RIGHTS-BASED ACCOUNTABILITY:
THE RIGHT TO WATER INFORMATION

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Purpose: This paper responds to increasing interest in the intersection between accounting and human rights. Rather than considering disclosures of performance in relation to human rights, the paper explores the notion of access to information constituting a human right. Since human rights have 'moral force', establishing the provision of environmental information as a human right may hasten policy change. The paper focuses on environmental information, and particularly the case of corporate water-related disclosures.

Design/Methodology: Ideally, a candidate human right would be evaluated using a set of generally accepted principles which underpin all human rights. Such principles, however, do not exist. A second approach, which the paper adopts, is to identify key themes within human rights discourse and evaluate the candidate right in relation to these themes. The pertinent theme identified is the right of political participation, and the paper considers whether water is an important political issue and the extent to which water information might enable public participation in water policy formulation.

Findings: The analysis suggests that access to corporate water-related disclosures may indeed constitute a human right. Such disclosures, however, may not necessarily be in the form of organisational sustainability accounts, but may encompass a much wider range of disclosure approaches, such as reporting by government agencies via public databases and product labelling. A countervailing corporate right to privacy is disputed on the basis that attributing moral agency to corporations ignores important limitations to corporate autonomy.

Originality/Value: By considering how human rights might apply to accounting this work seeks to make a theoretical and practical contribution. Theoretically, the paper explores how accountability might be conceived from an rights-based perspective and the process for determining which disclosures might constitute a human right. Practically, the paper seeks to assist academics engaging with disclosure policy by suggesting how calls for improved disclosure practices might be framed within human rights discourse.

Key words: Human rights, water, triple-bottom-line

Paper type: Conceptual

There is no magic in the marketplace.

Professor John Ruggie (2007, p. 3), UN Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business

1.0 Introduction

The intersection of accounting and human rights might be considered from two perspectives. The first perspective argues that corporations should be accountable for their performance in relation to human rights (Ruggie, 2008a; Kobrin, 2009; Ruggie, 2009) and should therefore report on this performance. For example the United Nations Global Compact prohibits organisations from being complicit in human rights abuses (United Nations Global Compact Office, 2008, p. 5) and requires them to report on their performance relation to upholding human rights (United Nations Global Compact Office, 2009). Similarly, the Global Reporting Initiative G3 guidelines list nine indicators specifically related to human rights (Global Reporting Initiative, 2006b, p. 33). Under this view, human rights become part of the long list of organisational impacts worthy of reporting, albeit an important part. The quality of rights reporting is generally inadequate (Ruggie, 2007, p. 21) though perhaps improving (Ruggie, 2008, p. 10; Ruggie, 2009, p. 9).

A second perspective suggests access to certain information might actually *be* a human right, or at the very least constitute a necessary if not sufficient condition for the realisation of human rights. It is this second view which is alluded to by Elkington (1999, p. 325):

> Whether driven by new regulations, emerging political movements or a recognition that commercial efficiency demands greater levels of transparency, we will see a continuing shift from long-established "need to know" requirements to new "right to know" approaches.

Under this view, it is the availability of information itself that is the core concern rather than the quality of reporting or the specifics of performance. This is based on the assumption that without such information it is difficult (or impossible) for other rights to be realised.

Whether certain information or disclosures constitute a human right is important because the concept of human rights has normative (and in some cases legislative) force. Risse and Ropp (1999) examined the impact of rights claims in various settings and suggest that this discourse was instrumental in changing practices in a number of cases (particularly when combined with strong advocacy networks operating at both the global and grassroots level). They also highlighted the power of dialogue, suggesting that 'transnational human rights advocacy groups should be aware that arguments are among their most powerful socializing tools' (Risse and Ropp, 1999, p. 276). This view is consistent with the approach adopted by high-profile NGOs such as Amnesty International and Human Rights Watch which attempt to drive social change via explicit appeals to human rights rather than to other moral theories. Clapham (2007, pp. 1-2) articulates this view as follows:

> Playing the "human rights card" can be persuasive, sometimes even conclusive, in contemporary decision making; this is one aspect of what makes the moral force of human rights so attractive – they help you to win arguments and, sometimes, to change the way things are done.

In the context of social and environmental accounting (SEA), the 'things' that many wish to change relate to corporate disclosures. While the more critical strain of social and environmental accounting has been less optimistic about the possibilities of disclosures to drive change (for example Tinker *et al.*, 1991; Gibson, 1996; Lehman, 2001; Tinker and Gray, 2003; Spence, 2009), organisational sustainability reporting has been one of the dominant concerns of SEA research (Mathews, 1997; Gray, 2001; Deegan, 2002; Gray, 2002; Gray, 2005). Gray (2010, p. 57) identifies three reasons why organisational (and particularly corporate) reporting is important. First, many organisations misleadingly present themselves as being sustainable and are unchallenged. Second, organisations are exceedingly powerful. Third, organisations are at the heart of the capitalist system (with features of limited discretion, promotion of empty consumerism and political influence) which is largely responsible for unsustainability. Organisational sustainability reporting might therefore facilitate public discourse (Boyce, 2000) and challenge financially-constructed social reality (Hines, 1988).

Organisational sustainability reporting has been shown to be woefully inadequate in both quantity and quality (O'Dwyer *et al.*, 2005; Moneva *et al.*, 2006; Milne *et al.*, 2007; Milne and Gray, 2007). These critiques have led to calls for more extensive mandatory reporting (e.g. Gray, 2001; Gray and Milne, 2002; Adams, 2004; Adams and Zutshi, 2004; Gray and Milne, 2004). For the most part these calls for mandatory social and environmental information have been unanswered and compliance with frameworks such as the Global Reporting Initiative remains largely voluntary. Water-related information is a case in point. Water is included as an indicator in reporting frameworks such as the Global Reporting Initiative (Global Reporting Initiative, 2003; Global Reporting Initiative, 2006a) and the Carbon Disclosure Project has recently launched the Water Disclosure Project (Irbaris, 2009). But reviews of water information provided in the context of a single firm (Rahaman *et al.*, 2004), the water industry (Crowther *et al.*, 2006) or large corporations (Morikawa *et al.*, 2007; Morrison and Schulte, 2009) suggest that such reporting is inadequate. The global situation is mirrored in Australia. In terms of organisational sustainability reporting obligations, compliance with frameworks such as the GRI remains voluntary despite consideration of the matter by various parliamentary inquires (e.g. Corporations and Markets Advisory Committee, 2006). Reporting of any breaches of 'significant environmental regulation' is now required under section 299(1)(f) of the *Corporations Act* 2001 (Cwth), which has improved environmental disclosures (Frost, 2007) but from a low base (Jones *et al.*, 2005).

As calls for improved corporate reporting have been largely unanswered this paper considers whether the 'human rights card' might be played. Of course, there are a wide range of institutional, cultural and political forces at play which will also play an important (and perhaps decisive) role in determining the success of appeals for improved disclosure. Nevertheless, the experiences regarding human rights noted above and explored further in this paper suggests that an plausible appeal to human rights has power.

