

Coordinated Attacks on Human Rights Through Sovereign and Corporate Complicity on Water Exploitation: The Case of American Government Action and Nestlé

The United Nations General Assembly, in 2010, declared access to safe and clean drinking water to be a human right. One of the greatest threats to this fundamental right is the complicity of sovereign and corporate forces seeking to commodify water and deprive populations of their access to that precious resource. The Swiss conglomerate Nestlé has a global reach that impacts several sectors, including water. In fact, Nestlé is the world's largest producer of bottled water. Yet, Nestlé is able to coordinate with willing and eager governments to extract financial and tax benefits while even availing the legal system to prevent local communities access to their own water supply. In Pakistan, for example, Nestlé digs wells at inaccessible depths to allow them exclusive access to water for bottling while preventing villagers from obtaining potable water. Such action may be properly framed as a form of new colonialism, whereby local populations are denied their own resources by their governments and corporate interests.

In the U.S. State of Michigan, Nestlé extracts 130 million gallons of fresh water annually for its bottle water industry; the state government charged the company a permit fee of only \$200 per annum to do so. At the same time, Nestlé files lawsuits against local communities to deny them access to their own water supply. The same Michigan government has been allegedly responsible, either through gross negligence or otherwise, for the catastrophic impact caused by the 2015 Flint Water Crisis, where thousands of residents, mostly people of colour, continue to suffer a lack of clean, safe water and for whom the costs to physical, mental and cognitive health will be at a generational scale. Such complicity and consequences borne of this relationship between state and corporation serves as a model and source of inspiration for other countries that justify their similar engagements with companies to exploit resources, while violating human rights.

This paper analyzes the coordination of government policies and regulations and corporate interests to exploit water for profit and political gain, while depriving populations of their access to a basic human right. It explores the leveraging of water resources at the expense and to the detriment of local communities that not only deprive such populations of water access, but also adversely affect their health at generational levels of impact. Finally, this paper will examine how American interaction with corporate entities results in the enervation and erosion of human rights on the global scale.

Peter Brabeck-Lamathe, the Chairman of Nestlé, gave a speech in 2005, suggesting that water is not a public right. Brabeck, in fact, further contended that water should be privatized. He claims, "Water is the most important raw material in the world." He added that, "Privatization is the best way to ensure fair distribution," and that, "Water is a foodstuff like any other, and should have a market value."¹ Such

¹ McGraw, George. "Nestlé Chairman Peter Brabeck Says We Don't Have a Right to Water, Believes We Do Have a

Right to Water and Everyone's Confused." *Huffington Post*, April 25, 2013.

attitudes about water should hardly come as a shock from the head of one of the world's largest multinational corporations and the biggest bottler of water on the planet. The Swiss leviathan had a reported 2016 annual revenue of \$91 billion and profits of \$9.1 billion. Its North American bottled water business alone netted \$4 billion.² But Brabeck's views on water go well beyond the financial dimension. Brabeck also remarked that in his estimation, water is not a human right.³

While a corporate CEO's statement on water as a human right may be eclipsed by the overwhelming affirmation of such a position by international organizations, Brabeck's bravado demonstrates the enormous influence and defiance that multinational companies wield in the face of global consensus on basic humanitarian realities. It is also noteworthy in the context of the power that corporations wield in this current climate of neoliberal policies that they can openly challenge with impunity international conventions on the issue of human rights. (Gleick, 1999) Case in point when Brabeck asserted his unmitigated hostility toward such bodies, contending that the "idea of water being a human right comes from 'extremist NGO's.'" Brabeck is emboldened to make such claims because of his knowledge and assurance that sovereign nations actively collaborate and conspire with multinational companies to subvert human rights despite many of those same nations being members of the very NGO's and international organizations that

² Nestlé 2016 Annual Report.

³ Nestlé has courted controversy in the purview of human rights beyond just its transactions involving water. It stands accused of child slavery and other nefarious labor practices in both African and Asian countries. See "Nestlé Admits Slavery in Thailand While Fighting Child Labour Lawsuit in Ivory Coast," *The Guardian*, February 1, 2016, <https://www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast>.

Brabeck holds in such contempt. It is thus important to examine how these organizations regard the topic of water as a human right.

