

PART FOUR

Environmental Philosophy  
and Policy in Canada



# Water Rights and Moral Limits to Water Markets

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## 1 INTRODUCTION

Does the human right to water entail moral limits to water markets? This question is striking, not least because the most esteemed theorists in the history of economic thought regularly invoked water as the example of a good that has *no* economic value and, therefore, *no* market. In *The Wealth of Nations*, Adam Smith famously claimed that “nothing is more useful than water: but it will purchase scarce anything; scarce anything can be had in exchange for it” ([1776] 1976, 44–5). No contemporary economist would agree with Smith’s claim. Today, water possesses enormous economic value and, unlike eighteenth-century Britain, water is becoming increasingly scarce in a growing number of jurisdictions. To resolve this problem, many countries, including Australia, Chile, Spain, and the United States, are now turning toward establishing water markets – in one form or another. In Canada, for example, water markets have been concentrated in Alberta, where the provincial government employs various kinds of market transactions to allocate the right to use water (Horbulyk 2007).

Free-market economists emphasize the wide variety of benefits of water markets, including the efficient distribution of a scarce resource to those who value it the most (Anderson and Leal 2001, 2010; Anderson and Snyder 1997). As the supply of water dwindles relative to its demand, standard economic theory predicts that, other things being equal, the price of water will rise. Far from being unfavourable, this effect is expected to incentivize the owners of water, or those with

the right to use it, to either conserve it or sell it to a buyer who will. Given these advantages, it is unsurprising that most economists do not explicitly recognize any moral limits to buying and selling water, let alone ones prompted by the human right to water.

Predictably, not everyone believes that water should be bought and sold in the marketplace. The Canadian environmental thinker Maude Barlow, for one, insists that water is not the kind of good that should be distributed by the free market. Barlow insists that water is not merely a resource, or even a basic human need, but a human right. From this proposition, she concludes that water “must never be bought, hoarded, traded, or sold as a commodity on the open market” (Barlow 2013, 65).<sup>1</sup> Barlow’s main claim is that no water markets should be permitted, let alone ones that are restricted on moral grounds.

From this limited purview, the choice is stark. Either water markets are to be left unbridled, without any clearly defined moral limits, or the human right to water entails that no water market should be sanctioned. This chapter engages what is perhaps the most convincing philosophical conception of the human right to water – due to Mathias Risse (2014) – and argues against both of these views. While it is true that the human right to water entails that some water markets should be blocked, there is no necessary connection between commodifying water and violating the human right to water.

## 2 RISSE ON THE HUMAN RIGHT TO WATER

The United Nations’ Universal Declaration of Human Rights does not mention the human right to water, but in 2002 the Committee on Social, Economic, and Cultural Rights formally recognized a human right to water in its General Comment 15, where it states: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.”

No doubt this declaration raises a number of unanswered questions, such as the nature of human rights, the precise amount of water that every holder of a right to water must have, and who is obligated to fulfill such rights. For the most part, this chapter will set aside these issues and will not mount any substantive defence for the claim that

water is a human right. Instead, it focuses on understanding how we might ground the human right to water philosophically, and the implications that such a conception has for restricting water markets. For this purpose, a “right” is to be understood as an entitlement that a right-holder has to be in a certain state. In particular, the holder of a positive right is entitled to some kind of good or service and the only good that we are concerned with here in this chapter is some minimal quantity and quality of water.<sup>2</sup>

Strikingly, philosophers have had little to say about the human right to water.<sup>3</sup> The most convincing and complete philosophical conception of the human right to water is due to Mathias Risse (2014), and therefore, this brief chapter will give exclusive attention to his influential Lockean conception.

Risse follows John Locke’s chapter five, “Of Property,” in *Two Treatises of Government*, where Locke ([1689] 1980) claimed that God gave the Earth in common to mankind and that, originally, in the state of nature, each person had an equal claim to make use of the Earth and its products.<sup>4</sup> Locke then famously grapples with the topics of original acquisition and private property. How can one person come to own previously unowned objects when such objects are entrusted to no one in particular but in common to all of mankind? Locke’s answer to this question does not depend on the social utility of private property but, instead, since each person naturally has ownership in themselves, and in their ability to labour – self-ownership – people can come to own previously unowned objects by mixing their labour with them and improving these objects for the benefit of life.

