

## **Why Should States Share River Governance? Place-specific Duties as the Ground for Co-Governing Trans-border Rivers**

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*Abstract:* States have mutually exclusive political jurisdictions, and they claim exclusive sovereignty over all natural resources in their territory. Why then should they share governance of trans-border rivers? This paper examines two leading views on this question. The first—the universalist view—argues that states should share governance of trans border rivers because there is a human right to water, which means that states should share the governance of all international water. It treats rivers as *water pipes for humanity*. A second view—the membership view—argues that when adjoining states share rivers they should also share jurisdictional authority over them, on the ground of their rights to self-determination. This view pictures rivers as *reservoirs for peoples*. In the paper I find these views wanting because they see the river as a vehicle for water rather than a self-sustaining ecosystem. A river sustains people who use its water, but also the physical and biological systems required to clean the water and insure that it will be replenished and available for human use in the future. I argue that the obligation to share rivers comes from place-specific duties, the duties that a person owes other people by virtue of being in a given place—in this case, living together by the river in question. Rivers are better seen as *lifelines for regions*. These regions include the river ecosystem and also the people present in a river basin.

How should trans-border rivers be governed? It is widely accepted that the states that share a river and its drainage-basin<sup>1</sup> should also share the river's governance. This view, moreover, has become established international practice. States signed almost 450 agreements on international waters between 1820 and 2007,<sup>2</sup> and there are more than 120 international river basin organizations around the world.<sup>3</sup> Yet political philosophers

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<sup>1</sup> A drainage basin (for the purposes of this paper the term can be used interchangeably with river basin, catchment area, or watershed), is the area of land where all the water flows to the same place. It is often irrigated and drained by a main river and its tributaries.

<sup>2</sup> UN-Water factsheet on transboundary water (2013) available at <http://www.unwater.org/water-cooperation-2013/get-involved/campaign-materials/water-factsheets/en/>.

<sup>3</sup> International river basin organization database (Oregon State University), available at <http://www.transboundarywaters.orst.edu>

disagree on *why* states should share the governance of trans-border rivers. For states have mutually exclusive political jurisdictions, and they claim exclusive sovereignty over all natural resources in their territory. Why then should they share trans-border river governance?

Until very recently, political philosophy had nothing to say about such questions. The field has notoriously been reluctant to examine the politics of rivers and water more generally. But today we face the possibility of crippling water shortages as the world's population grows, industrialization expands, and climate change alters established patterns of distribution and access to fresh water resources. This possibility has forced the public to reconsider the governance of rivers and water, and the urgency of the problem has become so great that a small but growing number of political philosophers are overcoming their field's reluctance to deal with geographical and hydrological questions. In so doing, they have made some interesting discoveries, given that philosophizing about water challenges settled views of the morality of the relations between states and the natural environment. Water, as we all know, flows. Yet this means that water inhabits not merely the earth's surface: water is all at once a surface resource, a sub-surface resource, and an atmospheric resource. Moreover, water can saturate the soil, and it is indispensable for life. Hence taking water seriously disrupts many of political philosophy's traditional assumptions about the states' territorial and resource rights.<sup>4</sup> Particularly, examining the fluid properties of water challenges the idea that a state has exclusive legal jurisdiction over a given area,<sup>5</sup> the view that states have permanent sovereignty over natural resources,<sup>6</sup> and standard views of why or when states should cooperate with each other. Thus, the attention that philosophers have recently begun to

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<sup>4</sup> There is important recent work on territory and resource rights that discusses the validity of these traditional assumptions. See Christopher Armstrong, "Justice and Attachment to Natural Resources", *Journal of Political Philosophy*, 22(2014), 1, pp. 48-55; Avery Kolers, *Justice, Territory and Natural Resources*, *Political Studies*, 60, 2, 2012, pp. 269-286; Alejandra Mancilla, "The Volcanic Asymmetry," *The Journal of Political Philosophy*, 23(2015), 2, pp. 192-212; Margaret Moore, *A Political Theory of Territory* (Oxford: The University Press, 2015); Cara Nine, "Resource Rights," *Political Studies*, 61 (2013), 2, 232-249; David Miller, "Territorial Rights: Concept and Justification," *Political Studies*, 60 (2012), 2, 252-268. For a review of some of these discussions see Alejandra Mancilla, "The Environmental Turn in Territorial Rights," *Critical Review of International Social and Political Philosophy*, Forthcoming.

<sup>5</sup> For a summary on the current views on territorial rights of states see Lea Ypi, "Territorial Rights and Exclusion", *Philosophical Compass*, 8 (2013),3, pp.241-253.

<sup>6</sup> For a critique see Christopher Armstrong, "Against 'permanent sovereignty' over natural resources." *Politics, Philosophy and Economics*, 14 (2015)

pay to water and rivers responds to at least two concerns: the practical concern for articulating a moral and political response to the current undersupply of drinking water in many places and the possibility of generalized water shortages in the future; and the theoretical concern to understand the consequences of different views about the rights over nature.

Among political philosophers, two views on why states ought to share river governance stand out. The first view holds that rivers should be shared because water should be shared amongst all human beings.<sup>7</sup> A second view holds that rivers should be governed collectively by riparian states (those states on the banks of a river) because the river's governance can not be divided, and the rivers' integrity is necessary to each of the riparian peoples' right of collective self-determination.<sup>8</sup> So, in the first case, universal rights and duties of individuals ground the duty to share the river's water (I call this "the universalist view"); in the second, the explanation rests on the rights and duties of groups, or membership-specific rights (I call this the "membership view"). Yet, as I will argue, neither human rights, nor membership-specific rights and duties, can fully capture the duty to share the governance of trans-border rivers.

In this paper, I propose a new account of why states have this obligation. I argue that what grounds the obligation is what I call *place-specific rights and duties*. The duty of shared river governance comes from the duties that a person owes other people by virtue of being in a given place.<sup>9</sup> I will argue that states have a duty to share the governance of rivers with other states with which they share a river basin because rivers are places, and they generate individual place-specific rights and duties that states must take into account when they establish legal orders and govern their populations. The main place-specific duty that individuals have in rivers is to preserve them as a *lifelines for regions*.<sup>10</sup> A river is the lifeline for those people who use it for drinking, washing and carrying waste; but it is also a lifeline for the biological systems that inhabit the river and

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<sup>7</sup> Mathias Risse, "The Human Right to Water and Common Ownership of the Earth" *The Journal of Political Philosophy*, 22 (2014), 2, pp. 178–203.

<sup>8</sup> Cara Nine, "When Affected Interests Demand Joint Self-determination: Learning from Rivers" *International Theory*, 6 (2014), 1, 60-76.

