround is getting a lot of attention even from the World Bank. It is an example of how efficiency can be achieved by a non-profit but efficiency-seeking public utility.[35]

The experience of Washington DC also offers some ideas on how there may be drivers of efficiency other than profit-motivation. In the case of the privatisation of Washington's wastewater facilities, federal government intervention and commissioned feasibility studies led to the simple quantification of what efficiency means, i.e. a reduction of operating costs

[35] William Muhairwe made a presentation on the NWSC experience at the World Bank's Water Week on March 5, 2003. In an informal chat with him, he revealed how he had to deal with the opportunistic behaviour of multinationals that they hired under a management consultancy contract. He was also disheartened that now that NWSC has been turned around and performing well, the government of Uganda wants to enter a lease agreement with the private sector. According to the World Bank's Bill Kingdom, this was meant to ensure that the efficiencies captured under Muhairwe's management can be preserved.

from 2.5 to 3.2 percent in the first few years. The public utility, the District of Columbia Water and Sewer Authority (DCWASA), was asked whether they could deliver this reduction in costs. When they said they could and showed the performance targets on which they would be evaluated, the political authorities in Washington DC decided not to privatise. What this experience shows is that efficiency is a technical target that can be measured, not an ephemeral notion that private sector involvement is assumed to always bring.

<u>The creation of demand and understanding collective action</u>

In recent years donors and governments in Africa have shifted away from supply-driven interventions in water and sanitation and adopted the Demand Responsive Approach (DRA). Supply-driven interventions are when communities simply receive a water and sanitation infrastructure and play a minor role in project implementation. The role of communities in development is limited to being mere, passive recipients of development projects. Decisions are made for them, not with them. The result is that millions of dollars were wasted as communities watched schemes that they did not see themselves as having a stake in and implemented on their behalf, fall into disrepair (Breslin, 2003).

But WaterAid's experiences in Niassa Province, Mozamnique suggests that while DRA offered advantages over the supply-driven approach, there are gaps and weaknesses that need to be understood and addressed. One such gap is the understanding of what demand means. Another is the need to refrain from managing capital cost contributions in a mechanical way and instead link it to issues of sustainability (ibid.). 'Demand' is an economic term and is therefore often understood in economic terms. But 'demand' when seen from a community perspective is essentially about collective action, and can be better understood when seen as a social process. Collective action typically results from a community's desire to change. Where there is collective action, there typically is greater sustainability. The problem to address is what to do when there is no desire for change, and therefore no collective action, and consequently no sustainability. The solution is to create demand, which means generating more collective action. And more collective action emerges from community organising work. In Niassa's case, such demand was created when, among others, investments in time, effort and resources were made in bringing the experiences of local communities brought to the radio; when community dramas were organised discussing issues of applications, community contributions, choice, roles and responsibilities; when traditional leaders were involved; and when exchange visits between communities were facilitated (ibid).

In the same way, capital cost contributions achieve their potentials for sustainability when they are expressions of collective action, and not simply of an economic exchange. WaterAid and its partners in Niassa are now experimenting on alternative models of how to continually link capital cost contributions to sustainability.

<u>Developing sustainability and equity indicators</u>

WaterAid has started to develop a tool called the "sustainability snapshot" that helps project managers focus less on the implementation aspects of their work and instead highlight key issues that may undermine sustainability across a region, district or country. The snapshot looks at a community's financial and technical ability as well as their access to equipment and spare parts to ensure the sustainability of a water point (Sugden, 2003). In other words, the sustainability snapshot is an indicator that looks in a more holistic way of ensuring that development goals are met.

Another indicator being developed is the Equity in Distribution Indicator (EDI) which measures the gap between those that have services and those that don't. The idea behind it is that there should be no difference in the levels of access to safe water between communities in a specified area. But oftentimes, resources are distributed unfairly, hence decisions on where water systems are located are biased and uninformed (ibid). Usually, it is the poorest sections of the community or an area have less access to safe water. The indicator enables the water sector to be quantifiably assessed on its effectiveness at targeting the unserved.

The sustainability snapshot and equity in distribution indicators are new tools that can be used for achieving not just efficiency but also and more importantly, sustainability and effectiveness in targeting the poorest.