Within the SEA literature explicit appeals to rights have been sparse, but nonetheless important: Stanton (1997, pp. 694-695) reads the work of Gray as asserting that rights to receive corporate social and environmental information exist, based in early years on legal rights but more recently on moral rights, a notion central to accountability: 'Accountability, according to Gray, is concerned with the right to receive information and the duty to supply it.' This is an emerging area of research and the subject of a forthcoming special issue of *Critical Perspectives in Accounting*. Though many studies have considered the role of accounting in discourse (e.g. Power and Laughlin, 1996; Boyce, 2000; Lehman, 2001;

Rahaman *et al.*, 2004; Unerman and Bennett, 2004; Rasche and Esser, 2006; Dillard, 2007) few if any studies have explicitly considered the extent to which SEA might itself be considered a human right in order to inform discourse. Using the particular case of corporate water disclosures, this paper therefore seeks to explore this question.

The remainder of the paper is organised as follows. Section 2 provides a framework for determining how rights might be established. Section 3 then considers the case for water disclosures constituting a human right based on a right of political participation, the importance of water as a political issue and the necessity of information to realise political participation. Section 4 considers how this right might be realised and Section 5 examines a key objection to the analysis, namely that corporations have a countervailing right to privacy. Section 6 offers a summary and conclusions.

2.0 The establishment of rights

This paper seeks to establish whether particular disclosures (or put slightly differently, access to particular information) might be considered a human right. This begs the more general question as to how human rights are established. Histories of human rights (Laqueur and Rubin, 1979; Ishay, 1994; Griffin, 2008) show considerable expansion of both rights-bearers and rights and from ancient times to modernity.[1] Yet identification of boundaries is important as the wider the net of rights is cast, the more the normative force is diluted (Clapham, 2007, Ch. 1) leading Griffin (2008, p. 272) to suggest that rights should 'mark off a special domain within morality' (while acknowledging that the boundaries of such a domain are 'of course, fuzzy').

How, then, might such limits to rights be determined? One possibility is to look to the principles which underpin rights, and then test a new candidate right against these principles. This is an approach typical of moral philosophy where the morality of an action is tested against moral system (such as utilitarianism or deontological ethics) leading to what might be considered moral 'proof' (Rachels, 2003, p. 43). In the context of rights, Griffin (2008, p. 272) suggests such a process might be 'first, to establish what "rights" in general are, then what the more specific "moral rights" are, and finally what the still more specific "human rights" are'.

The problem with this approach is that the principles underpinning human rights are unclear. Ishay (1994, p. 7) suggests that much of the intellectual heritage of human rights can be found in the ancient world – Babylonian concepts of justice, Hindu and Buddhist concerns for the environment, Confucian emphasis on education, Greek and Roman promotion of rationality and Christian and Islamic principles of human solidarity, for example. Laqueur and Rubin (1979) cite the works of Locke, Rousseau, Bentham and Mill as central to the heritage of human rights thought in addition to the more obvious work of Kant. Ishay (1994, p. 143) suggests that there is also a strong socialist heritage of many aspects of human rights such as the right to vote and the right to education, but that this heritage is obscured by changes in terminology (for example the 'working class' or 'proletariat' became the 'oppressed', 'exploited', 'the people' and even 'the nation'). Indeed, in a certain sense human

[1] To take a recent example, there have been claims that unborn future generations possess rights and that actions which infringe these rights should constitute crimes punishable under international criminal law (Hartwich, 2009)

rights might be considered more of a statement of consensus than a logical outcome of a particular moral framework. Griffin (2008) explores this issue in some depth, and provides as an archetypical example the drafting of the 1948 *Universal Declaration of Human Rights*. The drafting committee was advised by philosophers from all major cultures, which had little trouble agreeing on a list. A visitor who expressed amazement at this consensus was told 'we agree about the rights but on condition no one asks us why' (quoted in Griffin, 2008, p. 25). Griffin (2008, p. 273) concludes that a clear account of rights has not been provided 'not for lack of trying. It may not be possible, and certainly will not be easy, to give one'.

If human rights are more the product of agreement than clearly articulated principles[2] another method is required to determine the eligibility of candidate rights. Griffin's approach is to appeal to 'linguistic intuition' and to refer to the founding discourse of rights to find the boundaries. For example, Griffin suggests the Universal Declaration of 1948 and subsequent proclamations are consistent in the types of moral situations they encompass in terms of justice, and more generally at least '[p]arts of the extension of the term 'human right' are widely agreed' (Griffin, 2008, p. 273). This approach suggests the matter will be decided by examining whether a contemporary claim to rights can be grounded in the historical tradition of rights. If a candidate right can be seen as consistent with, or a logical extension of, previously agreed rights then this augurs well for the candidate right. A corollary is that the candidate right is the importance of the issue to contemporary society: a human right has to be something about which people care deeply. As Clapham (2007, p. 20) suggests:

> The vocabulary of human rights is not a simple revelation of a deep universal structure which we all innately understand. Nor is it a language to be learned as an adult. It is the story of struggles concerning injustice, inhumanity, and better government.

Therefore in order to determine whether water disclosures constitute a human right it is necessary to show how such disclosures are consistent with core rights. This approach is adopted in the following section.

3.0 The case for the right to water information

In order to show that access to water related information might constitute a human right, this paper aims to show that political participation is a core human right, that water is an issue of contemporary importance and political debate and that there is increasing recognition that information is required in order for political participation to occur. On this basis, access to water information constitutes a human right. These arguments are developed below.

3.1 The right to political participation

[2] There is an irony in suggesting rights which have normative force by virtue of a claim to be 'universal' are largely the result of historical consensus. Postmodernists such as Rorty suggest that the emergence of human rights is due more to sentimental stories than increased moral knowledge (Clapham, 2007, p. 14). Yet Rorty (2006) dismisses any claims to universality by moral theorists such as Kant and Mill, suggesting they are best viewed as 'social engineers' using whatever arguments resonated with their audiences and enabled them to achieve their objectives. Therefore the postmodern test of human rights is not whether they are theoretically coherent but whether they make any difference to practice.