<sup>9</sup> I develop this idea below, but a complete argument for this view can be found in "Taking Place Seriously: Territorial Presence and the Rights of Immigrants," *Journal of Political Philosophy*, forthcoming

<sup>10</sup> I borrow this term from Tim Palmer, *Lifelines: The Case for River Conservation* (Washington DC: Island Press, 1994) and from Ellen Wohl, *Disconnected Rivers* (New Haven: Yale University Press, 2004), p.2.

its banks. These systems, together with those geological features that give rivers their physical form, are necessary to clean and replenish the river's water. Without those systems, a river may not replenish and sustain life, nor deliver water for human use in the future. The duty to preserve the river as a lifeline is a duty to save the rivers' self-regulatory functions, which allow those who live in the wider region of the river basin to use the river sustainably.<sup>11</sup>

This place-specific account, I will argue, better explains shared governance of trans-border rivers than the leading views. On the one hand, the membership view uses a model of rivers that we could call *reservoirs for peoples*. This model is misleading, given that a people's territory does not clearly overlap with river basins. On the other hand, the universalist view sees rivers as fundamentally vehicles for delivering water and transporting waste; I claim that it sees rivers as *pipes for humanity*. In contrast, the place-specific account, with its view of rivers as lifelines for regions, better captures the fact that a river is a whole that is connected to the environment, which requires this connection to perform self-regulating functions.

The rest of the paper unfolds as follows: In part 1, I provide examples of international river governance to show what happens when groups disagree over the principles of cooperation, and why states should sometimes make these principles explicit. Part 2 examines the membership and universalist views, and show that they don't fully explain why states should share rivers' governance. The last two parts present my place-specific-duty account: states should share trans-border river governance because otherwise individuals cannot fulfill their place specific-duties, and thus preserve the river as a lifeline for others. To defend this account, Part 3 makes a case for place-specific duties, while part 4 shows that to protect human rights and the territorial rights of collectives people need to fulfill their river-specific rights.

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<sup>11</sup> In this paper I use "sustainability" in terms of resilience. That is, in terms of the capacity of the river ecosystem to bounce back from shocks. A river ecosystem "consists of all the organisms in a community and the associated nonliving environmental factors with which they interact. A river ecosystem includes an upland zone, riverside zone, aquatic zone, and hyporheic zone (a portion of the groundwater system that is directly connected to the aquatic zone at sites of upwelling into the river and downwelling into the subsurface.)" Wohl, Ellen. *Disconnected Rivers*, p.27-29

1. *Why make explicit the principles of cooperation*

Even though bordering states may collaborate on river management, agreements between countries seldom state the principles that motivate and justify their cooperation. Making these superficial agreements explicit matters because the principles determine *how* countries share the rivers. Clear principles illuminate conflicts that already exist, prevent others that may arise, and guide the future development of international institutions. In this part I offer examples of international river governance and their grounding in legal doctrines in order to explain what is at stake in making explicit the principles underlying these institutional structures.

Let us start with a specific example: Mexico and the United States share 1255 miles (or 2008 kms) of the Rio Grande (or Rio Bravo, as it is known in Mexico). This extent of river separates the two countries and constitutes about two thirds of the border between them. The two countries share river governance through the International Water and Boundary Commission (IWBC, or CILA, in Spanish). The Commission was established by a 1944 treaty, which superseded previous treaties ratified since the allocation of the border in 1848. The commission has Mexican and American personnel, and it largely manages and regulates the river jointly and independently: The commission drafts and submits minutes to the two countries' central governments, who usually rubber-stamp them. Very rarely one of the two governments rejects the commission's proposed policies. So the river is to a large extent co-governed.

This cooperation between the two countries may seem surprising, considering the enormous power differential between the United States and Mexico,<sup>12</sup> but the tendency to collaborate on river management is not as rare as one might think. As international relations scholars have argued, states tend to agree on water resources, rather than fight over them.<sup>13</sup> Besides international relations scholars, historians have also documented

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<sup>12</sup> The US reluctance to share the Rio Bravo/Grande with Mexicans downstream, was, after all, the source of the "Harmon Doctrine" on the absolute sovereignty of the use of international waters. The doctrine was put forward by Judson Harmon, attorney general of the US in 1895. (See Stephen C. McCaphrey, "The Harmon Doctrine 100 years later: buried, not praised", *Natural Resources Journal*, 36,3, 549-590.) The doctrine states that "a state wields absolute sovereignty with regard of that part of a river which lies within its territory." Tuomas Kuokkanen, *International law and the Environment: Variations on a Theme*, (The Hague: Kluwer Law International, 2002), p. 14.

<sup>13</sup> Barnett Jon, "Destabilizing the Environment-Conflict Thesis", *Review of International Studies*, 26 (2000), 271-288 and Shlomi Dinar "Scarcity and Cooperation Along International Rivers," *Global Environmental Politics*, 9: 1 (2009). Discussions on this topic often lead to Wolf's *Transboundary*

how many states have shared their rivers as they changed them,<sup>14</sup> and international lawyers have tried to streamline and codify the already existing cooperation of countries over water resources, which have highly complex institutions dealing with water-sharing.<sup>15</sup> The US-Mexico Border is not an outlier in this respect.

However, the work of sharing rivers is not solely about cooperation, it is also about the specific terms of the cooperation. In the case of the Rio Grande, a traditional source of conflict and cooperation has focused on property rights due to the river's tendency to change course (The Rio Grande is known in Mexico as Rio Bravo--that is, the "untamed" or "wild river"-- for its tendency to periodically overflow its banks and change its course). Throughout the 19<sup>th</sup> and early 20<sup>th</sup> century the changes in the river's main channel changed the boundaries between the countries and created much uncertainty for private property owners. Unsurprisingly, territorial disputes plagued the Grande/Bravo border since 1848 until the 1940's, when the countries finally dealt with the problem using canalization.<sup>16</sup> This, solution, however, did not eliminate other frictions that arise from sharing water. These have intensified due to the serious droughts in the last 25 years. The droughts have made it obvious that the population in the area uses more water than is available, due to the fast development of urban areas, and the growth of industry and agriculture on both sides of the border. Through drought and

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*Freshwater Dispute Database Project*. See also Wolf, et. al. "International River Basins of the World" *International Journal of Water Resources Development*, 15 (1999), 4.

<sup>14</sup> Marc Ferro and Pierre Ayçoberry, *Une histoire du Rhin* (Paris: Ramsay, 1981); Marc Cioc, *The Rhine: An Eco Biography, 1815-2000* (Seattle: University of Washington Press, 2006); Peter Coates, *A Story of Six Rivers: History, Culture and Ecology* (London: Reaktion Books, 2013), April Summitt, *Contested Waters, An Environmental History of the Colorado River* (Boulder: University Press of Colorado, 2013), Daniel MacFarlane, *Negotiating a River: Canada, the US, and the creation of the Saint Lawrence Seaway*, (Vancouver: UBC press, 2014). With reference to the Bravo/Grande see Jerry E. Mueller, *Restless River: International Law and the behavior of the Rio Grande* (El Paso: Texas Western Press, 1975)

<sup>15</sup> Parallel to the development of the UN Watercourses convention (adopted by the UN general assembly in 1997 and entered into force in 2014) which was modeled on the 1994 Draft Articles on the Law of Non-Navigational Uses of International Watercourses (1994 ILC Draft Articles), International Watercourse Law follows the development of international law as codified by the International Law Association which published the Helsinki Rules on the Uses of Waters of International Rivers in 1966, and the Berlin Rules for Water Resources of 2004. See the UN Watercourses Convention Online Users Guide (<http://www.unwatercoursesconvention.org>) and Salman M.A. Salman, "The Helsinki Rules, The UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law", *Water Resources Development*, 23, 4, 625-640 (2007).