In summary, sociological theory provides a sufficiently robust framework that can be an alternative to free market economics -- useful in developing a new approach in addressing the problems of water supply provision in developing countries. Already, this framework is informing new thinking in the field that leads to rights rather than profits becoming the driver of efficiency, the focusing of work on the creation of demand and collective action, or the development of sustainability and equity in distribution indicators.

6. Conclusion

The estimated 1.2 billion people without access to safe drinking water and 2.5 billion people without access to adequate sanitation are among the biggest development problems in the world today. Global efforts for poverty reduction could not be effective when the poor in least developed countries spend large proportions of their meagre incomes for water at the expense of spending on other basic needs; when villages (mostly the women) put a lot of their productive time collecting water; when families fail to work as a result of water-borne and sanitation-related diseases; or when children could not go to school because they are needed by their families for water-related duties. Millennium Development Goals to halve the proportion of people without access to safe drinking water and sanitation by 2015 present huge challenges to the international community.

This paper challenges the notion that the solutions to these problems may be found mainly in free market economic theory. The pervasiveness and nearly uncontested hegemonic appeal of this theory is apparent in how private sector participation has become the main element of water sector reform enforced by multilateral and bilateral donors in the least developed countries, and in how solutions to problems in water services provision are characterised to be more economic than political or anything else. The bias in the global donor community is to measure the problems in economic terms, develop economic tools of analysis and look for economic solutions. While the validity of water as an economic tool could not be denied, free market economic thinking tends to obfuscate the real issues that need to be understood and addressed in water services provision in the poorest countries in the world.

This paper has argued that the search for market-based, market-driven and market-like solutions for problems in water services provision in the poorest countries is in most cases unsuitable for a number of reasons. First, water markets typically don't exist or else are highly imperfect in developing countries. Second, efforts to develop market-like or market-friendly instruments for the economic management of water are likely to fail because: a) there can be no rapid entry competitors and there is an inherent propensity towards concentration in the sector to make water markets effective; b) mechanisms to introduce competition in water services provision in developing countries have typically failed due to, among others, the lack of regulatory capacity, the instability of rules, usually transient political leaderships, or absence of reliable information; c) information and transaction costs are typically high, making other non-contractual issues more important in arriving at and enforcing agreements in water services provision; and d) the private and societal costs are not yet fully understood to ensure that rights and entitlements to water are not violated when economic management is pursued.

However, this paper has also argued that a return to statism does not improve understanding, much less provide solutions to the problems either. States in least developed countries are typically deep in debt, suffer from poor infrastructure, have little capacity, few resources, lack the creditworthiness to access financing, and are mired in a host of other problems like corruption, transient leaderships, or underdeveloped legal and judicial systems to be able to deliver the rights to water. The problems in water supply are also, although not purely, economic.

As such, this paper presents an alternative theoretical framework for developing a new approach. There are three components of this theoretical framework, drawn largely from the work of Emile Durkheim. First, its basic unit of analysis is the transactions and the focus is on institutions – defined as collective acts that establish relations of rights, duties, no rights and no duties. It moves away from methodological individualism that characterise free market economic and rights-based theories. Second, it treats economic phenomena as moral facts – the product of agreements, conventions and struggles on what is acceptable and not acceptable. Third, it looks at the social embeddedness of the actors involved in a contracting process and hence sees the limits of commercial-contractual relationships and the potentials of solidarity relationships in development work.

This alternative theoretical framework, although not yet recognised as such, is already operative in the work of many water sector professionals around the world. This can be seen in efforts that make use of rights rather than profits as the driver of efficiency; in program work related to the creation of demand and collective action in poor communities, or what is commonly known in the sector as 'software' or social-infrastructure building; and in the development of such tools as sustainability and equity in distribution indicators.

In summary, a more sociological analysis of water services provides an interesting case on which a challenge to predominant free market economic thinking could be made. What the alternative approach makes is a restatement for the case that politics and the political process are more essential than the market process in solving social problems particularly in the least developed countries. But instead of a focus on the state as the main actor delivering the solutions on the basis of its coercive authority, it focuses on the institutions of society – the rules of the game as well as the organisations that emerge – as the more important aspects for the analysis. If we were to generalise the lessons from this case study of water services provision, we can say that institutionalised processes of social negotiations and collective action turn out to be more important guarantees of freedom than Smith's and Hayek's competitive system.

