

WRRC Speech by Richard Morrison

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March 22 was World Water Day. I read some accounts of conferences held around the world on that day. Two were in Brasilia, the capital of Brazil. I couldn't help but be interested in the fact that, at one of these meetings, the conferees voted to oppose the sale of water rights. Can that be surprising?

Water transfers are nearly always controversial, even in Arizona where planning for our state's water future is of prime importance. Obviously our view of such transfers may be influenced by our sense of place. By this I mean, even though most of us were raised to revere free enterprise and economic efficiency, and even though we might generally agree with the proposition that our economic resources should be subjected to some highest and best use economic theory, if you live in rural Arizona, when the subject is water transfers, you are not necessarily interested in economic theory. You are definitely worried about water flowing to money and you shout out, "Hey, not so fast!" That is part of the concern in Mohave County just now in reaction to the Central Arizona Project's acquisition of farmland. It is also the basis for a growing concern in Yuma County about the acquisition of farmland there by hedge funds. I do know some private equity funds that have acquired farmland in Arizona for the expected appreciation in the land itself. But there is growing concern that hedge funds are investing for the prospect of transferring water.

Are there ethical considerations in all of this? You bet there are. And sometimes economic justice issues, too. In the public arena ethics should translate to public virtue. What would that look like?

Imagine for a moment what it would mean to our political process if each of us could honestly say, “I want the same good, the same opportunity, and the same consideration for you as I want for myself.” It is also helpful to ask, as did Peter Block in his book The Answer to How is Yes, “What do you want most that money alone can’t buy and you can’t have it unless others can have it as well?” Well, of course everyone wants and needs water. Or you can think bigger than that. Thinking with reference to the very big picture, an answer to the question might be sustainable planetary success or the ability to live freely at various ages and stages. It can be argued that persons are not necessarily being virtuous when they express personal desires for sustainable planetary success. However, an action plan designed to accomplish such goals will inevitably consider the needs and the desires of others, and thus, justice theory becomes relevant to the development of an action plan. (I also believe the principles of economic justice prompt one to become virtuous in making policy choices. These ideas can be appropriated and internalized.)

I will give you an example of the tie between policy choices and economic justice that comes out of Arizona’s native American water rights settlement agreements. I remember arguments in the midst of Gila River negotiations about the extent to which the tribes should be able to market water contributed to the settlements. The issue interested me because I had written my Master’s thesis years before on economic justice theory as applied to the settlement of Central Arizona Indian Water Rights Claims. Frankly, as we were negotiating the settlements I was very respectful of the widespread native American practice of taking the long view in planning for the future. Specifically, as described in many publications, native American tribes typically plan for the “7th generation.” In other words, with every decision, be it personal, governmental or corporate, consideration must be given to how it will affect descendants seven

generations into the future. The point for today's meeting is: We all have a similar opportunity when it comes to water, wherever it is. Planning for unborn generations can certainly be an ethical principle. However, when I did my academic research, I quickly saw what most of you probably figured out long ago: whatever your guideline principles, the difficult part of applying them is in prioritizing the principles themselves, that is, vis a vis each other. The difficulty can be illustrated with reference to principles of economic justice. What am I talking about? A literature review of relevant material will generally produce the conclusion that six principles of economic justice win widespread public and private approval. They are as follows:

1. Justice requires equal respect and concern for all.
2. Justice requires special concern for the poor and oppressed.
3. Justice requires responding to basic human needs.
4. Justice requires human freedom.
5. Justice requires contributions to the well-being of the community.
6. Justice requires the fulfillment of our obligations to future generations.

To quickly illustrate my point about priorities, is it not obvious that the fourth of these principles that requires human freedom may conflict with the last one that requires fulfillment of our obligations to future generations. In other words, in the exercise of our freedom in the present day, we may elect to maximize the economic benefit to ourselves through the marketing of a resource that will be needed by future generations of people living where the water came from in the first place. So, sometimes decision making with reference to even widely adopted principles will be difficult. But whether you think native Americans should be able to market their water or not, most people agree that justice requires responding to basic human needs, and

people who live in rural Arizona are going to have a very particular economic perspective on what that means for their future, for the sustainability of their economies and their physical environments.