<sup>16</sup> Jerry E. Mueller, *Restless River: International Law and the Behaviour of the Rio Grande*.

overuse, the once mighty Rio Grande has been “reduced to a trickle.”<sup>17</sup> By the time the river reaches the border city of El Paso from the US, the watercourse has almost disappeared,<sup>18</sup> and Mexico also diverts and overuses water from the river’s tributaries further downstream. Not surprisingly, each side blames the other in times of water scarcity: the US holds that Mexico defaults on its obligations to deliver water,<sup>19</sup> Mexico holds that the terms of the treaty are unfair given that it did not accurately project urban development and industrial growth.<sup>20</sup>

Frictions in international waterways and basins surface during times of scarcity, but they arise due to an underlying lack of clarity on the terms of cooperation. So unless these are made clear, the tension is bound to increase as water use in the area also increases. In general, a modern river’s conditions are man-made, and a river’s fate depends on prior social and political decisions. In the Rio Grande/ Bravo case, droughts and more evaporation due to increased temperatures have only made clearer the patterns of human use and abuse: Since the turn of the century, the river has seen the population on its banks increase exponentially and industrial agriculture has increased as well. The river has been canalized and dammed, and it is now overused—such that underwater basins are also shrinking.<sup>21</sup> Thus, making the principles that govern cooperation explicit matters for planning and establishing priorities in water allocation, for establishing responsibility for the river’s current and future state, and for determining whose interests should river management consider.

Without explicit principles, countries often clash on future goals. Although countries may have practical understandings that allow them to “muddle through,” they may disagree on the goals and relevant subjects of this cooperation. Which population or region should the river service? Is the river mainly a resource for country-wide or regional development? Is the river seen mainly as a resource for development, or as an

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<sup>17</sup> Michael Wines, “Mighty Rio Grande now a trickle under siege.”

[http://www.nytimes.com/2015/04/13/us/mighty-rio-grande-now-a-trickle-under-siege.html?\\_r=0](http://www.nytimes.com/2015/04/13/us/mighty-rio-grande-now-a-trickle-under-siege.html?_r=0)

<sup>18</sup> The river remains “wild”: in the last weeks of May 2015, storms led the river to swell and cause devastating floods in Texas and Northern Mexico. (NPR story)

<sup>19</sup> Jeffrey Davidow, “Agua: Conciliación y Sentido Común” *Reforma*, Mayo 27, 2002; Nicole Carter, Claire Ribando Seelke, Daniel T. Shedd, “U.S.-Mexico Water Sharing: Background and Recent Developments” Congressional Research Service, 7-5700, R43312

<sup>20</sup> Felipe Calderón Hinojosa, “Agua en la frontera norte” *Reforma*, Mayo 23, 2002.

<sup>21</sup> Carter, Slike and Shedd, US-Mexico Water Sharing: Background and recent developments, US Congressional Research Service, 7-5700, January 23, 2015.

entity with intrinsic value? Without making these values explicit, the way countries talk about rivers may unintentionally favor particular interest groups and their views on development and conservation. Silence in these matters may also obscure important conflicts regarding the value of water and waterways: Those who see rivers mostly as an economic resource, clash with those who see rivers as complex wholes sustained by interconnections between ecosystems and populations. For those who emphasize the value of ecosystems, it is wrong to treat the river simply as a pipe or a sewer. For those who see the river as the sacred resource of indigenous peoples, state management of a river as a border may seem as an alien imposition on a seamless landscape. For those who are worried about global water scarcity, the demand to conserve water for the sake of biodiversity may sound like an extravagance, a failure to establish the right priorities.

This kind of disagreement surfaces when practitioners try to make explicit the terms of cooperation. For example, take the controversies regarding the revision of the International Law Association's influential "Helsinki Rules on the Uses of Waters of International Rivers." The ILA's rules rely on the principle of the "reasonable and equitable utilization" of the waters of international drainage basins among states.<sup>22</sup> The 2004 Berlin revision of the rules added an aspirational component of "progressive development," which takes into consideration environmental concerns, concerns for sustainability, and rules for the management of water resources *within* states, besides the traditional guidelines for international relations regarding rivers. The Berlin rules seek to preserve the river as a whole, and stress the fact that the river forms part of the wider environment, which states ought to preserve according to principles of sustainability and resilience. It propounds the underlying claim that the river is an independent entity that should be preserved for its value, which extends beyond its capacity to deliver water, and whose independent interest may be on a par with the interests of states.<sup>23</sup> This revision was agreed to by a majority of the Association's members.

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<sup>22</sup> ILA 1966,

<sup>23</sup> "The major distinction between the Helsinki Rules and the UN Convention on the one hand, and the Berlin Rules on the other, is that the former establish and emphasize the right of each basin state to a reasonable and equitable share. This is based on the concept of equality of all riparian states in the use of the shared watercourse. On the other hand, the Berlin Rules obliges each basin state to manage the waters of an international drainage basin in an equitable and reasonable manner. The term 'manage' is defined in Article 3(14) of the Berlin Rules to include "the development, use, protection, allocation, regulation, and control of the waters". Thus, whereas the Helsinki Rules and the UN Convention establish and emphasize

However, the revision came with a sharp dissent from some of the lawyers in the Association.<sup>24</sup> In the dissenters' view, ILA's lawyers should not articulate new principles; existing institutions and practices suffice. Customary international law regulates relations among states; and these relations occur under the traditional principle of exclusive sovereignty, constrained by the principle of equitable and reasonable use of resources. Against the revision's implications that the river's interests might be on par with those of states, the dissenters emphasized exclusive state sovereignty, and the rights of peoples to decide on the use of their resources, independently of what kind of resources these are. The resulting tension among international lawyers illustrates that there are sharp philosophical disagreements on how to specify the grounds of shared river governance. But lawyers seldom examine these disagreements systematically.

So, in sum, figuring out the principles and the values that underlie cooperation may let us know what are the interests of states, and help determine how rivers ought to be governed and by whom. In the following section, I examine two such views in political philosophy, and explain why I find them wanting.

## *2. The Ground for Sharing Governance of Trans-border Rivers: Two Rival Views*

Philosophers assume that territorial rights include the right to exclusive jurisdiction over a given area, the right to control natural resources, and the right to control borders.<sup>25</sup> In recent years some scholars have argued that the right to control natural resources requires further attention. In particular, resources that originate in one territory and cross to another require special consideration.<sup>26</sup> Water is such special case because it is "fugacious,"<sup>27</sup> and more importantly because it is vital; hence it may be

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the right of each of the riparian states to a reasonable and equitable share, the Berlin Rules emphasize the obligation to manage the shared watercourse in an equitable and reasonable manner." Salman, "The Helsinki Rules, The UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law", p.636.

<sup>24</sup> "Water Resources Committee Report, Dissenting Opinion." ILA Berlin Conference, 2004.

<sup>25</sup> David Miller, "Territorial Rights: Concept and Justification," *Political Studies* 60 (2012) 2, p. 252-268; Margaret Moore, *A Political Theory of Territory* (Oxford: The University Press. 2015); Anna Stilz, Nations, States and Territory, *Ethics* 121 (2011), p. 572-601.

Ypi, Lea. 2013. Territorial Rights and Exclusion. *Philosophy Compass* 8 (3):241-253

<sup>26</sup> Mancilla, "The Volcanic Asymmetry"; Nine, "When affected interests demand joint self determination: learning from rivers."