The assertion that political participation is a core human right is relatively uncontroversial, though its initial manifestation reflected concerns more about protection from the arbitrary use of power then genuine participation in affairs of the state. Mingoue (1979, p. 3) suggests that 'from early modern times the idea began to develop that, in addition to eyes and ears and all the other normal equipment, human beings also possess invisible things called "rights" that morally protect them from the aggression of their fellow men, and especially from the power of governments under which they live'. For example, the *Magna Carta* of 1215 (King John, 1215) was an agreement between King John and the English nobility predominantly concerned with the protection (and restitution) of the property rights of the nobility against the sovereign (clauses 23-25, 28-32, 46, 52 and 55-57) and protection of the nobility against arbitrary trial and punishment (clauses 17-22, 38-40 and 45). The *English Bill of Rights* of 1689 again sought to challenge arbitrary behaviour of the sovereign, but by this time it was the rights of the Parliament rather than the nobility that was being protected. The *Bill* sought to ensure that laws and taxes must be approved by Parliament, that elections be free, that free speech be protected within Parliament and so on. Most of the 1776 *American Declaration of Independence*, best known for the declaration that that all men 'are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness' (ushistory.org, 1776) mostly comprises a list of the rights abuses of the then King of Great Britain, including unjust imposition of taxes, lack of American representation in Parliament, the stationing of British troops in America with immunity to prosecution, the inability of Americans to receive a fair trial and so on. Positive rights were enshrined by ten amendments to the Constitution in 1791 known collectively as the *Bill of Rights* including the right to free speech (1); the right to bear arms (2) and the right to due process at law (5). Similarly the 1789 French *Declaration of the Rights of Man and of the Citizen* is another landmark document in the history of rights. This *Declaration* provides a series of universalist and egalitarian assertions, such as the claim that 'Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good' (clause 1). This Declaration also provides for citizen participation in the creation of the law and public office (clause 6). In addition to the declarations discussed above, this theme is also evident in the guiding philosophical works of Locke, who claimed that 'not only that the subjects authorize a government, but that they also require that it should be responsive to their wishes' (Minogue, 1979, p. 8).

Modern human rights agreements, grounded in the era of the two World Wars, have extended these ideas. have. For example, in 1915 the Fight for Right organisation was established which explicitly linked the war effort to the preservation of human rights (Clapham, 2007, pp. 24-25) and in 1918 president Woodrow Wilson's 'Fourteen Points' program referred to rights of self-determination and statehood for countries seeking autonomy (Wilson, 1918). A key step toward universalist conceptions of human rights was the publication of *The Rights of Man* in 1940 by H. G. Wells, which contained Wells' articulation of universal rights as well as other declarations and was apparently dropped behind enemy lines (Clapham, 2007, p. 30). Wells' vision for human rights formed a chapter in his work *The New World Order* and it is interesting to note that he considered human rights increasingly important in a world moving towards more powerful central bureaucracies:

> Our Western peoples, by a happy instinct, have produced statements of Right, from Magna Carta onwards, to provide a structural defence between the citizen and the necessary growth of central authority . . .[we need] a new Declaration of the Rights of Man, that must, because of the increasing complexity of the social structure, be more generous, detailed and explicit than any of its predecessors (Wells, 1940, p. 128).

The 1941 *Atlantic Charter* (jointly issued by President Roosevelt and Prime Minister Churchill) document contained eight principles, which included the right of all peoples to choose their form of governments (principle 3). Representatives from 26 Allied nations signed a Declaration by the United Nations affirming the Charter in 1942 and a further 21 had signed by 1945, forming the core of the 51 countries who founded the United Nations in 1945 (Clapham, 2007, p. 32). The 1948 *Universal Declaration of Human Rights* preamble states that 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' and the document sets out a wide range of rights which resonate with many of the rights set out in the preceding documents discussed above. In particular, the *Declaration* asserts that 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives' Article 21(1). In 1966 the United Nations issued the *International Covenant on Civil and Political Rights (ICCPR).* In Article 25(a) the ICCCPR reiterates the Universal Declaration by stating that every citizen has the right 'to take part in the conduct of public affairs, directly or through freely chosen representatives'. The *Universal Declaration* and ICCPR (together with two optional protocols) form the majority of the documents comprising the International Bill of Rights and the ICCPR is one of the nine 'core international human rights instruments' (United Nations, 2007a).

Therefore while the gamut of human rights runs far wider than political participation, this right is one of its core concerns.[3] However, a right to political participation is only salient in relation to issues of collective importance. The following section argues that water is just such an issue, both in general terms and in relation to the conduct of corporations.

3.2 The importance of water and the role of corporations

Water has always been central to human existence. Water management is a key sustainability issue for many countries and has been described as 'one of the great challenges of this century' (United Nations Educational Scientific and Cultural Organisation (UNESCO), 2006, p. 524). Almost three billion people (40 per cent of the world's population) live in river basins with some form of water scarcity (United Nations, 2008, p40). There are concerns that the peak of freshwater reserves has already been passed (Palaniappan and Gleick, 2009) and climate change is expected to exacerbate water stress (Intergovernmental Panel on Climate Change, 2007). Water disputes also fuel conflict – Gleick (2006 Ch.1) provides an exhaustive list from 1748 to the present of water-related terrorist attacks.

In the context of human rights, there have been increasingly prevalent discussions regarding the 'right' to water. Dubreuil (2006) advances the notion of a three-tiered approach to water rights. The highest priority is 'water for life', which entails 'providing water for the survival of both human beings (individual and collective) and other living beings'. Next is 'water for citizens' which entails 'providing water for general interest purposes, as regards public health or the promotion of values of equity or social cohesion'. The third level is 'water for development' which 'is an economic function relating to production activities which in

[3] Griffin (2008, ch. 14) considers in detail the question of whether human rights require democracy. While acknowledging that the *Universal Declaration* and most contemporary writers stress political participation as a core right (Griffin, 2008, p. 242), Griffin takes a more controversial stance in asserting that it is theoretically possible for a community to exist without contravening human rights in a non-democratic society. However he concludes that in the modern era, with large populations and highly complex society, democratic governments are most likely to respect human rights.

general concerns private interests like irrigation for agriculture, hydroelectricity, or industry' (Dubreuil, 2006, p. 4).

The 'human right' to water currently being advocated is the 'right to life' version; namely access to a certain minimum level of water per day for personal needs and sanitation. From a global perspective, this focus is both understandable and desirable, given the disgraceful statistics regarding the number of people without access to such minimums.[4] The United Nations suggests four foundations for successfully meeting the challenge of water and sanitation, the first of which is to make the right to water a human right. This right would be an entitlement to a secure, accessible and affordable supply of water, with a minimum target of 20 litres of clean water per day for every citizen (United Nations Development Programme, 2006, p. 8). The World Health Organisation lists a number of implications of asserting a right to water, not least of which is that the United Nations human rights system would be able to monitor progress and to hold governments accountable (World Health Organization, 2003, p. 9).