The importance of potable water and the critical need to maintain access to it is a well-established concept among a host of international organizations as well as scholars on the subject matter. Some authors define the notion as the “right to access sufficient water, with the term ‘access’ also including economic accessibility, i.e. affordability, and with the term ‘sufficient’ referring to both the quantity and quality of water necessary to meet necessary human needs.” (Scanlon, 2005) This construction is a consistent definition of water as a human right by a host of international entities. The Geneva Protocols imply as such in various elements: Articles 20, 26, 29 and 46 of the 1949 Geneva Convention III; Articles 85, 89 and 127 of the 1949 Geneva Conventions IV; Articles 54 and 55 of the 1977 Additional Protocols I and Articles 5 and 14 of the 1977 Additional Protocols II.⁴ In 1966, both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both issued statements implying that human beings have a right to water.⁵ The Mar del Plata Action Plan emerged from the 1977 United Nations Water Conference and declared “water as a right,” where all people have the right to drinking water in

⁴ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Third Geneva Convention)*, 12 August 1949, 75 UNTS 287; International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287; International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3; International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 3.

⁵ The United Nations General Assembly, 1966, art. 26.

quantities and of a quality equal to their basic needs.⁶ The 1992 International Conference on Water and the Environment produced the Dublin Statement on Water and Sustainable Development that asserted, in Principle 4, “It is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price.”⁷ The European Commission of the United Nations for Europe (ECE) issued its ECE Protocol in 1999, delineating the three central aspects of a human right to water: 1) an equitable access to water; 2) adequate in terms of both quantity and quality and 3) provided for all members of the population, especially those who suffer a disadvantage or social exclusion.⁸ The World Summit on Sustainable Development declared water as a human right at its 2002 conference in Johannesburg, South Africa.⁹

Most recently, the United Nations General Assembly enacted Resolution 64/292 in 2010, declaring that the “right to safe and clean drinking water is a human right.” 122 member states voted in favor of the resolution, with none against and 29 absent from the roll call. However, 41 countries abstained, including the United States, thus exempting those nations from adherence both to the spirit and letter of the resolution.¹⁰ The position by the United States on 64/292 is both expositive and unsurprising when examining the American efforts to suppress human rights in a litany of areas, but especially in the purview of water rights when

⁶ Mar Del Plata Action Plan: United Nations Water Conference, Mar Del Plata, Argentina, 14-25 March 1977.

⁷ H Tessenorff, Dublin Statement on Water and Sustainable Development: Aqua AQUAAA, Vol. 41, No. 3, p 129-135, June 1992.

⁸ UN/ECE Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, MP.WAT/AC.1/1999/1, 24 March 1999.

⁹ Johannesburg Declaration on Sustainable Development, A/CONF.199/20, Chapter 1, Resolution 1, Johannesburg, September 2002.

¹⁰ The United Nations General Assembly, 2010, A/RES/64/292.

it rejects the underlying premise that water is in fact a human right. While it may be nebulous to indict the United States for weaponizing water as a manner to suppress human rights by itself, it is evident that American policy and interactions vis-à-vis corporations and through various proxies in achieves the same outcome, intentionally or otherwise.

Nestlé has a major presence in the U.S. state of Michigan. From its nine wells that it owns near the town of Ewart, Michigan, the company pumps 130 million gallons annually, a rate of 4.8 million gallons per day, or 200 gallons per minute. To receive the requisite authorization to extract such quantities, Nestlé applied for and obtained the necessary enabling paperwork from the State of Michigan. The total cost for the permit is \$200 per year. This commodification is hardly a symmetrically reciprocal transaction, given the price of water at the retail level and the profit margin that Nestlé enjoys with relatively low overhead for obtaining its water.

Beyond the miniscule cost of extracting fresh water relative to profit for its bottled water business, there is an open question as to what non-economic considerations are involved in Nestlé's Michigan operations. There have been some efforts by the state government to explore such areas of potential harm, especially within the environmental purview. The Michigan Department of Environmental Quality has issued a directive to Nestlé to reevaluate its water pumping and to determine its possible impact on local wetlands, streams and natural springs. Such government action is occurring in light of Nestlé's pursuit of a \$36 million expansion to its bottling plant in Stanwood, Michigan.

Corporate manipulation of the political process pervades local, state and national levels of government. Its most visible and predictable manifestations involve lobbying efforts and financial contributions to politicians' campaigns, reaching millions of dollars of "investment" for the hope of favorable legislation or voting records, often against the interests of individual constituents and communities. But there are sometimes deeper connections, ones that clearly suggest at the very least serious conflicts of interest. Current and outgoing Michigan Governor Rick Snyder, under whose administration Nestlé's Michigan presence became solidified, has considerable ties to the conglomerate. Deb Muchmore, Chief Spokesperson for Nestlé in Michigan, is married to Governor Snyder's former chief of staff, Dennis Muchmore. It is impossible to comprehend that such an "arrangement" was bereft of substantial influence being exerted between the primary mouthpiece for a multinational that was seeking favorable treatment from the government and her spouse who was the gatekeeper for the state's highest ranking executive.

