

# Commoning Water

Human rights v. the market

Commodity v. commons

The cases of Paris and Naples

# The Story of Water

- In every religion there is a story about the sacred nature of water as the very origins of life on earth. Science tells us that we are made of more than 70% water. Water in both the religious and scientific sense reveals to us that it is the very essence of what we are in both the physical and metaphysical sense and yet this story of water has been overshadowed by another more persuasive story about water.

# Water as a Commodity

- In the 80s and 90s there was a campaign launched by the International Financial Institutions and Multinational Corporations like Veolia, Suez, Bechtel and Thames water company that “water was a scarce commodity in need of protection” and was currently under threat by public mismanagement, waste, and inefficiencies.
  - The best protection mechanisms proposed was private property rights which would provide the correct incentives for efficient and sustainable management of water.
- The story was so effective that it got support by water policy think tanks, human rights and environmental activists and NGOs.
- The notion of water as a scarce commodity was endorsed by states in the 1992 Dublin Statement which came out of the International Conference on Water and the Environment.

# The New Story of Water cont.

- The Director of a major multinational water company was quoted as saying:
- “Water may be a gift from god but he forgot to lay down the pipes.”
  - In this new narrative about water it is presented as something other than natural resource and rather as an artificial resource of a service rather than a good. A service which is provided by either the private and public sectors to which citizens have a contractual responsibility to pay either privately or through taxes.
  - So in conclusion the story of the 80s and 90s was that the notion of water as a human right was best recognized through its protection as a scarce commodity through privatization

# Effects

- International Financial Institutions strongly promoted this model and privatizations were instituted throughout the world primarily in the 90s in Latin America which culminated ten years later into the famous Cochabamba water wars but as well in Europe and the United States.
- In Europe, the PPP was an attractive antidote for the European Commission to the temptations of myopia in both the public and private sectors, allowing on the one hand the development of projects outside the budget of public funds without the inefficiencies of state bureaucracy.
- The European Commission in 2008 precisely identified the PPP as an instrument suitable for investments and strategic development programs not only for physical infrastructure but for common goods like water.

# What are PPPs

- a management contract, under which the private operator is only responsible for running the system, in exchange for a fee that is to some extent performance-related. Investment is financed and carried out by the public sector. The duration is typically 4-7 years.
- a lease contract, under which assets are leased to the private operator who receives a share of revenues. He thus typically bears a higher commercial risk than under a management contract. Investment is fully or mostly financed and carried out by the public sector. The duration is typically 10-15 years.
- a mixed-ownership company in which a private investor takes a minority share in a water company with full management responsibility vested in the private partner.
- a concession, under which the private operator is responsible for running the entire system. Investment is mostly or fully financed and carried out by the private operator. The duration is typically 20-30 years.

# Refuse to acknowledge “Water is a Human Right”

- The German Parliament recently discussed and declined to support a proposal to:
  - Reject the proposed directive of the European Parliament regarding concession grants.
  - In the case the prevention of the directive does not succeed, to at least work towards the water supply being excluded from the scope of the directive.
  - To support the European Citizen’s Initiative that “water is a human right.”
  - To prevent the creation of legal frameworks that would lead to the privatization of the water supply.
- So Why is it that Germany a country in the heart of Europe that is a party to numerous human right treaties both internationally and regionally could make such a statement?

# The Continuing Failure of Human Rights as a Legal Claim

The Moral claim is that access to water is a right to which every human being is entitled and no human being should be denied even based on their ability to pay .

The legal claim is that States have a legal obligation to enforce treaties to which they are signatories.

This claim (though weak) is that water is guaranteed by the ICESCR and state signatories should positively enforce/facilitate access to water for all people within their borders.

# Human Right to Water

The ICESCR guarantees in Art. 11 the right of everyone to an adequate living standard.

July 28, 2010 General Assembly Resolution Human Right to water and sanitation. Is it binding?

