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FOREWORD: GOING DOWN TO THE WATER

By John Fleck*

Some years ago, through the serendipity of a missed airport connection, I found myself stranded for 24 hours in Prague. I was tired, my mind set in the way of air travel on my destination—home. Prague may be one of Europe’s great cities, but it had not been my plan to visit it. It took me some time to warm to the opportunity my travel mishap had presented.

After stashing my belongings in a room at the airport hotel, I got a map from the concierge and directions for the transit connections to find my way into the old Eastern European city. With no advance knowledge of the city and no particular plan in mind, I emerged from the Malostranská subway station and did what I often do when I start from scratch—I began wandering toward the water.

Prague, in what is now the Czech Republic, spans the Vltava River. The city grew at a bend in the river where, according to a tourist sign in a park near the subway station, early residents could cross—first by ford and ferry, and later by stone bridge. On the west bank, beneath the saints of the Charles Bridge, I traced the path of a canal winding through the old neighborhoods of Malá Strana—Lesser Town, Prague. Some homes had staircases down to the water’s edge, a nod to a time when residents and visitors arrived by boat. One old building had a water wheel, remnant of the time when water powered the city’s mills. This was water being put to practical use.

“Say you are in the country; in some high land of lakes. Take almost any path you please, and ten to one it carries you down in a dale, and leaves you there by a pool in the stream,” Herman Melville wrote in the opening chapter of *Moby Dick*. “There is magic in it.” It is always down—simple gravity and fluid mechanics mean water occupies a landscape’s lowest spot. It is also instructive. To learn about a new place, I’ve found, you can always start with its water. To know London, start with the Thames and the earliest mariners traveling up its estuary for the first time, searching for a good place to land. But think also through London’s nineteenth century sewage management crisis, when the growing city finally had too much and was forced to organize around the problem of ridding itself of “the great stink.” To know Seattle, explore the wharves of Elliott Bay and learn the history of the Duwamish River—sacred salmon river turned industrial wasteland. To understand Los Angeles, and the Southern California metropolis that surrounds it, is to see the land as a community with little water of its own but the audacity to build three great artificial rivers to make up for its natural shortcomings. Lacking the natural harbors of its urban competitors, Los Angeles built a port.

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For Prague, a community that grew up in a place where the river could be crossed, the city's first water was the Vltava. Knowing nothing else about the city, I could trace the little canal back from a low diversion dam across the river and begin to see how the early community's members organized themselves around the task of managing their water. "How societies respond to the challenges presented by the changing hydraulic conditions of its environment using the technological and organizational tools of its times," Steven Solomon wrote, "is quite, simply, one of the central motive forces of history."¹

Solomon offers a guide to five central roles of water in human history: 1) domestic use (cooking, drinking, sanitation); 2) economic use (farming, mining, industry); 3) power generation, from the old water wheel-powered mills to today's massive hydroelectric power plants; 4) transportation; and 5) the environmental services it provides.²

As the articles that follow in this issue of the *Natural Resources Journal* illustrate, this approach is fruitful for understanding the relationship between communities and their first waters. In each article, query which of Solomon's five roles drove the community's relationship to its first water? How did the members of these communities organize in search of solutions to problems in water management? And how have these efforts shaped the histories of these communities?

To understand the farm communities of North America, Burke Griggs writes, you must understand where they get their water. In the East, rainfall simplifies the community organization required to make a go of agricultural life. But when the rain is insufficient to sustain the crops and irrigation is required, layers of complexity accumulate. Is there sufficient surface water? How do communities organize to dam and divert surface water, and then decide who is entitled to how much? When the rivers are insufficient, can groundwater make up the deficit? "It matters," Griggs writes, "because the source of that irrigation water largely defines the political culture of the community that depends on it." Approvingly citing irrigation pioneers John Wesley Powell and Elwood Mead, Griggs writes that "the relationship between irrigation and political culture [is] as real as western aridity itself."

In New Mexico, Matthew Reynolds' trail down to the water leads to Alamo Canyon, outside present-day Alamogordo, where Thomas Keeney and Jose Carillo in the 1880s argued over water flowing through the canyon: "[T]he land of the can[y]on was public unoccupied land, of no value whatever, except as a natural water-course; the complainants went on it, did work by which their supply of water was increased to them."³ This is an essential point in understanding the communities that followed and their relationship with water. In this arid place, land and the water that goes with it were "of no value whatever" until mixed with the

1. STEVEN SOLOMON, WATER: THE EPIC STRUGGLE FOR WEALTH, POWER, AND CIVILIZATION 14 (2010).

2. *Id.* at 17.

3. Keeney v. Carillo, 1883-NMSC-005, 2 N.M. 480.

human labor needed to turn the water out of its natural course and apply it to human economic activity. As Reynolds points out, the New Mexico Supreme Court's 1883 decision in *Keeney v. Carillo* is arguably the first time New Mexico law gave its tentative embrace to the doctrine of "prior appropriation," which binds the water itself in New Mexico law and the ensuing community structures to "beneficial use." Water's value had become inextricably bound up in its use by humans.

But as Reynolds, Michelle Bryan, and Richard Hughes all argue in their contributions to this issue, in following a trail to the early European immigrants' water use, we have not yet reached the low spot in this water-cultural landscape. As Hughes notes, Pueblo communities in what is now New Mexico "mastered irrigated agriculture a millennium ago" but have struggled to obtain legal entitlement to the water flowing through their lands, which they have used in one way or another for a thousand years. To go down to the water in New Mexico, or in any of the world's aboriginal landscapes, requires us to travel downhill not just in physical space but in human time. Reynolds and Hughes follow that trail into a thicket of legal questions that make it hard to see the water itself—what are the "rights" to water held by native communities, the people who were here using water before European immigrants arrived and overlaid notions of property rights on that which was already being done with the water?

It is Bryan who, quoting Walter Brenneman, gets us closest to the banks of the river itself. "One must 'see' water as more than an object of utility," Brenneman wrote, "as more than a mere 'thing' to be manipulated by technology for the convenience of humankind. One must take seriously, take as real, the meaning of water, the symbolism of water."

Here is where an effort to think carefully about the ways communities are rooted in water can be the most fruitful, and where Solomon's five historic human uses of water fall short. Like the Court's holding in *Keeney v. Carillo*, Solomon's utilitarian list suggests water not put to human use as being "of no value whatever."⁴ This misses something important. As Bryan notes, cultures across the globe have taken to their water, and organized around it, not solely for its utilitarian values, but as something sacred. Much of the most important scholarship and policy work around water today is directed to the task of incorporating what the economists somewhat clumsily call "non-market valuation."⁵ The econometric task involves an exercise in enumeration, which some find offensive. But the fact that we are having this conversation at all—Is water of value for its own sake?—suggests progress. Poor tools are better than no tools.

"In an era when indigenous sacred waters have become protected by international law," Bryan writes, "and the West is making space for new, emerging water values, it is time to begin a conversation about how our water law regimes can safeguard sacred waters."

4. *Keeney*, 1883-NMSC-005, ¶ 8.

5. See TIMOTHY C. HAAB & KENNETH E. MCCONNELL, VALUING ENVIRONMENTAL AND NATURAL RESOURCES: THE ECONOMETRICS OF NON-MARKET VALUATION (2002).

It is tempting to talk, as Bryan does, about these as “new, emerging water values.” They *are* new in the sense that the evolution of our modern water institutions has largely sidestepped them, and the struggle now is to incorporate them in a system already built. But if we follow the trail down to the water we find that, like the bridges and mills in old Prague, they have really been there from the beginning.