Since everyone in the Lockean state of nature has common ownership of the Earth, Locke must somehow ensure that such claims are not breached by individual appropriations of private property. To resolve this problem, Locke argues that appropriations are sanctioned only insofar “enough and as good left for others.” Otherwise, Locke affirms: “for he that leaves as much as another can make use of, does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both, is perfectly the same” ([1689] 1980, 21).

It is primarily from these two passages that Robert Nozick (1974) attributes Locke’s theory, with a specific proviso. Nozick explains

that “a process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened” (1974, 178). This proviso requires that all acquisitions must not worsen the situation of others and, therefore, it represents a bona fide constraint on property rights. To determine if the proviso has been violated one must show that others are below their baseline case, or starting position, because of the appropriation. Thus, the crucial question to ask is whether the appropriation of an unowned object has worsened the situation of others.

For Risse (2014), as for Locke, it is in virtue of the fact that humanity collectively owns the Earth in common, prior to any individual appropriations, that everyone possesses a set of natural rights to the Earth’s resources. Because resources originally belonged to humankind collectively, everyone is entitled to some minimal and proportional share of the Earth’s resources. This right to a proportional share of resources ipso facto encompasses a positive right to water. After all, how could it exclude water? Be that as it may, it should be clear that, on this account, people are not entitled to collectively own *all* of the world’s water. As Locke states above, there are some individual appropriations of resources, including water, that can be made without worsening the situation of others and, therefore, should be permitted. Clearly, this conception is inextricably tied to the Lockean proviso. According to this conception, then, people have a natural right to that minimal quantity and quality of water required to make them at least as well-off as they would have been in the Lockean state of nature, prior to any original individual appropriations.<sup>5</sup>

Does this conception of the human right to water entail specific moral limits to water markets? If so, what is the nature and structure of such limitations? Before answering these questions in section 4, section 3 argues that none of the most prominent views on the moral limits to markets can properly account for the moral limits to markets engendered by the human right to water.

### 3 MORAL LIMITS TO MARKETS

Are the norms of the free market appropriate for regulating the production, exchange, and enjoyment of all goods? (Anderson 1990b). Why not buy and sell everything? Should votes and kidneys be for sale, much like hamburgers and potato chips? If not, why not? Among

scholars who argue for moral limits to free markets, there is significant disagreement about why such limits should exist in the first place.<sup>6</sup> One can divide these scholars into two camps. The first gives explicit focus to the harmful consequences caused by certain market transactions. Debra Satz (2010), for instance, argues that the limits to free markets should be determined by the harmful consequences that are caused by buying and selling items when agents have either weak agency or vulnerability. The second camp consists of several scholars, including Elizabeth Anderson (1990a, 1990b), Margaret Radin (1996), Michael Sandel (2012), and Michael Walzer (1983). They argue that there are moral limits to markets, not because specific market participants possess a ruinous property but because the distribution of goods should be consistent with their social meaning. These scholars emphasize that the market is not a neutral mechanism for distributing goods and services but, invariably, involves treating goods in a specific way: as commodities. Since not all goods in human life should be treated as commodities, these scholars argue that there is a class of goods that should not be for sale.

From this point forward, I will label Satz's (2010) view as a *consequentialist view* and group Anderson (1993), Radin (1996), Sandel (2012), and Walzer (1983) together, portraying their view as a *conventionalist view*.

Satz (2010) argues that when buying and selling goods in the marketplace causes extremely harmful consequences, then such transactions should be blocked. She describes such markets as "noxious" since they are characterized by participants who, as mentioned already, have either weak agency or vulnerability. Both of these undesirable properties can be the source of extreme harms to individuals and society. Weak agency is problematic for individuals who do not possess sufficient information about the nature or consequences of a particular market and, as a result, these individuals end up engaging in actions that are harmful toward their own welfare. Vulnerability, on the other hand, refers to the status of participants in a market who have very unequal needs for the goods that are being exchanged. Consider, for example, the poor and destitute man who has no other choice but to sell his kidney to a rich foreigner to support his family. This kind of transaction is not a voluntary and mutually beneficial exchange between two market participants.

Rather, such a transaction is characterized by a vulnerable agent who acts out of desperation, which causes extreme harm to society.