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References:

Aegisson, Gunnar (August 2002). "The Great Water Robbery" in *Standpoint.* One World Action: London. (www.oneworldaction.org)

Annamraju, Shailaja, Belinda Calaguas and Eric Gutierrez (August 2001). "Financing Water and Sanitation: Key Issues for Increasing Resources to the Sector." *WaterAid Briefing Paper.* WaterAid: London.

Ashcraft, Richard (1994). "Locke's Political Philosophy" in *Cambridge Companion to Locke,* Vere Chapell (ed.) Cambridge University Press: Cambridge.

Bakker, Karen J. (2001). "Paying for water: water pricing and equity in England and Wales" in *Transactions: An International Journal of Geographical Research,* New Series, Volume 26, Number 2. Royal Geographic Society and the Institute of British Geographers. Pages 143-164.

Barlow, Maude (June 1999). *Blue Gold: The Global Water Crisis and the Commodification of the World's Water Supply,* a special report prepared for the International Forum on Globalization. (www.ifg.org)

Batenburg, Ronald, Werner Raub and Chris Snijders (2000). "Trust and contracting in buyer-supplier relations: An empirical study of temporal embeddedness effects". ISCORE Paper. Reprinted from Jeroen Weesie and Werner Raub (eds.) *The Management of Durable Relations.* Thela Thesis 2000: Amsterdam.

Bayliss, Kate (November 2000). "The World Bank and Privatisation: A Flawed Development Tool," a special report by PSIRU www.psiru.org

Bennett, Daniel (1999). "The creation and development of English commercial corporations and the abolition of democratic control over their behaviour" in www.corporatewatch.org.uk/pages/dan_corp.html

Blokland, Maarten, et. al, editors (1999). *Private Business, Public Owners: Government Shareholdings in Water Enterprises.* WSSCC and The Netherlands Ministry of Housing, Spatial Planning and the Environment.

Bond, Patrick, David McDonald, Greg Ruiters and Liane Greeff (December 2001). *Water Privatisation in Southern Africa: The State of the Debate.* Environmental Monitoring group: South Africa.

Breslin, Edward D. (March 2003) "Demand Response Approach in Practice: Why Sustainability Remains Elusive". WaterAid, London.

Bretton Woods Project (1997). "Background Papers." Accessed through http://www.brettonwoodsproject.org/about/background.htm

Briscoe, John (September 1996). "Water as an Economic Good: The Idea and What it Means in Practice." Paper presented at the World Congress of the International Commission on Irrigation and Drainage, Cairo, Egypt.

Butler, Eamonn (1983). *Hayek: His Contribution.* Maurice Temple Smith Ltd: Middlesex, UK.

Butler, Eamonn (2001). "Preface to the Theory of Moral Sentiments by Adam Smith." Accessed through http://www.adamsmith.org.uk/smith/tms-intro.htm

Christian Aid (2001). *Master or Servant: How global trade can work to the benefit of poor people.* Christian Aid: London.

Durkheim, Emile (1982). *The Rules of Sociological Method and Selected Texts on Sociology and its Method.* Edited with an introduction by Steven Lukes; translated by W.D. Halls. The Free Press: New York.

Durkheim, Emile (1973). *On Morality and Society.* Edited and with an introduction by Robert N. Bellah. The University of Chicago Press: Chicago.

Fact-Finding Mission (August 2002). "Report of the International Fact-Finding Mission on Water Sector Reform in Ghana" from www.citizen.org

Farkas Berkowitz (2001) Thirteenth Annual State-of-the-Industry Report: A Mid-Year Review of Infrastructure and Environmental Markets. http://www.waterindustry.org/Water-Facts/WaterQualitySystems.pdf

Feigenbaum, Harvey B. and Jeffrey R. Henig (January 1994) "The Political Underpinnings of Privatisation: A Typology" in *World Politics,* 46, 185-208.

Friedman, Milton (1962) *Capitalism and Freedom.* University of Chicago Press: Chicago.