Though recent rights documents contain explicit reference to safe drinking water and sanitation (including the *Convention on the Elimination of All Forms of Discrimination against Women* (United Nations, 1979, Article 14(2)(h)); the *Convention on the Rights of the Child* (United Nations, 1989, Article 24(2)(c)); the *Convention on the Rights of Persons with Disabilities* (United Nations, 2006, Article 28 (2)(a)); the *Occupational Health Services Convention* (International Labour Organisation, 1985, Article 5(b)); and the African Charter on the Rights and Welfare of the Child (Organization of African Unity, 1990, Article 14(2)(c))), the most comprehensive articulation of water rights is contained within the United Nations publication *The Right to Water* (United Nations Committee on Economic, Social and Cultural Rights, 2002). The right to water 'entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses' (Article 2) which is a prerequisite for the realization of other human rights (Article 1). Water is to be allocated for personal and domestic use ahead of other competing demands (Article 6) and should be treated as a social and cultural good, and not primarily as an economic good (Article 11). The claims of *The Right to Water* were reiterated by the World Health Organzation (2003) and the United Nations High Commissioner for Human Rights (United Nations, 2007b, paragraph 66), though this right is not yet enshrined in a binding treaty. However, over 100 countries have a right to a clean and healthy environment in their constitution, including nearly all constitutions adopted since 1992 (Shelton, 2002, p. 22). Many countries have explicitly recognised the right to water in their national legislation in the last decade, including Uruguay (2004), Algeria (2005), Indonesia (2005), Mauritania (2005), Democratic Republic

[4] It is estimated that 1.1 billion people in developing countries have inadequate access to water and 2.6 billion lack basic sanitation (United Nations Development Programme, 2006, p. 2). The Millennium Development Goal of halving the proportion of world population without sustainable access to safe drinking water and basic sanitation (Goal 7, target 10) is ahead of schedule in relation to water, but not in relation sanitation (United Nations, 2009a, pp. 45-46). Progress on water is largely due to significant advances in India and China (United Nations Development Programme, 2006, p. 7). Even if the goal is achieved, however, this would still leave 800 million people without water and 1.8 billion people without sanitation in 2015 (United Nations Development Programme, 2006, p. 4). The United Nations suggests that inequitable distribution of wealth is at the heart of the problem, suggesting that 'scarcity is manufactured through political processes and institutions that disadvantage the poor' (United Nations Development Programme, 2006, p. 3). Indeed, the United Nations suggests that because it is only the poor who are affected, rich nations provide an underwhelming response (United Nations Development Programme, 2006, p. 3).

of Congo (2006), Kenya (2007) and Nicaragua (2007) (Centre on Housing Rights and Evictions, undated).

While the human right to water is currently viewed as an extension of the right to life, the importance of water as a resource (and hence the need for political debate) is also acute for the other dimensions of water rights identified by Dubreuil (2006), namely water for citizens and for development. This is certainly the case in Australia. Though a comparatively rich country, as the driest inhabited continent on earth Australia has always been a site of fierce debates over water. The activities of both the indigenous peoples and European settlement were linked to, and limited by access to water (Pigram, 2006 p.v). Early Australian literature abounds with references to water, such as Dorothea Mackellar's iconic poem 'My Country', which describes Australia as 'a land of drought and flooding rains' and laments the 'pitiless blue sky . . . while around us cattle die' before the rains return (Mackellar, 1908). Australian conditions are such that drawn out problems of water scarcity can suddenly turn into even worse problems of water abundance. For example, [insert Fullerton ref]. In terms of surface water, average annual run off is 420 millimeters, compared with a global average of 660 millimeters (Pigram, 2006, p19). This rainfall is highly variable both in time and location, with limited availability in the most heavily populated regions in southern Australia. Run-off variability also causes variability in water quality, which is threatened by contamination by agricultural chemicals, and in particular, salinity (Pigram, 2006, p22). Given these conditions, much of Australia is dependent on groundwater resources – 60 per cent of Australia is totally dependent on groundwater and it is the dominant source for a further 20 per cent (Pigram, 2006, p25). Currently, water availablility is a critical issue and restrictions are common in both rural and urban Australia (Wahlquist, 2008). Modelling suggests that water will continue to be an issue of national significance in 2050 (CSIRO Sustainable Ecosystems, 2002) and billions have been invested in improving water management under the auspices of the National Water Initiative (Council of Australian Governments, 2004), National Plan for Water Security (Commonwealth of Australia, 2007) and the Water Act 2007 (Cwlth).

In addition to being an issue for both rich and poor nations, water is also a key issue for corporations. Peak business groups also acknowledge the importance of water, especially groups such as the World Business Council for Sustainable Development (WBCSD) ((World Business Council for Sustainable Development, 2006; World Business Council for Sustainable Development, 2007b). A recent joint publication of the WBCSD and the International Union for the Conservation of Nature states that:

> Every business depends and impacts on water resources . . . The future of business depends on the sustainability of water resources, which are increasingly under pressure . . . The global business community increasingly recognizes the water challenge (World Business Council for Sustainable Development and International Union for the Conservation of Nature, 2009, p. 4).

The report goes on to identify no less than sixteen current initiatives and tools for the improvement of business operations in respect of water use (such as the CEO Water Mandate, a public-private initiative under the auspices of the UN Global Compact which requires signatories to assess and improve their water performance).

Yet there have also been criticisms of the role of corporations in relation to water. For example, Corporate Accountability International (CAI) suggest 'realization of this right [to water] is not yet a reality for more than one billion people around the world. Often this right is undermined by corporate interests' (Corporate Accountability International, 2007, p. 2).

CAI suggests that corporations are not merely 'recognising' the water challenge (as suggested by the WBCSD) but actively exploiting it:

> Corporations play a particularly insidious role in contributing to, and profiting from, the global water crisis. They overuse and threaten water resources in a number of ways, including: using excessive amounts in unsustainable agribusiness practices; worsening climate change that increases drought conditions; spreading industrial pollution and expanding water-intensive industries such as mining, oil production, paper and power generation (Corporate Accountability International, 2007, p. 1).

While it is the extent to which corporations contribute to or exacerbate the water crisis is hotly disputed, it is undeniable that they play a key role in water management as water providers (Ogden, 1995; Ogden, 1997; Shaoul, 1997; Ogden and Anderson, 1999; Letza and Smallman, 2001) and water users (Hills and Welford, 2005; Burnett and Welford, 2007).

The above discussion suggests that in terms of human rights political participation is a central right and that debates around water and the role of corporations in relation to water is one that citizens are likely to want to participate in. In order to achieve such participation it is increasingly recognised that citizens require information. This aspect of rights is considered below.

3.3 The right to information

While the discussion above suggests that political participation has always been central to human rights, acceptance of a right to information is much more recent has only recently been tied to this right (Stec *et al.*, 2000; Sand, 2002; Stiglitz, 2003). Sand (2002) suggests that European countries even considered citizen access to government information incompatible with representative democracy and were therefore reluctant to enshrine access in legislation. A notable exception is Sweden, which starting with the *Freedom of the Press Act* of 1766 established wide-ranging access rights to public data. There are some references to information and accountability in early rights documents - the French *Declaration of the Rights of Man and of the Citizen* (1789) also explicitly mentions accountability in a broad sense, stating that 'Society has the right to require of every public agent an account of his administration' (hrcr.org, 1789, clause 15). An explicit requirement for financial accounting is also contained in Section 9 of the US Constitution (ratified in 1787):

> No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

However explicit consideration of access to information is largely absent from most early human rights documents. The *Universal Declaration of Human Rights* mentions information only in the context of freedom of expression, namely 'the right to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19). This principle was reiterated in the *International Covenant on Civil and Political Rights* (1966), which provides that 'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, *receive* and impart information and ideas of all kinds' (United Nations, 1966a, Article 19(2) (emphasis added)). The 1966 *International Covenant on Economic, Social and Cultural Rights (ICESCR)* Article 11 is concerned with the right to an adequate standard of living, and states that part of the measures needed include 'making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the

most efficient development and utilization of natural resources (United Nations, 1966b, Article 11(a)). Six of the Articles (16-21) are specifically concerned with reporting. States are required to submit reports outlining 'the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein' (Article 16) in stages (Article 17) and the results may be summarised and presented to the General Assembly (Article 21). Similar provisions are contained in the ICCPR (Article 40).