Such a transaction promotes servility and dependence while undermining democratic governance and other-regarding motivations (Satz 2010, 98–9). It is critical to recognize that, for Satz, however, the mere existence of noxious markets does not imply that there is an objective list of items that should never be for sale. On the contrary, her framework, which consists of both the sources (weak agency and vulnerability) and consequences (extreme harms for both individuals and society) of noxious markets, is meant to serve as a guide for evaluating the acceptability of specific markets on a case-by-case basis.

The second camp, occupied by Anderson (1990a), Radin (1996), Sandel (2012), and Walzer (1983) underscores the social meaning of goods as the basis for limiting the reach of markets. This conventionalist view provides the reason why, for example, human babies should not be for sale. Quite simply, babies are not the kind of good that should be for sale since treating them like commodities is corruptive. Sandel explains that, “to corrupt a good or a social practice is to degrade it, to treat it according to a lower mode of valuation than is appropriate to it” (2012, 34). Under this account, slapping a price tag on a baby and selling it in the marketplace would involve valuing the baby in the wrong kind of way.

Or, take the example of friendship. Sandel (2012) argues that friendship is not the kind of human good that that can be put up for sale without degrading or corrupting it. Sandel argues that friendships are the kind of good that cannot be bought and sold since, as he puts it, “the money that buys the friendship dissolves it, or turns it into something else” (2012, 94). While it is true that one might be able to pay others for the services that would be expected from a friend, the friendship itself, if it is a bona fide relation between individuals, is not the kind of thing that can be bought and sold in the marketplace without degrading or corrupting it.

The consequentialist and conventionalist views are both problematic. One challenge for the former view, as pointed out by Satz (2010), is that the social meanings of goods are frequently contested. Different individuals and different moral communities are bound to attribute a wide variety of social meanings and values to specific goods. Without a widespread consensus, the social meaning of goods cannot be expected to serve as a benchmark for deciding when some item should not be for sale.

Another worry is that, in some cases, there is only a tenuous connection between the social meaning agents attribute to a good and its distribution by the market. Conventionalists worry that buying



and selling certain socially significant goods can crowd out or uproot other important ways of valuing such items, but Satz argues that “the market price is rarely the direct expression of our evaluative attitudes towards goods” (2010, 82). Take the example of buying and selling sacred texts. Does the atheist bookstore owner who sells religious texts undermine the social meaning and value of the Bible for Christians? When sacred texts are treated as mere commodities, does this treatment undermine other important ways of valuing such items? On the contrary, buying and selling sacred texts in the marketplace does not seem to displace their social meaning or importance among those for whom they matters. Instead, the same item can be treated quite differently by the market participants who are involved in the same market transaction. The atheist bookstore owner can treat religious texts as mere commodities, recognizing that such items have no other value apart from their contribution to his profit margin, without affecting their sacredness for the religious buyer. The main point here is that the social meaning of precious goods need not be undermined when they are treated as commodities.

Satz (2010) assumes that her consequentialist account is more detached from the conventionalist view than it actually is. If Satz’s view is genuinely consequentialist, then it should account for any harmful consequences that arise from destroying the social meaning of certain goods for a particular individual or moral community, even if such pernicious consequences turn out to be anomalous or infrequent. Rather than viewing the conventionalist view as opposed to Satz’s consequentialist view, it might be better to recognize the former as being subsumed by the latter. The main upshot for doing so is that we would possess a more general consequentialist theory that can account for the significant social meaning of certain goods, all the while explaining why some things should not be for sale. Such a generalized consequentialist theory would extend beyond Satz’s emphasis on weak agency and vulnerability to include all sources of significant harms that arise from market transactions, including those that might arise from corrupting goods that possess special social meaning for a particular moral community.

Do any of these views – the generalized consequentialist, narrow consequentialist, or conventionalist view – properly capture the moral limits to markets engendered by the human right to water?