The Committee states that the ICESCR is neutral on economic systems, provided that a given state is democratic and it is committed to the protection of the rights enshrined in the Covenant.

# A More “persuasive” Binding Document

- GATS (General Agreement on Trade and Services) promotes free-trade in services, including water, food, environment, health, education, research, communication and transport.
- On March 16, 2001, the WTO presented a defense of GATS in a press conference it called “GATS: Fact and Fiction.” It argued that GATS does not violate right to water health or education because it excludes “services supplied in the exercise of governmental authority.” The WTO further maintained that GATS does not oblige countries to deregulate services or to open up their markets.
- However, what they did not make clear that those government that charge fees are considered to be market actors and therefore this provision would not apply leaving us exactly where we started.

# Human Rights as a Political Device for Limiting the Market

- Rights are a powerful tool for making moral claims through the language of legality/illegality.
- As such rights can be leveraged as political tools for social mobilization to influence the redistribution of private property.
  - National Level: Referendum for example, reform of codes, executive decrees, the creation of agencies to implement such reforms, court precedents.
  - Transnational level: ECC mechanism
    - 1.5 million signatures across Europe, and continues counting. 8 countries have passed the minimum number of signatures required. These countries are: Austria, Belgium, Finland, Germany, Lithuania, Luxembourg, Slovakia and Slovenia.

# Limit of Human Rights: Water as a Scarce Commodity

- While the ideology of the 90s of privatization was unmasked and the International Financial Institutions and governments around the world were forced to consider more participatory forms of water management or remunicipalization in order to meet human rights standards, the idea of water as a scarce commodity persists.
- Why? Because the idea that water has a price on the market and that someone either the state or the user has a contractual responsibility to pay service providers is still the basis of water management. In this view your human right to water remains a limited as an economic transaction with the state or private provider and instead of a human right to tp water you have a human right to pay for services to water.

# Why is this undesirable?

- Because it continues excludes those unable to pay the price of water.
- Only citizens are understood as beneficiaries of those systems as opposed to based on need and universal access as the human rights framework promotes.
- By reducing the human right to water to an economic transaction: It continues to leave management in the hands of managers: either private technocracy or public officials who could be potentially corrupt.
  - How can we democratize this economic transaction and convert water into something other than a mere commodity?

# Water can be conceived of as a commodity, as a human right or as a common good.

- Water as a commodity: a good that is traded on the market and its value is determined by its exchange value.
- Water as a Human right: Water is essential to human life and should therefore be guaranteed universally.
- Water as a common good:
  - a resource cannot be reduced merely to its exchange value but should be defined/emphasized by its utility (use value) based on human need.
  - Water is not a thing outside of us, but something to which we have a relationship of being beyond having and therefore should not be subject to commodification but rather “commonification” through a process of what is being dubbed as “commoning.”

## What is “commoning”?

- *Commoning*: “ is the evolution of commoners’ ability to impose shared rules on themselves: an evolution of the so-called “vernacular laws” which do not descend from above - from the State or from the transnational law firms - but an origin that originates from below: expressing needs, interests and values that circulate within local communities at the grassroots level.”

# How Commons Management democratizes the water economy

- Users are directly involved in the management of water.
- In most cases of commons management water rights are only use rights (usufruct) and are non transferable to owners outside of the community and therefore water is not treated as a commodity.

# Theory and Practical Challenges to Commonification

- Is the commoning of a commodity enough to convert it into a common good? In other words if only isolated communities exist commonifying water while the global market on water still exists “out there” then water regardless of its value in the community will continue to be under threat by economic interests in the water.
- Redefining the role of the state: How should decision making be structured to give a place to public representatives and at the same time “commoners”?
  - How do you define the community of “commoners?”
  - How can these commoners be represented in decision making?
- Redefining value: How do you measure value as something other than price on the market?