There is the natural and understandable inference one might draw that Nestlé's massive presence in Michigan had a direct causal relationship to the Flint Water Crisis. There is no evidence of such a link being present, although the optics of a humanitarian disaster in a moderately sized American city are stark and terrible, consequences of the obsession with corporate economics over municipal budgets.

What makes the Flint crisis disturbing is not just its scope, scale and impact, perhaps on a generational level, but also the knowledge that the entire catastrophe

could have easily been prevented had economics not been such a driving force for government action and decision making, and, arguably, a litany of cover-ups, denial and misfeasance at the highest bureaucratic echelons.

The Flint Water Crisis stands as a testament to governmental misfeasance and malfeasance, with its impact on an impoverished, largely minority community whose utility has seemingly long since evaporated for corporate and political interests. A generation ago, Flint was the second largest city in Michigan, with a population of 225,000, a distant number compared to its current 98,000. The birthplace of General Motors, Flint was a company town, with the automotive giant the city's largest employer and responsible for an entire infrastructure to be created around its industrial magnetism, including hospitals, universities, schools, restaurants, even an art museum and a planetarium. With the recession of the early 1980's and its effect on the American car industry, Flint suffered greatly with the closure of several General Motors factories and massive unemployment. It has not recovered since the economic catastrophe, especially with subsequent financially adverse periods since. The effects of the demise of a once thriving city that was entirely dependent upon a single major industry and company are quite profound and visible on the streets of Flint to the present time.

With its tax base, both individual and corporate a mere shadow of its former condition, the city of Flint became addled with debt. In 2011, the State of Michigan took over administration of the city's finances, following a \$25 million deficit. An assessment of the Flint's most pressing infrastructure needs was its water supply. The city announced the construction of a new pipeline to deliver water from Lake

Huron (50 miles away) to Flint. While under construction, the city made the decision to turn from the Detroit water supply to the Flint River as a cost saving measure. Within months, Flint residents began to notice coloration and a strong, foul odor in their water. Shortly after, authorities detected fecal coliform bacterium in the water supply and issued a boil water advisory.

External entities commenced investigation projects over the developing Flint water crisis. In 2015, the EPA and Virginia Tech University conducted tests and determined that Flint water had dangerous levels of lead contamination. Health issues related to such levels include impact to the heart, kidneys and nervous system. Among children, lead poisoning can lead to issues with cognition, behavioral disorders, hearing problems and even delayed puberty. In response to the disturbing revelation, the city voted to reconnect to Detroit's water supply, but was overruled by Jerry Ambrose, the state appointed Emergency Manager for Flint. Ambrose's argument for his veto was that costs would skyrocket for a city already in financial dire straits and that Detroit water was no safer than Flint water. By September 2015, Virginia Tech researchers concluded that 40% of Flint homes had elevated lead levels in their water. They also determined that Flint water was nineteen times more corrosive than Detroit water, in direct contravention to Emergency Manager Ambrose's claims.

Medical professional based in Flint began to notice the health consequences of bureaucratic decisions regarding the water supply. Dr. Mona Hanna Attisha, a pediatrician at Hurley Medical Center, concluded that there were elevated lead levels in the blood of several of the city's children, an amount that had doubled since

the city switched water sources, even tripling in children from some of the most affected neighborhoods. By December 2015, the city declared a state of emergency. The Michigan National Guard, as well as private citizens and organizations, mobilized to distribute bottled water to Flint residents whose water supply was quite literally lethal. In January 2016, President Obama refused to declare Flint a federal disaster, but he did authorize \$5 million in federal aid and declared a state of emergency for the city to allow for the Federal Emergency Management Agency (FEMA) to engage in providing support.

While measures to rectify the Flint Water crisis have been underway for the past several months, the recovery has been erratic and incomplete. Many residents still lack a restored, safe water supply, relying instead on the more expensive, inconvenient alternative of bottled water. There is also a psychological pall over the city, whereby residents are still diffident about the safety of their water supply. In addition, there is the yet undetermined long-term impact of the water crisis, as health issues are predicted to be on a generational level, with consequences, both detectable and otherwise, difficult to measure for several years. Perhaps most disturbing for Flint's beleaguered population is the knowledge that the entire crisis was easily avoidable had political decisions not been undertaken to save money at the expense of health security. That the administrative calculations were made dismissively by the same bureaucrats who obsequiously placate to corporate interests was a sobering lesson in governmental priorities that privilege business entities over people, emanating from the conceit that water is a commodity, not a basic human right for its own citizens.