The consequentialist views would only prescribe blocking particular water markets because of the harms caused by violating the human right to water. This is a problem because if it is morally wrong to

violate anyone's human right to water, it is because people have this right and, other things being equal, rights should not be violated. In other words, the wrongness of violating human rights does not stem from any consequences – harmful or beneficial – that would arise from such a transgression. My claim here is not that violating the human right to water would cause no harm.<sup>7</sup> Rather, my claim is that the human right to water entails moral limits to markets that cannot be properly captured by the consequentialist views because of their exclusive focus on the harmful consequences that may be caused by treating water like a commodity.<sup>8</sup>

On this question, the conventionalist view fares no better. While it may be true that there is a set of goods that should not be treated as commodities because doing so would corrode or corrupt them, this claim is immaterial to the issue at hand. No one believes that, if the human right to water entails moral limits to markets, it is because they would corrupt the special social meaning of “water rights.” Even if the proponents of the conventionalist view are correct to claim that the free market is not a neutral mechanism for distributing goods and services, but involves treating them in ways that may undermine their proper modes of valuation, it is difficult to see how this worry captures the moral limits to markets imposed by the human right to water.<sup>9</sup>

Without any uncontroversial universal view on the moral limits to markets that can account for the limits to water markets engendered by the human right to water, the next section shows how Risse's (2014) conception of the human right to water entails specific moral limits to water markets.

#### 4 HOW WATER RIGHTS ENTAIL MORAL LIMITS TO WATER MARKETS

In section 2, it was claimed that Risse's conception of the human right to water is inextricably tied to the Lockean proviso that original acquisitions must not worsen the situations of others. In most cases, appropriating unowned objects will *not* violate Locke's proviso. In other words, there are many original acquisitions or appropriations that would not worsen the situation of others. For example, it seems clear enough that the proviso would not be violated if a person were to appropriate all of the discarded grass clippings in the world. However, Nozick (1974) affirms that the proviso is particularly well-suited to cases where people appropriate the necessary conditions of

life. He gives the example of one person coming to own all of the drinkable water in the world and argues that if such an appropriation were to take place, then it would violate the Lockean proviso (Nozick is skeptical that such an appropriation could actually happen since water would eventually become prohibitively expensive to the agent attempting to appropriate it all).<sup>10</sup>

Why? Such an appropriation would almost certainly worsen the situation of others because, unlike discarded grass clippings, every agent requires some quantity and quality of water to live any life at all. It is important to recognize that in a case such as this, the proviso is not violated merely because *some* water is appropriated (recall Locke's example above when one person drinks from a river without worsening the situation of the next agent who endeavours to drink from the same river) but because *all* of the water is appropriated, and this substance has a special relation to agents, one that cannot be easily substituted for another and, therefore, is bound to worsen the situation of others.

It is crucial to recognize that the proviso can also be violated if an original acquisition combines with spontaneous natural events that, jointly, worsen the situation of others. To adapt one of Nozick's (1974) examples, suppose I were to appropriate 1 of 10,000 watering holes in a desert and that, in the beginning, this appropriation does not worsen the situation of others one iota. While everyone is certainly affected by my appropriation, since they can no longer appropriate my specific watering hole, no one's situation is immediately worsened by my owning the watering hole, and, therefore, the condition underlying Locke's proviso is met. But suppose further that quite independent of my own activities, a natural disaster strikes post facto – well after I had appropriated my watering hole – and, mysteriously, all of the other watering holes in the desert except for mine dry up. In this case, my appropriation of the watering hole and the natural events combined to make water radically scarce and thus violate Locke's proviso. As Nozick avows, the original process that would have normally given rise to a permanent bequeathable property right in a previously unowned thing – my watering hole in the desert – no longer applies since the situation of others has been worsened.

Of course, not every event that worsens the situation of agents violates the proviso. The proviso is only violated when agents are harmed by specific causes. These causes are either the acquisition of unowned things or, as demonstrated in the foregoing case, the

acquisition of unowned things *plus* certain other natural events that combine to worsen the situation of others. This means that, for example, unassisted nature cannot violate the Lockean proviso. An agent's situation will surely be worsened if he chooses to live as a hermit in the Negev desert and a natural disaster causes all of his water supply to evaporate. However, in this case, the condition underlying Locke's proviso would still be met because no other agent's appropriation caused the scarcity of water and thus did not cause the desert hermit's situation to be worsened. For Locke's proviso to be violated, the hermit's situation must have been worsened by the activities of another, even if those activities are combined with natural events.