I have introduced the subject of sustainability, which has long been an interest of the Arizona Water Resources Research Center. Sustainability itself can be viewed as an ethical issue when it comes to the intrinsic value of water in relation to the land above it or to land in the immediate vicinity of a natural watercourse. And some people think about the impact of water transfers on the land in the same way as others think about the problem of extinction among plants and animals—noting that extinction is forever. In some locales, water transfers could result in an irrevocable loss of both habitat and economy. But here is the point about the intrinsic value of water to a place. In the words of author James White, “Because the intrinsically valuable is that which is good as an end in itself, it is commonly agreed that something's possession of intrinsic value generates a *prima facie* direct moral duty on the part of moral agents to protect it or at least refrain from damaging it.”¹

Do no harm. How often we have heard that guideline in various contexts. I think most folks believe that is a laudable goal. Do we think it applies to the management of the water resources in our state?

¹ Brennan, Andrew, Lo, Yeuk-Sze, *Environmental Ethics*, The Stanford Encyclopedia of Philosophy (Summer 2002 Edition), <<http://plato.stanford.edu/archives/sum2002/entries/ethics-environmental/>>.

Certainly I recognize that voluntary water transfers are often **viewed** as essential in the Western United States to balance the ever-changing demand and supply of water in the desert. However, I think the organizers of this conference are suggesting it is possible and advisable to study the impacts beyond the interests of buyer and the seller to determine whether or not the transfers are ethical, particularly with reference to how non-parties will be affected. We can also explore whether the individuals involved on behalf of the parties to the transactions have an ethical responsibility as individual persons, one that is distinguishable from the win-win solution parties typically seek. Perhaps we can explore all the dimensions of this in the Q&A section that follows, but I want to say unequivocally that if there is anyone present who thinks that what is legal is what is ethical, I have never thought so. There are some who may believe public virtue requires nothing more than conformity to the law's requirements. Compliance with law would be expected, to be sure, but also a relatively poor standard when one considers that the law is of necessity incomplete. In our system of laws, we all know the nation does not attempt to legislate all that is moral, for example. Not everything as to which a criminal code is silent is considered to be moral, and not everything that is immoral is rendered criminal. That is why the individual virtue of the voters and the persons elected is vitally important to the welfare of all who are served by government—there is a huge gap between what is legislated and what is desired.

But doing no harm may require some new procedural safeguards that don't exist today outside the context of native American water rights settlement agreements; this could be another of the useful purposes served by the judicial branch of our government. Many or most of you know that our native American water rights settlements have generally required judicial approval

obtained pursuant to a special procedural order promulgated by the Arizona Supreme Court. Non-parties to the settlements have had the opportunities to come into court and explain how their interests are or will be harmed by the settlement provisions.

I ask you, should Arizona require similar hearings before water transfers can be made outside of the context of federal claims? Do we expect that the possible emergence of an adjudication approval procedure for the settlement of non-federal claims will take care all due process concerns? Really? What about the problem of notice? Are there other procedures outside of a settlement context that would provide adequate opportunity for third parties to protect their interests? You might say, well, a lot of the contemplated transfers will require a change in law. There will be opportunities for a hearing in the legislature. Maybe, but an opportunity for a hearing is not the same thing as an actual hearing. Furthermore, we live in a time of almost unprecedented political polarization over almost all public policy issues. Will we be content to let the parties to a water transfer agreement fight it out against their objectors in the media, or in the legislature where a change in law may be required to facilitate a transfer? Should that be all there is to it—pure politics--or should there be ethical benchmarks against which even that which is or may become legal can be tested?

And what would those ethical benchmarks look like? What system of ethics would you choose? There are several systems of ethics from which to choose. For example, there are consequential and non-consequential ethics. In consequential ethics, the outcomes determine the morality, the rightness or wrongness, of the act. An act is viewed as immoral, “wrong”, when it has a negative outcome on the greater number of people. So, decision makers try to predict the consequences of their choices. The problem with consequential ethics is that our ability to

accurately predict the results of our choices is often limited and our predictions may be just plain wrong.

But that doesn't mean we shouldn't try to agree on ethical standards for decision-making about water transfers. It can be a huge discussion, but one worth having.

Here is my final point: Whether we are talking about institutional decision-making or individual decisions, it cannot be enough that we know how to talk about ethics. There's a character issue that cannot be ignored. Ethical people possess an internal disposition that will sustain ethical practices. It's a disposition that will enable us to overcome the harms, dangers, temptations, and distractions which discourage us from ethical practices. This is the proper role of virtue, a term seldom heard these days. Virtue is important in business as in life generally-- because the law by itself will not take us where we want to go as a civilized people, happy and healthy, while alone and with others. Law gives us order, but ethics has the potential to secure happiness and health. The true victim of any failure of ethics will be the natural and social world that nourishes and sustains us.