While some reporting obligations are enshrined at the international level and within Europe, it was the US that led the world in providing citizen access to government information in general and environmental information in particular. Pivotal to this achievement was the US *Freedom of Information Act 1966* which 'radically changed the global map of comparative administrative law, and may actually have changed the universal catalogue of constitutional rights' Sand (2002, p. 7). This Act became the foundation for equivalent European legislation (though not until 1990) in the form of *Council Directive No. 313 of 1990 on Freedom of Access to Information on the Environment*, subsequently superseded in 2003 by *Council Directive 2003/4/EC on Public Access to Environmental Information* and more recently by the Aarhus Declaration, discussed further below.

A right of access to environmental information is even more recent. The 1972 Stockholm Declaration provided principles in relation to global environmental management without specifically addressing the issue of environmental information. The later 1992 Rio Declaration (the outcome from the first World Summit on Sustainable Development) built on the Stockholm principles and provided clear guidance on information and participation issues:

> Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available (United Nations, 1992, Principle 10).

The most detailed pronouncement on environmental information rights to date is the *Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters* (United Nations Economic Commission for Europe, 1998), also known as the Aarhus Convention. This Convention sets out a wide range of provisions in relation to reporting and decision-making and has 40 signatories across Europe as at September 2009 (United Nations, 2009b). The Convention explicitly links the right to an adequate environment with information and participation rights in Article 1:

> In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Article 2(3) defines 'environmental information' as information in any form that relates to the state of the environment (soil, water etc.), factors (energy, noise etc.), policies, legislation, plans, programs. It also includes information regarding human health and structures (such as cultural sites) that are affected by environmental matters. Article 3(3) explicitly notes the obligations of States to promote environmental education, 'especially on how to obtain access

to information, to participate in decision-making and to obtain access to justice in environmental matters'. Article 4 sets out the detailed provisions of access to environmental access and Article 4(1) provides a general requirement that where environmental information is requested it shall be made available, within the framework of national legislation.

At the first Meeting of the Parties in 2002, it was stated that the agreement 'addresses fundamental aspects of human rights and democracy, including government transparency, responsiveness and accountability to society' (United Nations Economic Commission for Europe, 2002, paragraphs 4-5 (emphasis in original)). Since this meeting, the Parties have outlined specific agreements in relation to pollution release and transfers (2003) and Genetically Modified Organisms (2005). The latest meeting was in 2008 and adopted the 2009-2014 Strategic Plan. A key objective of the Plan was to expand the number of signatories and the application of the Convention to other regions of the world, and to have the Convention set a benchmark for a similar global agreement (United Nations Economic Commission for Europe, 2008, paragraphs 7(b); 10).

Specific rights to water information have also been recognised in various forums. Dubreuil (2006) suggests accountability and information are central to realisation of all three types of water rights (water for life, for citizens and for development). Her conception of the 'rights of users' includes access to information, consultation, participation and right to initiate legal proceedings' and notes a corresponding obligation under 'duties of authorities, namely 'To encourage information for and participation of users' (Dubreuil, 2006, p. 11).

The *Right to Water* (United Nations Committee on Economic, Social and Cultural Rights, 2002) also explicitly addresses water information. Article 12(c)(iv) includes 'information accessibility' as a key right, which 'includes the right to seek, receive and impart information concerning water issues'. This requirement is echoed and deepened by Articles 48 and 49, which are under the heading 'Legislation, strategies and policies'. Article 48 addresses the right to participate in decision-making and be provided with applicable information, including the requirement that 'Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties'. Article 53 goes so far as to specify the particular monitoring that should be designed by States, such as establishing indicators for the different components of adequate water such as sufficiency, safety and acceptability, affordability and physical accessibility. The framework for monitoring implementation of the right to water set out by Roaf *et al.* (2005) also suggests specific indicators in respect of accountability mechanisms such as the existence of monitoring bodies and complaints mechanisms.

The Aarhus convention discussed above also contains a number of water-related provisions. Article 5(9) specifically mentions water-related information disclosure in the context of establishing standardized reporting in relation to water, energy and resource use. Annex 1 identifies key activities such as significant groundwater abstraction or artificial groundwater recharge schemes (section 10), significant water transfers between river basins, excluding transfers of drinking water (section 11) and significant dams (section 13). For such activities, Article 6 sets out the requirements for public participation, which include requirements to set out the proposed project, allow time for consideration, facilitate open discussion, and take due account of the public participation in the final decision.

Business groups recognise that there is a strong argument for water-related disclosures (though typically not of a mandatory nature). The Global Reporting Initiative (jointly funded by the United Nations Environment Program and large corporations) includes five water

related indicators in the current (G3) guidelines: Water withdrawn from the environment by source (EN8 - core), water sources significantly affected by the impact (EN9 - additional), the recycling and reuse of water (EN10 - additional), water discharged by quality and destination (EN21 - core) and the impact of discharges (EN25 - additional) (Global Reporting Initiative, 2006b). More recently, in 2009 the Carbon Disclosure Project commissioned a report by Irbaris titled *The Case for Water Disclosure* (Irbaris, 2009). This report detailed the results of a pilot project which surveyed companies regarding water risks and opportunities, accounting and management, and which has now been launched as a widespread (voluntary) initiative. Given the power of transnational corporations in general (Korten, 2001) the assertion of a right to corporate disclosure stems from the same principles as the right to government transparencey. Indeed, it may be even more important. As Chimni (2003, pp. 157-158) suggests: 'democracy is today a transnational affair and therefore it is not enough to introduce transparency and openness at the level of the nation-state without ensuring that the same norms apply to international actors, viz., states, international institutions, and transnational corporations'.

In summary, there seems to be a strong case for access to corporate water-related disclosures constituting a human right. Participation in political decision-making is a central human right. Water is an increasingly important political issue, and corporations have a key role to play in relation to water. Peak business groups acknowledge this role and reporting options have already been flagged. This supports the SEA calls for increased mandatory sustainability reporting (e.g. Gray, 2001; Gray and Milne, 2002; Adams, 2004; Adams and Zutshi, 2004; Gray and Milne, 2004). An important question, however, is the mechanism by which such rights might be realised, as dissemination of corporate water-related information may be achieved in ways other than via corporate reports, and indeed other mechanisms may be more effective. This matter is discussed in the following section.