Now that we have a better idea of what Locke's proviso is and how it can be violated, what, if any, moral limits does it impose on buying and selling water? As described in the introduction to this chapter, free-market economists do not generally recognize any such limits. In fact, some have argued that as water becomes increasingly scarce it should be privatized and then bought and sold in the marketplace. For example, Anderson and Snyder (1997, 11) state, "private rights must be established to enable individuals acting in a market to determine water allocation." Without explicitly recognizing limitations to buying and selling water, Anderson and Leal (2001, 105) argue that, "because [water] is a necessity of life ... it must be entrusted to the discipline of markets that encourage conservation and innovation." These authors maintain that the free market will distribute water like any other commodity: according to its most valued use.

The market does this by efficiently allocating water to those who are willing and able to pay the most for it. Even in the aftermath of a terrible natural disaster, such as Hurricane Katrina, for example, some economists have defended the practice of price gouging because charging a relatively high price for water in such urgent circumstances represents its scarcity and, moreover, such prices have beneficial consequences (Culpepper and Block 2008). As standard economic theory predicts, high prices will incentivize the owners of water to transport their water to the disaster zone and sell it, rather than choosing to sell it in a jurisdiction where the price is relatively low. This free-market approach to distributing water treats water as an ordinary commodity and does not explicitly recognize any limits to buying and selling it.

The problem with this line of reasoning is that water, or, at the very least, a specific quantity and quality of water, is not merely an ordinary

commodity and there are moral limits to buying and selling it. Some instances of buying and selling water – for example, during a natural catastrophe – will violate the Lockean proviso in the same way that the proviso was violated in the example above, when I came to be the sole owner of the last watering hole in the desert through a combination of my original appropriation of water and the subsequent natural events that, together, caused water to become perilously scarce. In both of these cases, as the owner of water, if I were to prevent others from obtaining it by charging a high price or otherwise, then their situation would be worsened, not merely by the natural events that took place following my original appropriation, but by my appropriation itself plus the natural events that were beyond my control.

While my claim is that some buying and selling of water should not be permitted, it should also be recognized that the price of water on its own need not prevent others from acquiring it and, as a consequence, my claim that some water should not be bought and sold, even when water is extremely limited, is a qualified one. Suppose, for example, that in the case of a natural disaster the only water available is owned by a person who, no matter what the circumstance, endeavours to sell it for a very low price – almost gratis. Suppose further that the price was so low that it prevented no one from actually using or obtaining it. In this case it would be difficult to sustain the claim that the situation of others was worsened by this benevolent owner's appropriation of water combined with the subsequent natural events that caused the disaster and eventual scarcity of water. In other words, it would be difficult to sustain the claim that Locke's proviso has been violated. In this special case, the grounds we had for blocking the sale of water – when its high price excludes other agents from accessing it – have been removed.<sup>11</sup>

But of course this is a fictional case. No theory predicts that owners will benevolently sell their water at a relatively low price when others need it for survival. On the contrary, economic theory predicts that *ceteris paribus* the opposite to be true: owners of water will sell their water at a relatively high price when it becomes increasingly scarce, even when others need it for their continued existence. This theoretical prediction alone is sufficient reason to underscore the moral limits of buying and selling water in those cases when others urgently need it (with that being said, while their urgent need is surely a reason for imposing moral limits to buying and selling water, it is not the reason under consideration).

The proviso requires that buying and selling water in the marketplace is limited in some minimal sense. If water is radically scarce and such transactions exclude agents from obtaining it, they should be blocked. We have seen that the proviso can be violated when others are harmed by the original appropriation or by the appropriation combined with certain natural events. However, Nozick explains that there is an exceptional class of cases when the situation of others is worsened and the proviso is still not violated: when the agent who appropriates some object also compensates those who were harmed so that their situation is no longer worsened. To continue along with our example, in the case of water, any such compensation will have to be *in-kind* and involve a specific distribution: according to those whose situation has been worsened.<sup>12</sup>

Is the free market expected to distribute water in this manner? If the market did distribute water to those whose situation has been worsened by the appropriations of others, then, for all intents and purposes, such a distribution would qualify as compensation and it would appear that Locke's proviso would also remain intact. But the problem here is obvious. The market does not automatically distribute water to those whose situations have been worsened to safeguard Locke's proviso. Rather, the market, as just mentioned, allocates scarce resources to those who are willing and able to pay for it. Therefore, the free-market outcome is not likely to coincide with the outcome required to keep Locke's proviso intact because it is unlikely that the specific agents who are willing and able to pay the most for water are not going to be the same agents who have been harmed and who need water to survive.<sup>13</sup>