While Nestlé may not have contributed to the Flint Water Crisis as an actor in the calamity, the corporation may have played an inadvertent role in the entire scandal. It is noteworthy that Dennis Muchmore, as Governor Snyder's Chief of Staff was responsible for overseeing the defunding of Flint's water sources, a factor that directly led to several decisions that culminated in the poisoning of the city's water supply. One may reasonably speculate whether Muchmore was distracted by Nestlé and the prioritization he may have been giving its needs and interests, to the detriment of Flint. There also exists the possibility that Muchmore played a role in facilitating Nestlé's rather "sweetheart" deal for water extraction relative to permit cost. This alone could be viewed as having significant implications, such as the loss of potential revenue to the state coffers that precipitated the need to defund monies to Flint's water needs. If true, it would demonstrate either an intentional or grossly negligent attitude among government officials who favor foreign multinational companies to the needs and health of their own state's citizens and cities.

The Great Lakes constitute the world's largest supply of fresh water. It is estimated that the five lakes- Erie, Huron, Michigan, Ontario and Superior- contain quadrillion gallons of water, or one-fifth of the earth's total fresh water volume. Eight American states- Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin- and the Canadian province of Ontario border the Great Lakes. It produces an economic impact of approximately \$4.5 trillion dollars for those bordering entities. The total population of the Great Lakes region is nearly 60 million. The ecosystem that the lakes have created allow for a thriving array of sea and wildlife that inhabit it, in turn allowing a burgeoning tourist industry that

respects the delicate balance of the region, with fishing and recreational activities conducted in good measure.

The importance of the Great Lakes region and the acknowledgement of the critical need to protect and preserve its ecological integrity have, thus far, been an issue that has been accepted as dictum by the political apparatus, irrespective of party affiliation. The Obama administration had signed into law the 2016 Great Lakes Restoration Initiative. The legislation was intended to identify the ten biggest threats to the Great Lakes ecosystem, including potential pollution sources as well as invasive species, such as the zebra mussel and aggressive forms of algae. The initiative was funded through the Environmental Protection Agency and its \$2.6 billion annual budget.

But the election of 2017 has now thrown such presumption into disarray, and with potentially devastating consequences. The Trump administration has announced that it would be cutting federal funding to the Great Lakes Restoration Initiative as part of its proposed 2018 budget and in concert with President Trump's persistent pledge to defund the Environmental Protection Agency. This decision will eliminate \$300 million that heretofore had been earmarked for the Great Lakes and their well being. The Trump administration's hostility to the environment goes beyond partisan politics, as the Great Lakes Restoration Initiative has enjoyed long-standing bipartisan support, in part due to the politically diverse composition of the states bordering the lakes. President Trump's director of the EPA, former Oklahoma Attorney General Scott Pruitt, has a well-recorded history of hostility toward the EPA as an agency and to many existing regulations intended to protect the

environment. He has very close affiliations to the automotive, mining and fossil-fuel industries, all of which stand to benefit greatly from the planned deregulations and budget cuts to the EPA. The corporations representing those sectors particularly seek the reduction of what they consider oppressive regulations that simultaneously keep pollution levels at bay and protect adverse environmental impact from their industrial output. Clearly, the precarious condition of the Great Lakes, not the least of which involves its fresh water supply, is now in danger at an unprecedented level of urgency.¹¹

Michigan is not the only state that has made concessions to large corporations at the expense of its water supply. California is the most populous state in America, with 39.3 million, or 12% of the country's population. The state has only recently emerged from a debilitating drought and is still persistently plagued by wildfires, many of which rage out of control for days and weeks. In 2015, in the midst of the fourth year of a major drought, Governor Jerry Brown issued significant water restrictions that included limitations on irrigation, shower usage and even the availability of table water at restaurants. Despite such regulations, the Governor placed no injunctions on Nestlé's bottling operations, which average 1 billion gallons per year, for an annual permit fee of \$524. Thus, California citizens are required to restrict their access to their own natural resource, also a human right, in the name of collective sacrifice, while a Swiss multinational is permitted to maintain the status quo with impunity and governmental imprimatur during an exigent situation.¹²

¹¹ Ellison, Garrett. May 23, 2017. "Trump budget eliminates Great Lakes cleanup funds." MLive. http://www.mlive.com/news/index.ssf/2017/03/trump_budget_eliminate_great.html.

¹² Cameron, Charley. (May 17, 2017). "How Nestlé is pillaging California's water in the 4th year of the state's worst drought." <http://www.inhabit.com>.