4.0 Realisation of the right to water information

There is an important distinction between reporting about organisations, reporting by organisations and reporting at the level of organisations. These terms are often used synonymously in SEA to refer to the preparation of organisational sustainability reports utilising frameworks such as the GRI. Yet as Gray and Milne (2004, p. 78) point out:

> [it is] not the impact of individual organizations that matters but the interactions and total impacts that a range of organizations has on an ecosystem's carrying capacity. This requires a level of analysis that is quite different from the analysis assumed by organizational reporting.

Indeed the whole nature of an organisational 'bottom line' is problematic from a sustainability perspective, rendering the concept of organisational sustainability reporting of debatable value (Norman and MacDonald, 2004; Moneva *et al.*, 2006; MacDonald and Norman, 2007; Pava, 2007).

There are other reporting models, however, where the concepts are not equivalent. For example, the US Toxic Release Inventory (TRI) requires reporting by organisations but about organisational sites and then collates this information in a public database which enables information to be accessed at the level of a physical region and/or a specific site. The TRI has been credited with having a major impact on emissions (Fung and O'Rourke, 2000; Sand, 2002; Stephan, 2002) though this is disputed by some researchers (Natan and Miller, 1998;

Koehlera and Spenglera, 2007). Fung and O'Rourke (2000) and Stephan (2002) suggest that the success of the TRI may driven by elements such as comparability and ease of access, factors often lacking in TBL-style reporting (Leong and Hazelton, 2008). Article 5(9) of the Aahaus Convention supports the database model, and requires establishing 'a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting'. In Australia, databases are becoming an increasingly common mechanism to disseminate social and environmental information, encompassing the Australian Electoral Commission database of corporate political donations, the National Pollutant Inventory and forthcoming databases containing greenhouse gas emission data.

The Iribaris (2009) report concerning corporate water disclosures recognised many of these issues, such as that as water is a local issue, equivalent water extractions may have vastly different impacts in different regions. It is also recognised that measurement of water is itself problematic as there are many types of water (such as surface water, groundwater, recycled water, wastewater and so on) for which definitions are not universally accepted. For these reasons, the report suggests that 'water disclosure will have to contain qualitative information on the specific watersheds where water is taken. This will have to include social impacts, water policy decisions and wider issues of price, water rights and allocative efficiencies' (Irbaris, 2009, p. 11). The issue, then is what sort of information will enable the realization of accountability in this form. In Australia, the Australian Water Resources Information System, will be a web portal to water data collected from across the country (National Water Commission, 2007) is currently under development and its success may be measured as to how well it meets these challenges. In addition, water accounting from a physical perspective is being trialled as the basis for National Water Accounts (Bureau of Meteorology, 2009).

In addition to disclosures via databases, product labelling is another emerging site for accountability and reporting. Article 5(8) of the Aarhus Convention also calls for relevant information to be provided to enable consumers to make informed environmental choices. The 2009-2014 Strategic Plan also discusses product-level information:

> The range of environmental information that is made available to the public is gradually widened, inter alia, by developing and implementing mechanisms enabling more informed consumer choices as regards products, thereby contributing to more sustainable patterns of production and consumption (United Nations Economic Commission for Europe, 2008, paragraph 11(b)).

Such information has received little attention in the SEA literature to date. In one of the few references, Gray and Bebbington (2001, pp. 110-111) summed up eco-labelling thus:

> Eco-labelling has proved to be a process fraught with difficulty and conflict . . . The basis of the conflict is real enough – complex products (e.g. washing machines or cars) go through so many processes and are of dubious environmental value in their use such that establishing a single indicator of 'environmental effect' is impossible . . . whilst it remains a crucial and live issue eco-labels do not look to become widely, consistently and reliably adopted in the near future.'

While concerns over difficulties and conflict continue, in the years since Gray and Bebbington's assessment eco-labelling schemes have become ever more prominent. Reviewing energy labelling schemes throughout the world, Harrington and Damnics (2004) found energy labels being used in over 50 countries. Supermarkets such as Tesco have begun to experiment with labelling, particularly in relation to carbon, albeit with mixed success

(Hall, 2007; Leahy, 2007; Tesco plc, 2008). There is some evidence that labelling schemes do change behaviour (Weaver and Finke, 2003; Unnevehr and Jagmanaite, 2008; Commonwealth Department of Environment and Heritage, undated), but Gray and Bebbington's concerns as to the complexity and potential for greenwash remain salient (Australian Consumers Association, 2008). In Australia, for example, electrical and gas appliances are required to display energy efficiency labels and similar requirements are in place regarding water efficiency (Wilkenfeld, 2003). The *Water Efficiency Labelling and Standards Act* 2005 (Cwth) requires labelling of showers, taps, toilets, washing machines and dishwashers and the scheme's promotional brochure suggests that by 2021 Australians can save more than 87,200 megalitres of water per year (Commonweath Department of Environment and Heritage, undated)[5] and there have been calls for more extensive product labelling in relation to water use (e.g. Kaye, 2007).

This section has suggested that there is a strong case for a right to water-related disclosures. Such disclosures, however, may not necessarily be the form of triple bottom line accounts but may also include mechanisms such as government databases and product labels. An important objection to this assertion, however, is a commensurate corporate right to privacy which would nullify any citizen rights to information. This objection is considered in the following section.

5.0 The corporate right to privacy

A contemporary example of debate concerning the 'right to know' water information is a 2007 article published in a major Sydney newspaper about Sydney's largest water users. The article was largely critical, suggesting that Sydney's corporations were not following the lead of private citizens, or companies in other States, in reducing water consumption (Moore, 2007). The usage statistics, however, were not publicly available, and had to be requested under Australian Freedom of Information laws. Sydney Water provided a list of the top water users to the newspaper but did not disclose their names (obtained by the journalist via other means). Readers were able to post comments on the newspaper's website (see Moore, 2007). A lively debate ensured regarding whether or not such information should be disclosed, framed largely in terms of rights. Some such as 'rh' identified the public interest of access to such information following much of the same lines as has been articulated above: 'Sydney's water is a public resource, obtained at considerable public expense (the building of the dams and network) and the resource-allocation issue is a critical public issue. Hence the interest in knowing who is using most of it, and who is not meeting public expectations to become more efficient in use of water'. Others, however, raised the issue of privacy: 'Arapeta' commented '[W]hat right do you people think you have to intrude on the privacy of a paying company?' and suggested that it the proposition was as ridiculous as requiring the Australian airline Qantas to name its largest customers.

More generally, the Australian Water Act (2007) gives wide-ranging powers to the Bureau of Meteorology to collect water information from any person (section 127). Information may be refused if there is a 'reasonable excuse'. However this excuse does not apply merely because information is of a commercial nature, subject to a confidentially arrangement or

[5] However, to put the potential WELS water savings in context by 2050 Australian water consumption is estimated to have increased by 16 million megalitres from 1996/97 levels (CSIRO Sustainable Ecosystems, 2002, p.204).

commercially sensitive (s 127(4)). However, under section 123(2)(b) the Bureau is prohibited from publishing information regarding a person's water use unless that information is already published or otherwise publicly available. While the term 'person' is not explicitly defined in the legislation, it is described by both the Bureau's explanatory document and the subsequent Water Regulations (2008) as including both natural persons and organisations, meaning that the Bureau would be precluded from publishing details of, say, large water users if they were not published elsewhere.