<sup>27</sup> Armstrong, "Justice and Attachment to Natural Resources", p. 4

considered a human right.<sup>28</sup> Out of the recent reflections on the rights to natural resources we can find two leading answers to the question of why rivers should be shared across borders. The first, universalist, view holds that rivers should be shared because all water should be shared. The second, a membership view, sustains that states have exclusive jurisdiction over rivers in their territory, but they must share them when they cross borders to protect their people's right to self-determination. I will argue that each of these views relies on a misleading model of rivers (even if the authors holding the views don't subscribe to these models explicitly). The first sees rivers as pipes for human water needs. The second sees rivers as reservoirs for specific peoples. I argue that, in both cases, the proposal undermines the very resource that trans-border river sharing is meant to protect.

The first view holds that rivers should be shared because water should be shared amongst all human beings. All humans need water to survive, and they own the resource in common. Because of this, individuals have an obligation to share water, which they should discharge with the aid of states and global institutions. On the same grounds, states should share governance of all rivers that extend across boundaries. The main proponent of this view is Mathias Risse, whose main concern is the human right to water and proposes a global compact to manage the resource.<sup>29</sup> Risse argues that trans-boundary water conflicts offer special complications about which established human rights are silent, but co-ownership of the earth allows us to resolve. From this principle of co-ownership, he derives the conclusion that we should establish a "global compact on water including a monitoring body that keeps track on global distribution" (P. 182). Risse thus explains the duty to share rivers as a requirement derived from universal individual rights and duties, which can only be discharged through a global schema of cooperation among all states. For Risse, the states system is only justifiable if everyone can enjoy access to water to which, as co-owners of the earth, we are entitled. "Guaranteeing access to safe drinking water and basic sanitation becomes a genuinely global responsibility, a condition of the very acceptability of the state system, which on [his] account is characteristic of human rights" (p.196). Risse concludes that we have to go beyond

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<sup>28</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 15, 20/01/2003

<sup>29</sup> Mathias Risse, "The Human Right to Water and Common Ownership of the Earth," *The Journal of Political Philosophy*: Volume 22, Number 2, 2014, pp. 178–203

international agreements and sign a global compact on water, which would stipulate that water-rich countries should transfer water to water-poor countries that need it, or allow more immigration if the first option is impossible. Such a compact would explain why countries have to share water in general and, *a fortiori*, why they should accept joint management of rivers. In sum, this view takes shared rivers as a component of a larger duty to share water conceived as a global resource, and managed within the international system.<sup>30</sup>

Notice that this view subsumes the concern for any particular trans-border river under the general water needs of the global population, calculated using the overall value of resources on a per-country basis (198-199). In Risse's view, the management of trans-border rivers should depend on cross-national negotiations regarding how actions in one country affect the overall value of resources in the other, constrained by global decisions on the global need for water.<sup>31</sup> Risse's view on sharing rivers, then, relies on the fair allocation of resources on the basis of human rights and the overall needs of the global population. These can be calculated using each country's overall water resources on a per-capita basis, which would allow us to classify some countries as under-users and others as over-users. This means that in the case of a given river extending across the border of two countries (whom Risse calls A and B), sharing should be regulated on the basis of the overall water resources of A and B, as well as on how water-management in A affects the overall value of resources in B, downstream. For our purposes, this means that river-sharing hinges on the overall value of water resources on a per-capita basis in each country. Put simply, what matters is sharing water, not rivers. When we think in terms of water transferring and water volume allocations independently from the river itself we adopt a model of rivers as pipes. Yet detaching water from rivers (even if only for the purpose of calculation and management) generates a new series of problems that may undermine Risse's position, given that water transferring across countries may destroy the very resource that shared management is meant to protect and distribute.

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<sup>30</sup> The global compact would not regulate water use *within* countries—it would only ensure that water is distributed among them because countries are already required to deliver water to their populations as a condition for their legitimacy.

<sup>31</sup> In this sense, he says “water matters twice: it must itself be sufficient, and its availability is one factor in the aggregate value of resources.” P.199

To illustrate this point, we can turn once more to the US-Mexico border example. The 1944 water treaty stipulates the conditions for water allocation of the three rivers the two countries share, including their tributaries.<sup>32</sup> The negotiators' main concern was the fair allocation of water volumes, and they treated the flows of all three rivers as fungible, such that they determined cross-boundary water volumes over the whole international boundary, regardless of which river the water came from—the Colorado, the Tijuana, or the Bravo/Grande rivers. The annual averages of the three rivers were negotiated as a bundle, and the volumes allocated to each country were determined on the basis of the existing needs of communities on either side. So, according to the 1944 treaty, the US must deliver more water to Mexico than Mexico delivers to the US.<sup>33</sup> However, this presupposes a barter of water of the Colorado River for the water of the Rio Grande. Mexico receives downstream water from the Colorado in the western part of the international border, but Mexico must deliver most of the water from the Mexican tributaries of the Bravo/Grande in the east. In 1944, this treaty took into consideration the general water needs of the countries and their development goals, but it did not consider the rivers as ecosystems, and did not project the ecological and cultural needs of the populations that would live by the Rio Grande and its main tributaries. As Stephen Mumme puts it, “the treaty is unabashedly about development: about harnessing the potential of transboundary streams and rivers for economic benefit.”<sup>34</sup> Today, in times of drought, nobody in Mexico dies of thirst, but it is difficult to see how receiving water of the Colorado to use in Tijuana and to irrigate the Mexicali valley in the northwestern part of the country, can compensate for the parched soils in Chihuahua and the dried riverbed along the northeastern communities that need the river for crops, industry, power and recreation—not to mention the plants and animals in the east that need the water to survive. In sum, the treaty illustrates Risse's model of rivers as pipes. Here the river is fundamentally a pipe to deliver water for household consumption. It is not seen as a river ecosystem.

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<sup>32</sup> Stephen P. Mumme “Revising the 1944 water treaty: Reflections of the Rio Grande drought crises and other matters” *Journal of the Southwest* 45 4 (2003), 649-670.

<sup>33</sup> Jeffrey Davidow, “Agua: Conciliación y Sentido Común” *Reforma*, Mayo 27, 2002.

<sup>34</sup> *Fluid borders* p.652

Yet, modeling the river as a pipe generates a crucial problem for this proposal. Seeing rivers exclusively as a resource may undermine the availability of the very water that ought to be distributed among those who need it. Risse does mention some important difficulties that may arise for his view due to the fact that water exists in complex relations to river and lake ecosystems.<sup>35</sup> Yet, he does not consider the following objection: If we are to share water across states, but the availability of water depends on the conservation of ecosystems within a water basin, then we may not be able to share water allocating volumes or transferring water from one place to another. For allocating volumes or transferring water (to other countries or to urban areas) may destroy the ecosystem in question, including its capacity to regenerate the water that should be distributed.<sup>36</sup> To share water, countries must also share the governance of *rivers* (and marshes and lakes), which must be considered as wholes that include their relationship to the rest of the environment. Yet, Risse's perspective seeks to share rivers on the basis of per-capita global water needs, and the overall value of resources on a per-country basis. This makes it very difficult to explain why rivers should be shared *as rivers*, rather than just as water. The model does not allow us to give independent value to the ecosystem given that such value does not translate clearly into the overall value of water resources in each country. However, in order to share water, countries must also share the river ecosystems, which reproduce the water in question. Rivers must be considered valuable *as rivers* connected to the landscape, even if only to preserve their instrumental value. Explaining why rivers have to be co-managed requires that we take values other than the human right to water into consideration; particularly, I argue, it requires that we preserve the river's resilience, understood as its capacity to regenerate itself through interactions with the underground and atmospheric water, and that we preserve the river's capacity to

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<sup>35</sup> Risse considers the difference between water volume and renewable supplies, as well as the connection of water to ecosystems and the fact that the water is shared with other species in the last but one paragraph of his article. He acknowledges that these considerations may present difficulties for a world water compact, but does not respond to these as objections. Pp. 199-200.

