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## **Water as a Negative Right**

Claim: Most theories of justice demand that the least well off members of society (in this case, global society) must be afforded a certain amount of care and concern. Based on these theories, providing water to those who will die without it seems uncontroversial. Libertarian theory is a notable exception, especially in the United States. Libertarians tend to recognize only negative rights and negative duties. If access to water can be established as a negative right on libertarian grounds, then libertarian arguments against any right to water fail.

### **Definitions**

Negative Right – Liberty

Negative Duty – Generally a duty to not do something.

Positive Right – Entitlement

Positive Duty – An obligation to provide something.

Thus, if water is described as a negative right, it implies that no one can interfere with an individual's efforts to secure enough water to sustain life and health. If water is described as a positive right, it implies that water must be provided to those who do not have enough water to sustain life and health.

### **Assumptions**

1. Goods secured through unjust means are not owned property in any legitimate sense.
2. The existence of negative rights can exist with positive rights (one may have a right to educate oneself, but this same person may have a right to have education provided).
3. When competing claims of justice are in conflict, life sustenance and promotion of health take precedence over all other claims.

### **History**

1. Just distribution of resources is only discussed when the resource is scarce.
2. While water has always been scarce in some places, most western philosophers writing on social justice have viewed water as an unlimited commodity. For example, eighteenth-century Scottish philosopher David Hume wrote, "Water and air, though the most necessary of all objects, are not challenged as the property of individuals; nor can any man commit injustice by the most lavish use and enjoyment of these blessings (Hume, 36)."
3. Most discussions of "water rights" began only when a) scarcity was recognized and b) water was already becoming a commodity. This statement refers only to recognizing a right to water for life sustenance. Disputes, for example, between fishers, farmers, and polluters predate current debates over water as a commodity. Four dams built on the Klamath River in Oregon and California from

1918 to 1961 depleted salmon populations in the river and created conflict between Native Americans, fishers, farmers, and PacifiCorp, which owns the dams (McKinley).

4. Some think of water not as a right but as a public good belonging to no one. In such a scheme, humans participate as stewards to manage the resources of the world responsibly and effectively. In the United States, law and policy tend to be based on rights. Rather than arguing about which outlook is better, we can seek common conclusions from varied perspectives.

### **Theories**

1. Libertarian
  - a. Nozick – all rights are negative rights. Entitlements are not just. (See *Anarchy, State and Utopia*.)
  - b. Sterba response – Current inequalities result from past injustices, which must be corrected; therefore, “entitlements” are a just response to past unjust actions.
2. Utilitarian – it is good to relieve pain and suffering and promote happiness, so we are obligated to do so. Peter Singer and Peter Unger have both claimed we all behave badly when we do nothing to prevent deaths of those starving to death in any part of the world.
3. Kantian – To ignore the wretched conditions of another without helping would be to follow a rule that cannot be universalized. To do so would be to will that no one show us compassion when we are in need.
4. Virtue – Generally, compassion and generosity are virtues but do not carry specific obligations.

### **Complications**

1. Water scarcity is often a result of environmental degradation, which is not easily reversed. Water redistribution projects are often destructive to the environment (simple case: bottled water must be bottled and shipped by various methods).
2. Recognition of a right to water as a liberty might also entail other liberties (It could imply a right to oil? Coal? Oxygen? Trees?).
3. The liberty to obtain water does not provide water for those who do not have it; thus, it may be that many will go without water if water is not established as an entitlement or positive right.

### **Case Study: China’s Water Transfer Project**

Virtual Water Transfer—Water is transferred in the form of goods delivered from water-rich regions to water-scarce regions (bottled water, produce, and products that require water in their manufacture).

Actual Water Transfer—Water from rivers or, perhaps, other bodies of water is redirected to regions lacking adequate water. The Yangtze River project in China may be the best-known example. The project will require resettling 330,000 people. A 2006 study predicted that the project would “stimulate China’s economy and increase welfare.” The authors also noted that the impact on the rest of the world would be “small but negative” (Barritella).

Conflicts—“Tibet is the source of water for close to half of humanity as the ten major watersheds that form high above the Tibetan Plateau spread out all across Asia. China’s plan to permanently divert seventeen cubic billion meters a year from these watersheds is creating great consternation with Tibetans

(Barlow, 155)” Diverting the Yangtze River will obviously make drastic changes to the environment. The cost of environmental damage is hard to predict or assess.

### Conclusion

The distinction between negative and positive rights may be more useful theoretically than practically. The claim that humans have a liberty right to take water to sustain their lives does not bring them nearer to water or water nearer to them. It does accomplish something, however; it establishes that practices resulting in restricted access to water are unjust. Many people who lack access to water now face their crisis as a result of past injustice. In addition, destroying sources of drinking water or privatizing water sources that exist is always unjust. Contrary to libertarian arguments, this does not imply that there can be no positive duties to provide water to those who lack adequate access. Improving access to water requires changes to current “water rights.” Redistribution of water means that those who now use the water or “own” it must give up their claim to it. In a study of modern water rights, Stephen Hodgson concluded, “The design of a system of modern water rights for a given jurisdiction will need to take account of its specific cultural, hydrological/hydrogeological, economic and sociological conditions. There is no blueprint (Hodgson, 103)” Progress requires an acknowledgment of all stakeholders that access to life-sustaining water is a human right and that cooperation to ensure such a right is not only a moral obligation but a mutually beneficial goal.

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