The Aarhus convention also recognises corporate rights to privacy, stating that a request for information can be refused to protect a 'legitimate economic interest' (Article 4(e)) though th is section also maintains disclosure requirements 'relevant for the protection of the environment' and the Strategic Plan also discusses the objective of increased information accessibility in light of 'relevant issues of confidentiality of commercial and industrial information and protection of intellectual property rights' (United Nations Economic Commission for Europe, 2008, paragraph 11(b)).

In relation to water, some business groups have asserted much broader rights than that of privacy. For example, in their submission to the UN inquiry on the right to water, the WBCSD submission included the following:

> Certain governments have indicated the right to water does not include water for industry, recreation or transport. By explicitly excluding the right to water for industry in this way, one is indirectly excluding the right for industry to operate, and therefore contribute to the economy, which includes satisfying the Right to Employment etc (World Business Council for Sustainable Development, 2007a, p. 3).

While corporations asserting 'human' rights might seem bizarre, there is a long history of corporations appropriating rights. Nace (2003) provides a detailed account of the establishment of corporate 'personhood' in the US, leading to the crucial case of *Santa Clara County v. Southern Pacific* which established that corporations constituted persons under the 14th Amendment to the US Constitution.[6] Corporate lawyers were quick to exploit this newfound status. As the activist Mary Zpernick states in the film *The Corporation*, while the 14th amendment was passed to protect newly freed slaves, of, there were 307 cases brought before the court between 1890 and 1910, 288 were by corporations and only 19 by African Americans (Bakan, 2006, p. 5).

More recently, corporate rights to the First Amendment right free speech have also been the subject of considerable debate (Dworkin, 2000, Ch. 10; Mayer, 2007; Nesteruk, 2007). In Europe, Lafarge Redland brought a lawsuit in 2000 claiming that the Scottish Executive contravened the company's rights under Article Six of the European Convention of Human Rights in relation to the length of time taken to have a case heard (McIntosh, 2000). Grear (2006) examines the phenomenon of corporations utilising the doctrine of human rights to further their interests in detail, suggesting that 'corporations employ the language and concept of human rights to defend and promote their corporate interests – even while they violate the human rights of natural living human beings and communities' (Grear, 2006, p. 189).

[6] Interestingly, Nace suggests that in the written decision there is no mention of this principle. The Chief Justice hearing the case (Morrison Waite) made verbal comments to this effect from the bench and the Court Reporter then incorporated these comments into the Statement of Facts and highlighted the comments as the main point of the case in the Syllabus (the Court Reporter's summary of the case). The Syllabus then became the 'precedent' for this fundamental change in corporate philosophy (Nace, 2003), p. 123.

An important question, then, is the extent to which corporations have a claim to 'human' rights. Some commentators suggest that corporations are indeed moral agents, and therefore may plausibly assert 'human' rights. For example Goodpaster and Matthews (1993, p. 267) suggest that '[o]rganisational agents such as corporations should be no more and no less morally responsible (rational, self-interested, altruistic) than ordinary persons . . . we think an analogy holds between the individual and the corporation'.[7]

Within SEA, McKernan and MacLullich argue that it is possible to consider corporations moral agents. Indeed, they consider that such corporate moral responsibility 'cannot be externally imposed, but must rather be freely assumed. Firms must be given a degree of freedom to define their own identities and consequently their responsibilities' (McKernan and MacLullich, 2004, p. 344). They do, however, recognise that the distinct nature of a corporation precludes automatic translation of human moral agency, and specifically dispute the application of Levinas' ethical theories to corporations because such entities lack a physical self (McKernan and MacLullich, 2004, p. 343). Shearer (2002, p. 543) suggests that corporate moral agency is problematic because economic entities do not possess a consciousness. Such concerns echo the famous dictum attributed to Baron Thurlow that a company has 'no soul to save and no body to incarcerate'.

The most important reason to dispute corporate moral agency relates to autonomy. If an agent has no choice of action, it is difficult to see how they can be considered morally responsible (or irresponsible). This position is consistent across moral theory but perhaps most explicitly highlighted in the work of Kant who claimed that only autonomous beings were within the moral realm: 'a free will and a will subject to moral laws are one and the same' (Kant, 1889 (first published 1785), p. 39). Applying this principle to corporations, if corporations lack autonomy they are outside the moral realm.

There are at least two significant limitations to corporate autonomy. First, corporations operate in competitive markets (Friedman, 1993 (first published 1970) p. 251-252). Second, the legal structure of the corporation privileges shareholders over other stakeholders (Evan and Freeman, 1993 (first published 1988), p. 255-256). These constraints suggest that corporations (and in particular public corporations) lack autonomy and can be most usefully be considered an amoral entities, overwhelmingly concerned with profit maximisation (Bakan, 2004; Hazelton and Cussen, 2005). Indeed Danley (1993, p. 286) argues that ascribing moral responsibility to a corporation, which he suggests is most correctly regarded as a machine, is a 'contemporary form of animism' and he therefore considers 'anthropological bigotry' justified.

Within social and environmental accounting, there is general agreement that corporations are profit maximising entities, with limited interest in the intrinsic value of social and/or environmental objectives. For example, Tinker, Lehman and Neimark (1991, p. 33) suggest that 'the market imperative often impels corporations to dump chemicals haphazardly rather then employ expensive reprocessing methods, cheat on billings to government agencies, bribe government officials, condone shoddy workmanship etc.'. Similarly Gray and Milne (2004,

[7] Goodpaster and Matthews also believe in organisational moral development (perhaps analogous to Senge's (Senge, 1990) 'learning organisation'): 'just as the moral responsibility displayed by an individual develops over time from infancy to adulthood, so too we may expect to find stages of development in organisational character that show significant patterns' (Goodpaster and Matthews, 1993), p. 270.

p. 73) consider it ‘entirely unreasonable to ask companies to act in socially responsible ways – they operate in a system (capitalism) that largely penalizes non-economic (socially responsible) action when that socially responsible action is in conflict with economic dictates’. Indeed Adams and Whelan (2009, p. 137) suggest:

> [M]anagers of Anglo-American corporations are legally obliged and remuneratively encouraged to try to maximize shareholder wealth. This fact can thus be taken, more or less, as a given. Accordingly, scholars of CSD are encouraged to take this as a starting point of their research, rather than assuming that it is something that needs to be continuously rediscovered or proven.

There are two important implications of the conclusion that corporations lack autonomy. First, it problematises corporate claims to human rights, such as corporate appeals to the *Universal Declaration* and subsequent rights proclamations. It should be emphasised that this argument does not preclude the granting of rights to corporations in certain instances. It may be that society believes an optimal overall outcome is achieved by granting corporations particular rights, and this might be correct. However, this justification is not based on simple ‘corproatehood’, in the sense that granting a natural person a human right is based on simple ‘personhood.’ Instead, such rights must be granted utilising a different set of arguments, most obviously the public interest.