<sup>36</sup> On the risks of water transferring across water basins see Jamie Pittock, Jing-hua Meng, Martin Geiger and Ashok Chapagain "Interbasin water transfers in a changing world—a solution or a pipedream?" Germany, August 2009. Frédéric Lasserre, "Continental Bulk Water Transfers: Chimera or Real Possibility?" In Emma Norman, Alice Cohen and Kern Bakker, *Water without borders?* Toronto: University of Toronto Press, 2013. (pp.88-118) Regarding water transfers and the risk to communities in the American SouthWest see Steven Shupe, Gary Weatherford and Elizabeth Checchio "Western Water Rights: the era of reallocation" *Natural Resources Journal*, p.413-434; and Kenneth Weber, "Effects of water transfers on rural areas: A response to Shupe, Weatherford and Checchio." *Natural resources Journal* v.30 (1990)

clean itself through biological mechanisms. Only in this way can the river continue being a source of life to the communities surrounding it. In other words, only then can it be a *lifeline*.

Could the second view better explain state's obligation to cross-border rivers? Cara Nine argues that rivers should be governed jointly by riparian states because the river's governance cannot be fully divided. Given that the river governance is a necessary component to each of the riparian peoples' right of collective self-determination, then both countries should both have a claim to the river as a whole.<sup>37</sup> Nine shows that when there are "ongoing, high stakes, mutual effects" (p.162) between states, their decision-making process should be shared; even though each state has territorial rights based on its people's right of self-determination. In this view, self-determination may be more important than optimization of resources, but neighboring countries sharing trans-boundary watercourses should cooperate on taking care of the river because its integrity may be necessary to ensure the resilience of each territorial community. Foreign states (or relevant collectives) should be included in decision-making processes when the outcome of the decision will significantly affect foreign collective interests. So in Nine's view, self-determination requires shared jurisdictions in cases of shared resources. "The joint authority," says Nine, "can determine through legitimate decision-making procedures, the appropriate shares of river resources to be held by each state. Each state then has dependent rights of self-determination to rule over their share of the river within and following from the legislative guidelines provided by the joint authority." (171)

This view begins to explain why states should share rivers, rather than just water. However, this approach cannot tell us why the river matters independently of the peoples who have territorial rights over it. Nine explains why peoples should share and conserve rivers using the idea of country resilience—that is, a country's capacity to bounce back from shocks. If we harm a river we may undermine a country's resilience, and thus we may also undermine its people's capacity for self-determination. Yet, this means that the river --understood as a lifeline for the riparian region-- could still be sacrificed to the

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<sup>37</sup> The principle of self-determination has often been seen as standing in conflict with resource sharing and management across borders (see Margaret Moore, *A Political Theory of Territory*-- which argues that "collective self-determination should be given priority regarding control of resources. P.174) Yet, here, the principle of self-determination is crucial when it comes to keeping the river as a whole.

general interests of the peoples and the wider territories associated with the riparian states. Nine's perspective is at bottom a membership view with state-national scope and is principally concerned with resilience within a political and cultural boundary, rather than a restricted ecological region such as a river basin. So, joint river governance depends on each riparian people's general concerns for resilience and sustainability of their country *as a whole*; and a country could be much vaster (or smaller) than a river basin. If what matters ultimately is the value of a people's collective self-determination and by extension, the resilience of their whole territory; then this resilience, will be calculated using the country's overall water holdings. A river basin could be sacrificed for the wellbeing of the whole country, just as rivers and canyons are often sacrificed to make way for dams to satisfy the water needs of populations in a wider areas. Nine's account therefore sees rivers as fundamentally *reservoirs for peoples* and their countries.<sup>38</sup> Again, water becomes a fungible resource detached from its environment, rather than a river ecosystem that must be attached in order to be a self-sustaining lifeline.

In sum, the current available accounts of why rivers should be shared allow us to understand some general aspects of international river management, but they are not precise enough to explain the intuition that rivers matter because river ecosystems matter, independently of the states that happen to have territorial rights over them. Even if we mainly care about humanitarian access to water, or the principle of self-determination, we still need to capture the intuition that rivers must be connected to the environment, because without such relations rivers do not function very well. A "disconnected" river may not be able to provide the water that the universalist and the membership views require that we deliver to third parties.<sup>39</sup>

Self-determination and human rights are not specific enough to capture the idea that rivers matter for us *as rivers*, rather than as pipes for human needs, or reservoirs for a specific people. This is the intuition motivating the concern of the ILA lawyers who believe that countries are entitled to an equitable and reasonable share of the river, rather than an equitable and reasonable use of their share.<sup>40</sup> In the first case, the countries share the river because the river has intrinsic value independent of the states that it crosses. In

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<sup>39</sup> On "disconnected" rivers see Wohl.

<sup>40</sup> Salman. P.636

the second case, the river should be shared because the states who have rights over the river may affect each other states by using it. While membership or self-determination may explain the second formulation, they do not fully explain the first. Neither the universalist view with its emphasis on human rights, nor the membership view with its concern for self-determination can capture the intuition that rivers matter as such. This intuition was recently legally expressed by the people of New Zealand, who recently accepted an arrangement giving legal personality to the Whanganui river.<sup>41</sup> The view of the river iwi (local Maori peoples) as well as the Crown was that the river was not a resource owed by individuals or by a particular people, but rather it should be seen as an independent subject of rights who should have its own legal representation. In this view the moral relation of people to the river can neither be reduced to private property nor to (universal or collective) rights to resources, although it should be able to coexist with them.<sup>42</sup> This intuition that the river as such is valuable cannot be fully captured by the models of rivers as pipes or reservoirs.

What we have to explain, then, is a moral relation of people to the river that is motivated morally rather than just instrumentally; a relation that is defined individually, rather than as a relation of collectives to territory, yet one that does not interfere with individual property rights, the rights of local peoples, or states' rights to territorial jurisdiction. I think that the best *explanans* for such an *explanandum* is neither universal rights nor the rights of membership groups, but local relations instead. In the next section I explain this local, or *place-specific*, view.

### 3. *Place-specific duties and the obligation to share river governance*

Can we find an explanation of the duty of shared river governance that keeps the integrity of the river (and does not, like the universalist view, treat the river as a pipe), but does not see rivers as valuable only for the sake of collective self-determination (and hence does not treat the river as a reservoir for a specific people, like the membership view does)? Here I argue that what best explains why rivers should be shared is the moral

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<sup>41</sup> Ruruku Whakatapua- Te Mana o Te Iwi o Whanganui.  
<http://nz01.terabyte.co.nz/ots/DocumentLibrary/140805RurukuWhakatupua-TeManaOTeIwiOWhanganui.pdf>, retrieved on June 16, 2015.