Garn, Mike (May 1998) "Managing Water as an Economic Good: The Transition from Supply-Oriented to Demand-Responsive Services." Presented at the WSP Conference, Washington DC.

GCWC - Global Committee for the Water Contract (1998). *The Water Manifesto: The Right to Life.* GCWC, Brussels.

Giddens, Anthony (1998) *The Third Way: The Renewal of Social Democracy.* Polity Press: Cambridge.

Gleick, Peter H., Gary Wolff, Elizabeth L. Chalecki and Rachel Reyes (February 2002). *The New Economy of Water: The Risks and Benefits of Globalization and Privatization of Fresh Water.* Pacific Institute: Oakland, California.

Glenn, Gary D. (1979). "Inalienable Rights and Positive Government in the Modern World," in *Journal of Politics,* Vol. 41, Issue 4. Pp. 1057-1080.

Hall, David J. (August 2001) "Subject: Water Privatization" in the series *Prague 2000 Issue Briefings,* published by the Public Services International Research Unit, University of Greenwich, London.

Hall, David (June 2002) "Water in Public Hands" PSI: London

Hall, David J. and Emanuele Lobina. (August 2001). "Private to Public: International Lessons of Remunicipalisation in Grenoble, France". From http://www.psiru.org/reports/2001-08-W-Grenoble.doc

Hardin, Garrett (December 1968). "The Tragedy of the Commons" in *Science,* Volume 162: 1243-1248.

Hardoy, Jorge E. and David Satterthwaite.(1989) *Squatter Citizen: Life in the Urban Third World.* Earthscan Publications Ltd: London.

Hausermann, Julia (September 1999) "A Human Rights Approach to Development: Some Practical Implications for WaterAid's Work" (pamphlet). *WaterAid Lectures.* WaterAid, London.

Hayek, Friedrich A. von (1944). *The Road to Serfdom.* The University of Chicago Press: Chicago.

Hilary, John (2001). *The Wrong Model: GATS, trade liberalisation and children's right to health.* Save the Children: London.

Kaul, Inge, et. al. (2001) *Global Public Goods: International Co-operation in the 21st Century.* Oxford University Press: Oxford.

Kikeri, Sunita, John Nellis and Mary Shirley (1992). "Outreach # 3: Eight Lessons of Experience." World Bank Country Economics Deparment. www.worldbank.org

Martin, Brendan (1995). "Privatisation Creates More Problems Than It Tackles." Remarks at the UNCTAD Working Group on Privatisation, Geneva.

Mauss, Marcel (1954). *The Gift: Forms and Functions of Exchange in Archaic Societies.* Translated by Ian Cunnison, with an introduction by E.E. Evans-Pritchard. Cohen and West: London.

Ministry of Foreign Affairs, Sweden (2002). *Financing and Providing Global Public Goods.* Ministry of Foreign Affairs, Sweden, Study 2001: 2.

Reed, Lawrence W. (May 1997). "Remarks at the 'Future of American Business'," a Shavano Institute for National Leadership Seminar, Indianapolis, Indiana. Accessed through www.privatization.org

Rousseau, Jean Jacques (1754). "A Discourse on a Subject Proposed by the Academy of Dijon: What is the Origin of Inequality Among Men, and is it Authorised by Natural Law?" Translated by GDH Cole. Downloaded from www.library.adelaide.edu.au/etext/r/r864s.zip (42 pages when printed on 10-point text)

Silva G, Tynan N & Yilmaz Y (1998) *Private Participation in the Water and Sanitation Sector – Recent Trends.* Private sector viewpoint note 147. Public Policy for the Private Sector Series. World Bank, Washington DC.

Smith, Adam (1776). *An Inquiry Into the Nature and Causes of the Wealth of Nations.* Full text downloaded on-line from www.adamsmith.org.uk

Stiglitz, Joseph E. (2002). *Globalization and Its Discontents.* Penguin Books: London.

Stillman, Peter G. (1974) "Hegel's critique of Liberal Theories of Rights" in *American Political Science Review,* Vol. 68, Issue 3. Pp. 1086-1092.

Strauss, Leo (1953). *Natural Right and History.* University of Chicago Press; Chicago.