A pertinent example is the right to privacy, defined by Davis (2009, p. 467) as including ‘control over to whom and when his personal information be given to others’. Griffin (2008) suggests that such ‘personal’ information constitutes matters such as sexual orientation, and therefore there should not be a conflict between this right and access to ‘the information required to function as a normative agent: access to the relevant thoughts of others, to the arts, to exchange of ideas, and, in democracy, to information about the issues before the public’ (Griffin, 2008, p. 240).

In the context of Australian water disclosures, in 2006 the National Water Commission commissioned PricewaterhouseCoopers to report on the issues of disclosure of pricing and personal information on water use (PricewaterhouseCoopers, 2006). The report primarily focused on information contained within State and Territory governmental water registers, which record the identity of water entitlement holders and may also record water trades. PwC noted that both record-keeping practices and privacy legislation varied considerably across Australia, but were particularly concerned that the transition of registers to publicly available databases facilitated their use by direct marketers. In relation to corporate information, PwC suggested that where information related to business interests this did not afford the same level of privacy protection relative to natural persons:

> The information contained on some water entitlement registers may be considered business information and therefore does not fall under privacy provisions. This reflects a general view that the community has a ‘right to know’ about the activities of businesses or corporations (PricewaterhouseCoopers, 2006, p. 69).

The report also noted that information regarding water ‘assets’ should be comparable to other types of readily available information:

> It is difficult to see how knowledge of water access entitlements or trades is any different from knowledge of other assets (e.g. land) or common factors of production (e.g. machinery) for which values are often publicly available or widely known (PricewaterhouseCoopers, 2006, p. 69).

Returning once more to the debate regarding Sydney water's disclosure of large water users, then, contrary to 'Arapeta' there is a right to know who the large users are of a public resource. Indeed, the comment regarding whether there is a right to know the biggest customers of Qantas may be prescient as greenhouse gas reporting requirements tighten, and such a right might also be grounded within the human right of political participation.

While many may be sympathetic to the stripping of automatic corporate rights, the second important conclusion is that, as a corollary to lacking rights, corporations do not have moral duties. Expecting that corporate social responsibility will result in profit sacrificing behaviour is unrealistic and will only occur when in the economic interests of the company, consistent with Friedman (1993 (first published 1970) p. 253)). Stating that corporations lack moral autonomy therefore becomes an argument for much stronger regulation and oversight[8] and supports calls for mandatory reporting.

5.0 Summary and conclusions

This paper has explored the notion that information can not only be *about* human rights, it can *constitute* a human right. It has shown that modern articulations of human rights increasingly include explicit discussion of information rights in the context of political participation. This conclusion may resonate with the ethos of many SEA researchers exploring the notions of accounting and discourse (e.g. Power and Laughlin, 1996; Boyce, 2000; Lehman, 2001; Rahaman *et al.*, 2004; Unerman and Bennett, 2004; Rasche and Esser, 2006; Dillard, 2007) and supports the legitimacy of concerns regarding disclosures in social and environmental accounts (O'Dwyer *et al.*, 2005; Moneva *et al.*, 2006; Milne *et al.*, 2007; Milne and Gray, 2007). If the assertions regarding the moral weight of human rights suggested by authors such as Clapham (2007) and Risse and Ropp (1999) are correct, 'playing the human rights card' might therefore be useful to advancing calls for more extensive mandatory corporate reporting (e.g. Gray, 2001; Gray and Milne, 2002; Adams, 2004; Adams and Zutshi, 2004; Gray and Milne, 2004).

A further theme of the analysis was that while environmental informational rights are increasingly being recognised and asserted, the location of such disclosures may be in areas other than organisational social and environmental accounts. While the actions of organisations are critical (Gray, 2010) it does not necessarily follow that corporate sustainability reports contribute to accountability, as the organisation may not be the salient level of analysis (Gray and Milne, 2004; Gray, 2010). Alternative techniques such as providing databases of environmental information are advocated by the Aarhus Convention and have been credited with considerable success (Fung and O'Rourke, 2000; Stephan, 2002). Though such success relies on public awareness of both the existence of information and their right to access it, which has been difficult to achieve (Hallo, 2007; Thorning, 2009) this means of accountability seems worthy of greater attention within SEA.

[8] The argument for stronger corporate regulation resonates with Kant's ideas on how to create the 'good' society. As noted above, Kant believes in the realisation of human potential through rationality. At the societal level, his *Idea for a Universal History with a Cosmopolitan Purpose* (Kant, 1991 (first published 1787), pp. 41-53) conceptualises humanity's past and future as a gradual progression towards the 'cosmopolitan purpose' of creating a civil society which can administer justice universally. Only such a society enables full realisation of the capabilities of humanity, but requires extensive and universal regulation: 'the most precise specification and preservation of the limits of this freedom in order that it can co-exist with the freedom of others' (Kant, 1991, p. 45).

In addition, the issue of consumer-level environmental information is also raised by the Aarhus Convention, and while there are clearly challenges for effective environmental labelling (Gray and Bebbington, 2001, pp. 110-111), the pervasiveness of labelling schemes (Harrington and Damnics, 2004) coupled with some reports of success (Weaver and Finke, 2003; Unnevehr and Jagmanaite, 2008; Commonwealth Department of Environment and Heritage, undated) suggests this nonetheless represents an additional interesting avenue for further research.

The paper also explored the question of organisational rights. Adopting a Kantian framework it is shown that the limitations to corporate autonomy identified by many researchers (e.g. Tinker *et al.*, 1991; Gray and Milne, 2004; Adams and Whelan, 2009) place corporations outside the moral realm. This suggests that the application of human notions of morality (e.g. by Goodpaster and Matthews, 1993; Shearer, 2002; McKernan and MacLullich, 2004) is problematic, and that criticism of the appropriation of human rights by corporations (Dworkin, 2000, ch. 10; McIntosh, 2000; Grear, 2006; Corporate Accountability International, 2007) is justified. Any 'rights' that corporations possess must be carefully justified with reference to the (human) public good rather than merely by corporate 'personhood'.

In relation to the specific issue of water this paper argued that there is a strong case for access to water-related information, and in particular corporate water-related information, constituting a human right. This position is at odds with the current Australian legislation specifically precluding the main custodian of water information, the Bureau of Meteorology, disclosing such information where such information has not already been provided elsewhere.

The analysis has also revealed that there are important questions in terms of both the content and method of such reporting. The GRI-style model is by no means an automatic choice for water reporting, and even advocates of such reporting acknowledge difficulties with this approach (Irbaris, 2009). Indeed neither of the two main water reporting modalities currently in development in Australia, the National Water Account and the Australian Water Resources Information System, adopt this model. While studies examining corporate water reporting have generally found such reporting deficient (Morikawa *et al.*, 2007; Morrison and Schulte, 2009) they have not offered recommendations beyond improved reporting at the organisational level. Therefore research which considers both the content and delivery of corporate water-related disclosures more broadly also constitutes an area worthy of further research.

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