<sup>42</sup> Wanganui Chronicle, Tutoho Whakatupua explained Questions and Answers, September 3, 2012.  
[http://www.nzherald.co.nz/wanganui-chronicle/news/article.cfm?c\\_id=1503426&objectid=11073833](http://www.nzherald.co.nz/wanganui-chronicle/news/article.cfm?c_id=1503426&objectid=11073833)

relation of individuals to the places where they dwell. This is what I have called *place-specific duties*.<sup>43</sup>

My proposal urges that we see rivers as *lifelines for regions*. A lifeline is a rope intended to save life. In this context, the line is the river that saves life in the ecosystems within the region of a drainage basin. The river as lifeline is a specific place that matters to morals and politics.<sup>44</sup> The place is morally and politically relevant because it determines relations among people and produces place-specific duties. Given that there are place-specific duties that require schemes of cooperation over places, people who live in drainage-basins should establish schemes of cooperation over the rivers and the land around them. These schemes sometimes will overlap or cross-cut political borders, and thus the resulting institutions will not belong to particular peoples (defined nationally or culturally), but rather, to those who dwell by the river's bed, its banks, and its floodplains.<sup>45</sup> These institutions, however, need not be sovereign; for place-specific duties are not tied to a country or a self-determining people, so the institutions that uphold them lack sovereign jurisdiction. Place-specific duties are special obligations, just like the special obligations that we owe to our fellow members of a club, a family, or a religious group. (The special duties we owe to our co-religionists can be fulfilled on both sides of a national border. Likewise, the place-specific duties of managing a river can be shared on both sides of the border.)

There is a lot to unpack in the previous paragraph, and this is what I shall do in the rest of this section and the next. I begin by explaining what I mean by “place-specific rights and duties.” Elsewhere, I have described these rights and duties using the term *ius situs*, which captures a domain or level of morality that has been ignored of late by political philosophy, although it is well understood by laypeople, and was taken seriously

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<sup>43</sup> I discuss this in full in *Just Borders: Peoples, Territories and the Rights of Place* (manuscript in preparation.) A shortened version can be found in “Taking Place Seriously: Territorial Presence and the Rights of Immigrants,” *Journal of Political Philosophy*, forthcoming.

<sup>44</sup> *Place*, as I use the term, is a bounded (but not necessarily closed) area that provides a setting for social relations, has a precise location, an envioning situation, and cultural meaning. This definition is based on the work of Jeffrey Malpas, *Place and Experience* (Cambridge, Cambridge University Press, 1999) and Edward Casey, *Getting Back into Place: Towards a Renewed Understanding of the Place World*, 2<sup>nd</sup> edition (Bloomington: Indiana University Press, 2009), as well as on John Agnew's view of the three components of place: location, locale and sense of place. ‘Space and Place’, in John Agnew and David Livingstone (eds.) *Handbook of Geographical Knowledge* (London: SAGE, 2011), 316-30.)

<sup>45</sup> The flood-plain is the area over which the river spreads in flood, when it has not been canalized or artificially contained.

by the political philosophers of ages past.<sup>46</sup> This domain exists somewhere between the rights and duties of membership, on the one hand, and the moral incidents of natural rights and personhood, on the other. It is wholly distinct from the first domain, and cannot be reduced without remainder to the second. For as I shall show, *ius situs* can capture a person's rights and duties in dealing with rivers across states, but membership criteria like ethnic, associative, or social membership cannot. On the other hand, I shall also show that natural rights, including a right to water, are too general to capture the specific rights and duties created in particular relation of the individual to a river. The idea of *ius situs*, instead, can fully capture such place-specific rights and duties.

Although *ius situs* is overlooked by the political philosophy of our day, it was appreciated by political philosophers in the past. *Ius situs* was recognized by a line of thinkers including Machiavelli, Montesquieu, Rousseau, Bentham, and Tocqueville, all of whom theorized about the social and the physical conditions that make possible different forms of political organization, and to what extent geography and economy determine these traits. Indeed, they considered to what extent political principles should vary depending on the different aspects of the natural, cultural, and built environment of a society. In so doing, they thought in terms of *ius situs*. But the place-specific concerns of this tradition have come to be overshadowed by other aspects of their thought. This is partly because in the twentieth century, concerns about national identity, ideology, membership, and the market system trumped concern about the specifics of place and geography. So although political philosophy today overlooks *ius situs*, it has not always done so.

By contrast, laypeople and the law have never overlooked the claims of *ius situs*. To see that *ius situs* is intuitively accepted by laypeople, we only need to turn back to rivers and how changing the river can disrupt the relation among people who live on its banks, and how these produces new rights and duties that riverine communities accept, and yet these are neither membership, nor universal rights and duties. Consider again the example of the Rio Grande: The negotiation of the water quotas in the 1944 treaty took the rights of the states into consideration, the rights of the members of each of the states'

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<sup>46</sup> Ochoa, "Taking place seriously: Territorial presence and the rights of immigrants," *Journal of Political Philosophy*, forthcoming.

communities into consideration, and human rights into consideration. What was not taken into consideration was the river as a place. The river was seen as a water resource. So, the place was changed by a process of damming, canalization and rectification meant to distribute water according to the development needs of both adjoining states. This process allowed national and state governments in the two countries to control water for agriculture, urban development, and the fulfillment of international water allocation quotas to the other country. This, in turn, led to industrialization, which attracted more people to the border area and produced even more urban growth. This pattern of use led to overpopulation, and eventually to over-allocation of the basin's water. By the 2000's, even the faintest sign of drought made it impossible for the two countries to share the river, given that the treaty allocations allowed them to keep the water of the Rio Grande's tributaries in each of their territories in times of drought.<sup>47</sup> Thus, the international treaty to "share" the river made it impossible for border dwellers to preserve the Rio as biological habitat or a landscape, and thus it made it impossible to people in the region to fulfill their local obligations to share the river with each other. In sum, changing the river altered the relation among the people who live by its banks. These changes created new obligations to rescue the river ecosystem, which are well-recognized by the locals, yet not fully captured by national or international commitments, and thus not captured by existing legal or institutional mechanisms.<sup>48</sup> Locals share the intuition that these obligations exist, yet they are not fully captured in terms of states' rights (given that the 1944 treaty allows countries to default in times of drought), or membership rights (given that each country has enough water to deliver to its members and has imperatives of national development which include economic and urban growth at the border), or human rights (given that there is still enough water to deliver drinking water and sanitation within each country).