But what is one to make of the free-market environmental economist's argument that price gouging in a disaster zone signals and incentivizes the owners of water to transport and sell it to those in the disaster zone? Surely, this is a beneficial consequence of the free market, one that, given the dire circumstances, should be enthusiastically embraced. After all, who would object to transporting water to a disaster zone where there are agents in desperate need of it? While I do not deny that, on the whole, such activities would seem to have positive consequences, the point that I am making is that such consequences are not likely to prove sufficient for keeping the proviso intact and it is keeping the proviso intact that is our sole concern here. Why will the proviso be violated in this case? Water might be transported into a disaster zone because it bears a relatively high price,

but once again, it is not likely to be distributed in the specific way required *by the proviso*.

What matters when it comes to Locke's proviso is not merely the promise of transporting a large quantity of water to a disaster zone for the purpose of selling it, but ensuring that those agents who have had their situation worsened by the appropriation and subsequent natural events are compensated to such an extent that they are not worse off from their baseline case. In short, the problem with the free-market environmental economist's line of reasoning when applied to water is that price gouging in a disaster zone, for example, does not, on its own, ensure that the conditions underlying the proviso will be met. Economically efficient outcomes do not require a specific distribution, but Locke's proviso does.

Surely, an alternative policy might be used to preserve the efficiency of the price system and incentivize the supply of water where it is needed the most: to make monetary transfers to "needy" individuals (those individuals whose situations have been worsened). Under this arrangement, the monetary transfers could be used by such individuals for any purpose, including purchasing water in the marketplace. However, whether such a policy would help to leave the proviso intact remains an open question since a monetary transfer to an individual in need of water is not identical to a transfer of water *in kind*. If it were guaranteed that the individuals who received monetary transfers could thereby attain sufficient water so that the proviso is left intact, then our worry about violating the proviso would be diminished significantly or alleviated altogether.<sup>14</sup>

## 5 CONCLUSION

This chapter began by contrasting two positions on the moral limits to water markets entailed by the human right to water. While free-market economists do not generally recognize any such limits, Maude Barlow has argued that the human right to water entails that no water markets should be permitted. If we accept Risse's (2014) conception of the human right to water, then both views are mistaken. If water markets prevent people from obtaining some minimal and proportional share of water, by charging a prohibitively high price, or otherwise, then those markets put the human right to water in jeopardy and should be blocked. The main claim defended in this chapter is compatible with Barlow's conclusion that *no* water should be treated

as a commodity. After all, no positive argument has been given to support the claim that water should be commodified. However, it should be remarked that the position defended in this chapter departs from Barlow's view since it is also compatible with the claim that *some* water should be treated as a commodity. While the human right to water entails definite moral limits to free markets, it would appear that Barlow goes too far in claiming that it therefore entails that all water should never be commodified. However, since some water is a human right, then all water is never *merely* a commodity and should never be treated as such. Even if it turns out that we may treat some water as a commodity, the conclusion defended in this chapter would still stand: the human right to water entails moral limits to buying and selling it.

There are at least two limitations to the foregoing analysis that ought to be made explicit. First, the "real-world" implications of the Lockean proviso remain underexamined in this chapter. Risse's philosophical conception of the human right to water appears to be limited to cases when water is relatively abundant, which is not always the case. After all, if water cannot be acquired without worsening the situation of someone (thus violating the Lockean proviso), then, strictly speaking, either the proviso is inapplicable in such cases or no one is permitted to acquire water. Neither alternative seems desirable. Moreover, one might reasonably ask, what action might a government take if the proviso is violated? Would a violation of the proviso justify the renationalization of all or some water resources? If a government had strong evidence to believe that the proviso would be violated in the near future, can such a government pre-emptively set limits on water markets to avoid this violation? These are significant and complex practical questions that would have to be addressed by anyone proposing to actually ground the human right to water in the Lockean proviso.