The United States wields tremendous influence in international organizations in which it plays the role of an instrumental stakeholder, either by its financial contributions or through the assertion of its hegemonic power. One such entity is the International Monetary Fund (IMF), based in Washington, DC, barely four blocks from the White House. The IMF's mission is "working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world." To achieve these objectives, the IMF issues loans to applicant nations, the vast majority of them in the so-called developing world and in need of considerable investment in their infrastructures for sustainable development. The IMF operates as an amalgam of 189 member countries, each of which has voting shares as a percentage of its quota financial stake in the organization. The United States has 831,396 shares, or 16.73% of the total votes. By comparison to the next five biggest stakeholders, the United States is the only country with a double-digit voting share. Japan, the second largest stakeholder, has 6.23%, followed by China with 5.39%, and then France and Great Britain, each with 4.09%, respectively. As a function of its stake, the United States is able to direct the rudder of the IMF, even in areas that appear to be directly antithetical to the organization's own mission statement, including under the aegis of water access.¹³

The International Monetary Fund forces African countries to privatize water. In the year 2000, the IMF issued loans to twelve African countries: Angola, Benin, Guinea-Bissau, Niger, Rwanda, Sao Tome and Principe, Senegal and Tanzania. As

¹³ <http://www.imf.org>.

part of the debt agreement, the IMF included conditions that imposed water privatization on these countries as well as full cost recovery protocols. Given the paucity of alternate funding sources and the challenges such countries possess in securing monies for critical projects, the IMF is often the only viable source, as private lending institutions often impose exorbitant interest rates and difficult repayment schedules based upon the country's designation as a weak credit rating. While escaping such oppressive terms, developing nations nonetheless expose themselves to terms through the IMF that defy correlation to the purpose of such loan requests. The IMF thus becomes the vehicle for the application and enforcement of neoliberal policies and priorities, invariably ones that facilitate and benefit multinational corporations and their interests in potential new markets.¹⁴

Niger, one of the recipients of IMF loans, has been challenged by the effects of a drought in 2010. The impoverished population is ill equipped to afford the privatization of its water, but loans for its infrastructure reconstruction are contingent upon the country acceding to the IMF demand. Similarly, Mali, Niger's neighbor, copes with privatization of water and land acquisition by multi-nationals to further gain control over water access, disenfranchising local populations for their own natural resource for self use, as well as that for livestock and agricultural needs. In 1992, the apartheid era South African government granted water privatization contracts to six foreign, mostly French entities. Nestlé is one of these companies that has been operating with few if any restrictions in South Africa.

14 Stubbs, Thomas & Kentikelenis, Alexander. (December 4, 2017). "How international financial institutions undercut human rights and impede public health." <http://blogs.biomedcentral.com/on-health/2017/12/04/how-international-financial-institutions-undercut-human-rights-and-impede-public-health/>.

(McDonald, 2005) Nonetheless, local opposition efforts have attempted to resist this encroachment upon the country's water supply and the complicity of the government to that end. In 2000, The South African Municipal Workers Union (SAMWU) led the fight against water privatization, in part due to the corporate intervention as well as the indirect impact on the water supply as occurred with a cholera outbreak in Durban that year.¹⁵

While the International Monetary Fund may play a critical role in facilitating and imposing water privatization in developing countries, often serving as a shell entity for its dominant member countries, other entities also wield their considerable power and influence to achieve the same objectives. (Cooper, 2002) The G8 countries (Canada, France, Germany, Great Britain, Italy, Japan, Russia, United States), for example, have made water privatization a key demand for their debt relief negotiations and agreements. American domination of corporate activity and corporate engagement indicate that the G8 countries in effect follow the example set by the United States in subverting human rights involving water access, among a host of other human rights curtailments. (Bakker, 2007)

American governmental complicity, at the state and federal levels, with multinational corporations has contested even fundamental notions of human rights. While several international organizations, including many to which the United States is a member state, have declared access to drinkable water to be a basic human right, American policy has militated against that reality. Instead, water privatization efforts demonstrate how the notion of water as a human right has

¹⁵ SAMWU Press Statement 14th February 2001. <http://www.cosatu.org.za/samwu/14feb2001.htm>.

become weaponized by American neoliberal modalities and interaction with multinational companies both at home and throughout the world. (Swyngedouw, 2005) While it is beyond dispute that potable water is a precious commodity, the commodification of water and the privation of water to those most in need based on prurient business interests, profit margins and political exploitation is a baleful phenomenon today. The combination of sovereign hegemons and corporate hegemons in vitiating water as a human right threatens the lives and livelihood of human beings, communities, ecosystems, as well as political, economic and social stability across the globe. In a world where corporations outnumber sovereign nations as the biggest economies, its pervasive impact and further potential harm make it the most widespread human rights violation of all.

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