In contrast, we could turn to a place where place-specific duties were enshrined in new laws and institutions. A process similar to the one that changed the Rio Grande

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<sup>47</sup> Viña, CRS-6

<sup>48</sup> "Government decision makers need to recognize that more U.S and Mexican border citizens are demanding more environmental restoration projects in addition to traditional water supply projects." Conclusiones, Mesa de Trabajo "Abastecimiento de Agua Potable," CILA/IBWA, Cumbre Binacional de Recursos Hídricos de la Frontera, <http://cila.sre.gob.mx/cilanorte/images/stories/pdf/aap.pdf>

occurred in the Rhineland in the 19<sup>th</sup> and 20<sup>th</sup> centuries. Beginning in 1815, Swiss, German, French, and Dutch diplomats “created an overarching blueprint for improving the Rhine as a navigational and commercial artery, but no corresponding one to protect it as a biological habitat.”<sup>49</sup> After WWII, however, it became clear that polluting the river was undermining the riparian countries’ water supply. Hence these countries created new institutions to protect the river ecosystem. Even though the main driver of the change could be understood in terms of membership obligations or human rights (the river was seen by many players as a pipe for water needs, or as a reservoir for each of the riparian peoples), much of the democratic support for these institutional changes came from the locals’ view that, by the 1970’s, “the Rhine looked more than a sewer than a Romantic icon.”<sup>50</sup> The bulk of the institutional and legal changes have focused on improving water quality, but it is clear to all those involved that it would be impossible to attain this goal without rescuing the river ecosystem by improving biodiversity and restoring floodplains. After 200 years of subsuming place-specific duties under the imperative of national development, the governments of the Rhine’s riparian countries finally acknowledged what locals new all along: It is not sufficient to see the river as a pipe for water delivery. To properly fulfill their duties to each other, those who live by the river have to see it as a complex biological habitat.<sup>51</sup> Obligations of local individuals to each other are linked to the river as a place. This was clearly captured in an early 19<sup>th</sup> century Prussian legal brief which stated: “Every river needs to be seen as a single entity from its source to its mouth.”<sup>52</sup> This dictum summarized the need for cooperation at the local level. In this view, it is clear that beyond relations among members of a national group, and relations among human beings *qua* human, there are special relations among people *in a place*.

In sum, these examples illustrate that *ius situs* does not depend on relationships among members of self-determining political communities. Yet, the obligations that

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<sup>49</sup> Cioc 175

<sup>50</sup> Cioc 175

<sup>51</sup> See Cioc, p. 105. “Seeing” the river as a pipe or as a reservoir can be compared to the idea that the State “sees” resources according to the administrative logic and utilitarian morality described by James Scott’s *Seeing Like a State. How Certain Schemes to Improve the Human Condition have Failed* (New Haven: Yale University Press, 1998). The technocrat’s river does not look the same than the local’s river—and the technocrat’s gaze is likely to miss place-specific obligations, which it tries to subsume under the country’s development goals.

<sup>52</sup> Cioc 70.

individuals owe to each other when they share a river cannot be simply reduced without remainder to the human right to share water. Place-specific rights and duties best capture the relation that concerns us when we think about governing rivers.

#### *4. Grounding Place-specific duties: The rights of third parties*

Now, what justifies the idea of place-specific duties and the *ius situs*? And how does this ultimately ground riparian states' obligation to co-govern rivers? In what follows I specify these duties' nature, their function and content, and their ground. I also show that this *ius* complements rather than supplants other reasons why a state grants rights and gives a legal sanction to duties. Place-specific duties add one more to the repertoire of reasons that justify sharing rivers; reasons that are now restricted to the narrowly particular rights of membership, and the expansively general natural rights. Finally I show that in order to adequately protect human rights to water and the territorial rights of collectives people need to fulfill their watershed-specific obligations.

The *ius situs* is a normative system by which physical presence in specific places gives special duties to individuals, and these place-specific duties, I argue, are a type of role obligation. Yet they do not attach to persons by virtue of who they are as a matter of social role; rather, they depend on *where* they are. A doctor or a minister carries her role obligations with her as she travels the globe; but you do not carry place-specific duties with you through space. For place-specific duties depend on configurations of people and things that only exist in a particular place. Place-specific duties vanish once you exit the place. For "place" denotes both nature and culture, a network of relations among the natural, cultural, and built environment. Such duties are thus distinguished from other role obligations in that all other role obligations are place-unspecific: they exist regardless of where the obligatee is, and of where the obligations' beneficiaries are.<sup>53</sup> For example, I have a role obligation to my mother, and this does not change whether she is present in Mexico or the United States; I always remain her daughter. However, when I travel, my place-specific duties change completely. If I am by the Schuylkill in the Delaware basin, my main obligations may be to work towards improving water quality and reducing pollution; whereas in Mexico City, the most important concern may be to

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<sup>53</sup> Ronald Dworkin, *Law's Empire* (Cambridge Ma: Harvard, 1986) 196-200.

first insure that everyone has access to drinking water, and then to work toward restoring the region's lakes. These duties, it is important to remember, are not correlative to rights to either ownership, or territory—they cannot tell you to whom water resources belong. My obligations to the rivers and the lakes do not depend on my being part of the collective that has territorial rights over the water or the watershed, just as the obligation to do well by the Whanganui does not require that the Iwi *own* the river or the land along it. The legal jurisdictions in which these places are situated ought to facilitate the fulfillment of these place-specific obligations, but they do not necessarily overlap with the boundaries of the natural region in question.

So what, then, are the functions and content of place-specific duties? Above all, such duties establish and uphold local schemes of cooperation. Moreover, unless we fulfill our place-specific duties, others cannot fulfill theirs; so they are a condition on others' moral agency. All such duties allow strangers to live close to one another without deep conflict. As such, they reflect common understandings that allow for predictability and ease in social life. These, of course, differ in each place according to local custom and the local environment. Everywhere, however, such duties include being a good neighbor, sharing communal areas, allowing for the provision of services, respecting sacred (and other purpose-specific) places, and generally, participating in schemes of cooperation specific to the locale. Superficially, the specific content of some of these duties might seem arbitrary. For some of them do no more than provide a coordination point, like the duty in Britain to drive on the left side of the road, rather than the right. But most often the duties' content is not arbitrary; it depends—as such thinkers as Montesquieu, Rousseau, or Tocqueville would have insisted—on the physical surroundings, the climate, and the locals' culture. This becomes obvious in and around rivers. Most people in the world will agree that those who live upstream have an obligation to those downstream, for example. Yet, these obligations to others are not only a feature of affected interests due to nearness, they also depend on how the physical environment conditions such nearness. (If we live in a floodplain we may owe more duties to those with whom we share a marsh than to those with whom we share a stream, for example). In a river, our relations depend on the type of watercourse (Is the river's current swift and unpredictable? Are there bends in the river that are prone to flooding?),

and on how other natural resources and physical features are used (Are there migrating fish? Is there mining or fracking near the river? Are there dams?), and what is the property regime in a given area (Does the stream cross private property? Is it part of the commons? Is it owed by the state?). These features assign varying roles to each person depending on their location on the place, and thus create varying duties associated with those roles.

What, then, grounds place-specific duties? Why does simple presence create duties that are owed to others and which are specific to a place? The answer is that in every place, there is a scheme of cooperation going, and it needs some minimal participation by everyone present to avoid conflict over the most basic questions. Cooperation by everyone in the place is to some degree is necessary: even transients and visitors. This cooperation scheme cannot be moved somewhere else, because it emerges and works around distinctive networks of natural relations, and its organization cannot be reduced to legal or cultural interactions. For example, regardless of their culture, a tourist should not bring a foreign fish to a stream, but that obligation only arises when they are by the river where the foreign fish is an invasive species. Thus, in a river (as the example of the Whanganui again illustrates) the scheme of cooperation does not depend on the cultural identity of the people who live by the river, but rather, it arises from the relations that people develop *because* they live by this specific river (which may, or may not, form an integral part of their culture).