Second, while it should be clear that this chapter has established that some water should not be treated as a commodity, it has *not* determined the proper scope of all water markets. Clearly, even if water markets violated no human rights, it would not follow that such markets should be left completely unchecked. Why? There are almost certainly independent moral reasons – not examined in this chapter – against privatizing and subsequently buying and selling water. For example, it is well-known that many moral communities



treat specific bodies of water as vitally important, or even sacred. Naturally, the question arises as to whether this special ascription of value is compatible with commodifying water (a question that is taken seriously by conventionalists, as discussed in section 3 above). In some cases, both modes of valuation may be congruous: buying or selling water would not eliminate the culturally significant values ascribed to water. In other cases, however, the simple act of commodifying water and allowing the free market to determine its allocation could have a crowding-out effect: it could eliminate culturally significant values that ought not to be eliminated. In all such cases, barring the explicit consent of the community members concerned, the default position should not be to treat water as a commodity. The point being made here is that, independent of the human right to water, there are almost certainly reasonable grounds for imposing moral limits to water markets. However, the analysis in this chapter was restricted to analyzing the moral limits to water markets engendered by the human right to water.

## NOTES

- 1 For more on her position, see Barlow (2002, 2007). On the topic of governing water resources in general, from a Canadian perspective, see Bakker (2007).
- 2 For more on rights, see Wenar (2015).
- 3 For the exceptions, see Bleisch (2006) and Veigha da Cunha (2009). For literature on the related and growing field of “water ethics,” see Brown and Schmidt (2010) and Groenfeldt (2013).
- 4 For a modern-day secular argument supporting the claim that the earth originally belongs to humankind collectively, see Risse (2014).
- 5 See Pogge (2005).
- 6 Others argue that markets have *no* moral limits (Brennan and Jaworski 2016).
- 7 Clearly, vulnerable people living in poverty may, out of desperation, choose to sell their water or their rights to use a body of water, thereby inflicting harm on themselves and the rest of society. The narrow and generalized consequentialist views would capture these harms and correctly judge that such markets should be blocked.
- 8 Of course, this particular criticism only succeeds if consequentialism is actually unable to accommodate rights, a claim that is not

uncontroversial. Philip Pettit (1988), for one, has argued that consequentialism *can* recognize rights because this is the best way to promote a certain sort of desirable consequence. For more on consequentialism and rights, see Brandt (1984) and Gibbard (1992).

- 9 The conventionalist view is not inapplicable to every question concerning the moral limits of water markets. For example, it is well known that many communities treat water or specific bodies of water as vitally important, even sacred (Altman 2002). Naturally, the question arises as to whether ascribing sacred value to water is compatible with commodifying it. In some cases, it may be that the two modes of valuation are congruent: buying or selling water does not eliminate the culturally significant values ascribed to water. In other cases, however, it is easy to imagine that the very act of commodifying water has a crowding-out effect that eliminates culturally significant values that ought not to be eliminated.
- 10 It is to be remarked that if Locke's proviso would be violated by appropriating all of the water in the world then it would also violate the proviso if one were to purchase all of the water in the world, knowingly or not. Nozick states, "if my appropriating all of a certain substance violates the Lockean proviso, then so does my appropriating some and purchasing all the rest from others who obtained it without otherwise violating the Lockean Proviso. If the proviso excludes someone's appropriating all the drinkable water in the world, it also excludes his purchasing it all" (1974, 179).
- 11 By the term "sale," I mean the transfer of the possession of ownership or title of a good or property in exchange for money or some other commodity.
- 12 Why *in-kind*? I cannot be compensated post facto for a loss in some condition required for survival. It is worth noting that the owner of water might also have to be compensated in some sense. Consider the watering hole example above. Suppose it was only through great cost and effort that I maintained my watering hole while others did not and this was, in part, the reason why my watering hole was the last one that remained after the natural disaster. The process that originally gave me property rights in my watering hole might no longer obtain since it violates the proviso, but given that I have incurred great cost to maintain my watering hole I would have claim to some reasonable compensation.
- 13 Even if the free market were to distribute water according to its most valued use, such a distribution would not override those who have a claim not to be harmed by the appropriations of others.

- 14 It is worth recognizing that if monetary transfers are not made directly by the entity that owns the water (i.e., a private water company), then compensation in the Nozickian sense would not really transpire because the costs of the transfers themselves would not be borne by those who own a disproportionate amount of the resource at hand. Thanks to an anonymous reviewer for this observation.