# Two Cases of Water of Human Right & maybe Common Good?

- Paris
- Naples
  - Through these examples I hope to highlight is 1) The use of the language of the human right to water as drivers for political change 2) The efforts of the actors in these two cases to “commonify” the resource through user participation.

# Paris: The Background

- In 1985 Jacques Chirac, then Mayor of Paris, decided to privatise water distribution.
- 2 years later in 1987, a Public private-company (SEM) with a majority public holding was set up for production purposes with a 25 year contract.
  - SEM was the creation of a mixed capital company, SAGEP (Societe Anonyme de Gestion des Eaux de Paris).
  - Eventually the municipality outsourced the water management entirely to SAGEP. Who capital was owned 70% by the city, 28% by Veolia and Suez (each with 14% shares( and 2% by the Caisse des Depot et Consignation), public national investment bank.

# Paris cont. Private Management

- The Compagnie des Eaux de Paris", a subsidiary of the Generale des Eaux (the Veolia group) was granted a lease (without any call for tenders) for the right bank.
- "Eau et Force Parisienne des Eaux", a subsidiary of the Lyonnaise des Eaux (the Suez group) was granted the left bank of the river on the South side.
- The private companies shares in SAGEP placed them in a clear conflict of interest, since SAGEP was supposed to oversee the concession through studies into the water quality and pricing and insure that the transfer of management did not compromise citizen's interests in the water.

# Paris cont. Unfair Contractual Terms

- guaranteed a minimum profit rate to operators to compensate for decrease in the volume sold.
- Also clauses in the contract permitted Veolia and Suez to wait 6-10 months to transfer profits to SAGEP, allowing them to make interest meanwhile on those profits.

# Paris cont. Delanoë Enters & Calls for Study

In 2003, when the contracts with the private firms came up for renegotiation, the newly elected mayor Bertrand Delanoë called for a legal, economic and technical study of the water service. The study showed that a) water quality had not improved 2) water tariffs had gone up over (260%) 3) privatization had not led from a public monopoly to competition in the market (which would lead to a decrease in price and quality for consumers) but rather directly into a private monopoly.

# Paris Water as a Human Right & Common Good

Delanoë in 2008 ran on a reelection platform that public water management can be more efficient, and it enables the city to manage water as a common good rather than being treated as a private commodity.

Although there wasn't a massive social movement as there was in Italy. He was reelected by the people of Paris on this platform and proved that the platform was not just an election promise and in January 2010 Eau de Paris (the old public-private company) was transformed into a public body.

# Eau de Paris

- The company is an semi-independent legal entity that has its own budget and reports to the municipality. Its publicly owned and city run. Profits, rather than going to private companies is reinvested into the water service.
- The Board of Directors is composed of elected representatives of the Paris municipality (10 members), who represent all the political groups of Paris, elected Local Authority members, staff representatives (2 members), and qualified individuals who represent other interests, 2 water and sanitation experts, 1 environmental NGO, 1 consumer organization and 1 member of the observatoire (5 members).

# Paris cont. User participation: The Observatoire

- A citizen's control mechanism has been introduced via the Municipal water watch (Observatoire Municipal de L'Eau).
- This group enables users to evaluate the provision of services. It also provides a space for discussion between all stakeholders and for putting forward ideas at the municipal level. This body also has a representative on a consultative basis on the Board.
- Meetings of the Observatoire are open for the public

# Benefits of public ownership

- Higher profits: no need to pay dividends to shareholders and to set aside part of the profits generated by the water services to pay them. In fact Eau de Paris saved 35 million per year.
- Transparency of contracts.
- Cost of water is remaining stable at a cost below the national average. And an 8% decrease in price of water tariffs within the first 2 years.
- And these extra savings have permitted a policy of social subsidies:
  - to guarantee access to water in Paris for poor families.
  - to assist local farmers to switch local agriculture to organic to reduce water pollution.