Waldron, Jeremy (1984) ed. *Theories of Rights.* Oxford University Press: Oxford.

Waldron, Jeremy (1987). *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man.* Methuen: London.

WaterAid (2001) *Land Tenure* (pamphlet). WaterAid: London. Portions may be downloaded from www.wateraid.org.uk/research/index.html

WaterAid (June 2001). *Looking Back: The long-term impacts of water and sanitation projects.* WaterAid: London.

Water Issues Team (1999). "How Does the Market Value Water Resources" in *Water Issues in Wisconsin.* Water Issues Team University of Wisconsin, accessed through http://www1.uwex.edu/ces/pubs/pdf/G3698_2.PDF

Welle, Katharina (September 2001) "Contending Discourses on 'Partnerships': A Comparative Analysis of the Rural Water and Sanitation Sector in Ghana", Occasional Paper No. 40, SOAS Water Issues Group. SOAS: London.

Wilks, Alex (February 1997) "The World Bank's Promotion of Privatisation and Private Sector Development: Issues and Concerns." Briefing Paper. Bretton Woods Project: London.

Williamson, John (July 1999). "What Should the World Bank Think About the Washington Consensus," Institute for International Economics: Washington DC. http://www.iie.com/papers/williamson0799.htm

Woicke, Peter (May 2001) "Connecting People to Resources – What Role for the Private Sector" in *Business Briefing: World Infrastructure and Development – Infrastructure and Poverty Briefing for the World Bank, May 2-11, 2001.* World Markets Research Centre: London.

Yaron, Gil (March 2000). "The Final Frontier: A Working Paper on the Big 10 Global Water Corporations and the Privatization and Corporatization of the World's Last Public Resource." Polaris Institute and the Council of Canadians: Ottawa.

Interviews:

William Turner, president of the Water Bank, at the July 2001 Vancouver Conference and the August 2001 conference of the International Water and Law Institute of the University of Dundee, Scotland.

Mai Flor (Business Development Director) and other officials of Ondeo Services. Informal chat and interview at the Asian Development Bank Conference on Water Services and the Urban Poor, Manila, May 29, 2002.

Case Studies Used:

Almansi, Florencia, Ana Hardoy, Gustavo Pandiella, Ricardo Schusterman, Gaston Urquiza and Eric Gutierrez (March 2003) *Everyday Water Struggles in Buenos Aires.* WaterAid and Tearfund: London

Capistrano, Lyn and Eric Gutierrez (March 2003) *For Profit Versus Not for Profit: Cases of Social Privatisation from the Philippines.* WaterAid and Tearfund: London.

Esguerra, Jude (March 2003) *The Corporate Muddle of Manila's Water Concessions.* WaterAid and Tearfund: London.

Estamos – Organizacao Comunitaria (March 2003) *Rolling Back the State Where Markets are Underdeveloped: Small Scale Private Sector Participation in Niassa, Mozambique.* WaterAid and Tearfund: London.

Etherington, Alan, James Wicken and Dinesh Bajracharya (March 2003) *Preparing for Private Sector Management in Kathmandu.* WaterAid and Tearfund: London.

Green, Joanne (March 2003) *Regulation and the Balancing of Competing Interests in England and Wales.* WaterAid and Tearfund: London

Gutierrez, Eric (March 2003) *The Continuous Internal Improvement Alternative in Washington DC.* WaterAid and Tearfund: London.

Pronet-Ghana (March 2003) *From Solidarity to Commercial Relations in Rural Water Provision in Ghana.* WaterAid and Tearfund: London.

Viero, Odete Maria and Andre Passos Cordeiro (March 2003) *The Case for Public Provisioning in Porto Alegre: A View from Inside.* WaterAid and Tearfund: London.

WaterAid-Tanzania (March 2003) *Water Sector Reforms and Private Sector Participation in Dar es Salaam.* WaterAid and Tearfund: London.

WaterAid-Uganda (March 2003) *Contracts and Commerce in Water Services in Uganda.* WaterAid and Tearfund: London.

WSTB (Water Science and Technology Board) (2002) Privatisation of Water Services in the United States: An Assessment of Issues and Experience http://books.nap.edu/books/0309074444/html/index.html