Now, presence generates obligations because by being in a place you become part of a network of such duties. Your compliance is a condition for your neighbor's compliance, and thus a condition on their moral agency. More specifically, unless you cooperate, those around you will not be able to fulfill their obligations to third parties. For example, unless you allow the water from your tributary stream to flow into the nearby river, the river will not create the pools and ripples that clean the water descending from an upstream lake, and this will force your neighbor to deliver tainted water to the town downstream. So, your participation in the network of place-specific duties is required to allow your neighbor to fulfill his obligations to third parties, and thus a condition on *her* moral agency.

Likewise, the international obligation to share river governance comes from the duties that individuals owe others by virtue of being in a given place. Given that a river -- as a whole--- can be conceived as a place, when they are in this place, individuals incur certain rights and obligations to each other, and they are expected to develop schemes of cooperation in order to fulfill their duties. When the river spans or crosses more than one political territory, the schemes of cooperation may be established as a region that crosscuts and overlaps these political territories. States should (and often do) recognize and accommodate those new areas of governance by given these regions special trans-national legal status, or forming international commissions. In sum, I argue that states have an obligation to share the governance of rivers with other states with which they share a river basin because rivers are places, and they generate individual place-specific rights and duties that states have an obligation to take into account when they establish legal orders and govern their populations. The main place-specific obligation that individuals have in rivers is to preserve them as lifelines, that is, to preserve the rivers' physical, chemical and biological self-regulatory functions that allow the river ecosystem to recover after shocks.<sup>54</sup> It is this self-sustaining ability that replenishes clean water and allows us to use it and share it with others.

Thus, from place specific-duties we can explain why states ought to share a trans-boundary river. Unless states share the river, they will undermine the relations among individuals who live there, and, in turn, this will prevent other individuals to fulfill their obligations to their membership communities and all human beings. More specifically, unless states allow and foster local efforts to preserve water in rivers that breathe and are connected to the ground, and so are able to sustain life; it will be impossible for locals to share water with others. In other words, maintaining rivers and their natural connection to the rest of the environment is a condition for fostering a country's resilience (and its people's self-determination). Without resilient ecosystems it will be hard, if not

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<sup>54</sup> Pollution can upset the balance between plant animal and microbial life in a river ecosystem. However a water stream can restore this natural balance through dilution, mixing through currents, bacterial oxidation and other natural processes. This ability has been called "self-purification" in the past. Yet, the term is deceiving, because it suggests that a river can withstand pollution indefinitely. Now-a-days "self-purification" is a technical term that measures the river's ability to return to a particular level of dissolved oxygen in the water. Frank Spellman, Melissa Stoudt, *Environmental Science: Principles and Practices* (Plymouth: Scarecrow Press, 2013) p.532.

impossible, to fulfill both individual and collective global obligations to make water available to everyone.

Place specific duties and the *ius situs* can then explain why you should fulfill duties to each other in given places. But why do these specific places matter? Aren't some places are more important than others? For example, why couldn't we transfer groundwater from a deserted area in order to turn another place into an orchard? Why shouldn't land owners in rural areas sell their water to others that may need it more in urban areas, or for industrial or agricultural needs? In my view, these are tradeoffs that should be evaluated on a case-by-case basis, provided that we don't confuse places with jurisdictions, or with a community's territory. The obligations I have discussed are tied to natural regions such as watersheds, rather than to private property or territorial jurisdictions. For any given point of coordinates in a map there are overlapping areas with different legal and moral statuses. The principles that rule resource use in each of these different types of demarcation are also different, and sometimes they uphold competing values. Given that the boundaries of communities, habitats, watersheds and legal territories do not clearly overlap, state jurisdictions and governments should coordinate and evaluate between competing claims at the local level and cooperate with neighboring states.

But if there are competing claims of different groups in a given place, this raises a further objection. Which group or which values should have priority? Membership duties, universal duties, place specific duties? In the case of rivers place specific duties have a practical priority, because they are a condition to satisfy the other two. In order for a people to be self-determining, or to share water with all human beings, individuals must first insure that there is a sustainable amount of water to share. But this order of preference does not always obtain: the duties are not lexically ranked. If there were an urgent demand, as it happens when the main water supply of a urban center is threatened, then it may be necessary to have inter-basin water transfers (provided that this does not generate irreversible damage to the river—and water supply-- in the long term.) The upshot of this view is that we cannot say that communities have permanent sovereignty over resources in a given territory,<sup>55</sup> even if we grant that these rights are limited by

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<sup>55</sup> Miller, *Territorial Rights*

universal needs or human rights,<sup>56</sup> because territories are not clearly delimited according to all the relevant moral and political criteria to establish legal boundaries: different criteria (membership, place, human needs) create different overlapping jurisdictions. Yet, this does not necessarily complicate governance—in many cases overlapping jurisdictions may diffuse conflict. Introducing place-specific duties allow us to consider several important values, which temper the dichotomous conflict between the competing claims of, on the one hand, self-determination of ethnic or national identity communities, and on the other, claims to global distributive justice based on universal rights. These considerations are particularly relevant at the border of states, where local concerns can step in to break the impasse between the competing national plans of neighboring states, and thus may open up space for thinking about requirements of global justice.

### 5. Conclusion

I have argued that states should share the governance of trans-border rivers because they should recognize place-specific rights and duties in any river basin that straddles national territories. Those present in the river basin have local obligations to preserve the rivers' self-regulatory functions that allow both locals and third parties to use the river sustainably. States should cooperate with each other and establish international mechanisms to co-govern these places so that their citizens can fulfill their duties.

This view gives a systematic explanation to the intuition expressed in the view of international lawyers, peoples and environmental activists who see the river as an object of concern. This concern exists independently of the rights that individuals, peoples, or states may have over natural resources. This place-based view, moreover, can explain co-governance without having to introduce the idea of shared sovereignty. It can do so, because it detaches the relevant duties from state or people's territories. Regions that share a river basin are not national territories, but focusing on their moral importance can help us explain why rivers create areas of moral concern that straddle geopolitical borders.

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<sup>56</sup> Moore, *A Political Theory* and Armstrong, *Justice and Attachment*, Armstrong, *Against Sovereignty*.

Yet, while the view relies on regions that straddle borders, it does not impose governance “from above” as do most proposals to manage resources beyond national boundaries. Unlike proposals for global or international water governance, which presuppose a supra-national authority to establish governance priorities, this proposal addresses universal concerns at the regional level, and takes into consideration the experiences and special moral obligations of individuals who relate to each other in specific circumstances.

This view on place and place-specific rights and duties can help us break through philosophical debates that extend beyond the question of who should govern rivers. Up to now, questions over natural resources tend to be reduced to debates between the principles of self-determination, and the imperatives of global distributive justice and human rights. However, the duties of group membership and universalist humanitarian duties are not the only lenses from which to understand the demands of justice in relation to nature. Focusing on environmental concerns from the point of view of specific places can help us think through some of these questions beyond current impasses. Moreover, focusing on place-specific rights and duties can help us think about other questions of political morality where geopolitical borders and the rights of national or ethnic collectives are an important constraint, but should not be the only consideration. This is the case with other aspects of sustainability and conservation, but also other problems that arise at the border, such as the rights of immigrants, taxation, commerce, and border control.