# Is Public Ownership facilitating commonification of the resource?

- Impressive mechanism for public involvement, however, for example the representative of the observatoire plays a purely consultative role for the moment, contrary to the others who have the right to vote on any issue. So user participation is still somewhat minimized.
- Also the water value is still translated into price, however the savings can produce non monetary forms of value in the sense of social equity via subsidies to poor families and ecological value by organic farming subsidies.

# Case of Naples

- Context: As a result of Legge Galli introduced in 1994, the Tariffs increase of 60% in 10 years.
- Decreto Ronchi: the whole public services management was mandated to be put on the financial market.
- However, In June 2011 Water Referendum widely supported 95% of voters supported-recognition that privatizing a service is to privatize the good itself.
- July 2011 A Deliberation of Naples mayor De Magistris to implement the results of the water referendum resulted in the Naples Statute on Water as a Common Good and the conversion of ARIN SPA into ABC Napoli

# Naples Statute

- Water is a **Common Good** and a universal right. Availability and access to fresh water are **fundamental human rights**;
- Water is a limited resource to be protected as essential for human life and future generations;
- Each territorial district should define a water management plan to **preserve the resource and its quality**;
- Integrated urban water management is a **public service with no economic relevance** , out of trade and market logics and oriented to social and environmental
- Within a well-defined period of time every private, public-private and **S.p.a. management should be ended** ;
- The minimum daily subsistence water amount of **50 liters per person** should be guaranteed for free;
- Water management **workers and local communities take active part** in the main decisions concerning urban water management.
- Alderman: Assessore ai beni comuni appointed by Mayor: **Alberto Lucarelli**.

# Birth of ABC Napoli

- The Conversion into ABC Napoli took place September 23, 2011.
- Legal Form: Conversion from SPA(private corporation) to an azienda speciale (public entity).
- Board of Directors: Current composition-5 members (all with voting power) appointed by the mayor
  - President
  - Administratore Delegato (CEO Executive function)
  - 1 members of the technical, administrative, juridical expertise
  - 2 member of the “environmental world”

# Comitato di Sorveglianza

- Participation of the board by users (citizens) and workers through the “Comitato di sorveglianza” .
  - 21 Person Board
    - 6 representatives of the City of Naples (1 a delegate of the mayor on the commons (asesore))
    - 5 representatives of the workers
    - 5 Environmental Experts
    - 5 representatives of the users.
    - Citizens are entitled to access information on the deliberations and they are made public online.

# Proposals Currently Under Consideration

- Question: Should the comitato be represented in the consiglio as a member with voting power.
  - The 2 environmentalists could be members of the comitato.
- How to value water by something other than price.
  - Introduction of the Common Good Matrix developed by Christian Felber.

# Matrix of the Common Good

- Positive Factors
  - human dignity
  - eco-sustainability
  - social equality
  - democratic participation.
- Negative factors are also assessed
  - Violation of labor standards
  - Acquisition or cooperation with companies that violate human dignity.
  - Hostile takeover
  - Environmental pollution
  - Violation of environmental standards
  - Massive pollution
  - Unequal remuneration for men and women
  - Nondisclosure of shareholdings
  - Tax havens

# How Can the Matrix Present a First Step?

- It provides a measure of success other than profits and efficiency.
- It provides a marker of which water companies are succeeding at implementing commons values as opposed to merely adopting its rhetoric.
- If implemented by all water companies, it could affect the price in the sense that those companies that do better would receive larger credit lines, lower taxes etc which could lower the overall price.
- It is still unclear however how the matrix will allow the complete commonification or decommmodification of water.

# Conclusions Paris & Naples

- In both cases the language of Human Rights & Commons is a great mobilizing device for social pressure to resist privatization.
- In both cases there are efforts made by the the state via the municipalities to include the direct participation of users, workers, and the public in the management of the water system.
- There are still significant challenges ahead, in terms of the true “commonification” of the resource through direct user involvement in the decision making and in valuing the good as something other than a commodity.