An introduction to the human right to water: Law, politics, and beyond

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Abstract
In spite of its official recognition by the United Nations in 2010, the human right to water remains a contested notion as illustrated by three main debates: (a) the definition of its scope, content, and indicators to monitor its implementation; (b) the conceptual appropriateness and effectiveness of the human rights approach in countering water services privatization; (c) the call for decolonizing or decentering the western, liberal, individualistic, and anthropocentric approach of the human right to water. The article introduces the main themes and insights within these debates and concludes by pointing at potential future research at their intersection, in relation to (a) other species' rights, (b) culture and religion, and (c) technology and infrastructure.

This article is categorized under:
- Human Water > Rights to Water
- Water and Life > Conservation, Management, and Awareness
- Human Water > Water Governance

KEYWORDS
human right to water, infrastructure, privatization, rights of nature, water culture

1 INTRODUCTION

Water is essential for human life. In spite of this self-evident consideration, constantly repeated in official publications, international campaigns, and political mobilizations, in the last 20 years there has been a heated debate about whether water should be explicitly acknowledged as a human right, and if this recognition can really make a difference in policies and practice. Scholars and activists have engaged in this discussion with representatives of international organizations, national governments, nongovernmental organizations, and the private sector. A landmark in the debate were the resolutions adopted in 2010 by the United Nations (UN) General Assembly, recognizing “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of the right to life and all human rights” (UNGA, 2010), and by the UN Human Rights Council on “Human rights and access to safe drinking water and sanitation” (UNHRC, 2010a).

Notwithstanding these authoritative acknowledgments, the human right to water remains a contested notion in relation to three main debates. First, in the realm of law and policies, the main questions revolve around the scope and the content of this right, as well as the instruments to ensure its monitoring and implementation. Second, from a political perspective, the discussion has focused on whether the human right to water represents an effective tool to ensure adequate access to water and participation in its governance, particularly in the context of services privatization and resources commodification. Third, ethical,
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philosophical, ecological, and epistemological considerations have questioned the Western, individualistic, liberal, and anthropocentric approach informing the human right to water. This article introduces the main themes and insights within these three debates, pointing to potential directions of interdisciplinary research at their intersection, exploring the human right to water in relation to (a) the rights of nature and other species; (b) cultural and religious stances, and (c) technology and infrastructure.

2 | THE HUMAN RIGHT TO WATER IN LAW AND POLICIES: SCOPE, CONTENT, AND INDICATORS

Water is not explicitly mentioned in the International Bill of Human Rights, the keystone of international human rights law composed by the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social, and Cultural Rights (1966). At that time, environmental concerns were not at the top of the international agenda. However, a few decades later this unintended void let scholars and activists with the task of arguing for the existence of the human right to water, justifying its moral and legal foundations, and advocating for its explicit recognition (Bluemel, 2004; Fantini, 2005; Gleick, 1998; McCaffrey, 1992) also by clarifying its definition and scope (Cahill, 2005) and emphasizing its added value in addressing major water problems (Langford, 2005). Scholars' debates interwove with developments in different legal systems. Explicit reference to water within international human rights instruments firstly materialized in the Convention on the Elimination of All Forms of Discrimination Against Women (1979, Article 14.2 on adequate living standards of women in rural areas) and later in the Convention on the Rights of the Child (1989, Article 24.2 on the right to health). At domestic level, the human right to water has been enshrined in national constitutions, for instance in South Africa (1996) or Uruguay (2004) where it was upheld through a national referendum.

Compilations of national and international legal instruments supporting the right to water (Centre on Housing Rights and Evictions, 2007), or UN documents clarifying its content (United Nations Office of the High Commissioner for Human Rights, 2010) provide an indication of the multiple dimensions of the human right to water: as individual right it intersects with other social and economic rights such as health and food; as collective right it has been linked to the right to development, to participation in cultural and political life, or to indigenous people's right to self-determination in the use of natural resources according to their traditional practices and spiritual beliefs; as environmental issue it addresses both present and future generations' rights. This complexity challenges the consensus around a universal definition and common understanding on the human right to water. Within the UN system, two milestone events paved the way for advancement towards such consensus. The first was the adoption in 2002 by the UN Committee on Economic, Social and Cultural Rights of General Comment 15, acknowledging that “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights” (UNCESCR, 2002), clarifying its normative content, and identifying states parties’ and nonstate actors obligations. The second milestone was the appointment in 2008 of a UN Special Rapporteur on the human right to safe drinking water and sanitation. These developments lead to the clarification of the normative content of the human right to water and to the adoption of the resolutions by the UN General Assembly and Human Rights Council recalled above. As affirmed in those texts, the UN now recognize that “the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living” (UNGA, 2010). Such official recognition did not pass uncontested: the General Assembly resolution was not adopted by consensus, as the US called for a vote on it and abstained together with other 43 countries, including Canada, Japan, Australia and several European and African countries, for procedural or substantial reasons.

In clarifying the meaning of affordability, accessibility, availability and quality, the work of the UN Special Rapporteur has investigated the implementation of the human right to water at the intersection of institutions (governance and management models, including financing schemes and tariffs), physical characteristics (resource availability, infrastructures, typologies of services, and technologies), and processes (public participation, accountability, gender equality, nondiscrimination). One of the key message are the limits of merely infrastructural or supply-side measures to ensure the human right to water (Aleixo, Pena, Heller, & Rezende, 2019). The UN jurisprudence cemented consensus on the fact that from a legal perspective, when we talk about the human right to water we refer to access to water for personal and domestic uses, generally on an individual or household level. Water allocation and distribution for productive activities such as agriculture fall outside the scope of the human right to water and are usually referred to as “water rights.” In spite of this consensus, there are still discrepancies in the definition, with different wording—human right to water, right to access to water, right to safe drinking water,
A right based approach entails obligations, primarily by national and local governments (Jiménez & Pérez-Foguet, 2010), but also by nonstate actors and international organizations (UNCESCR, 2002), to respect, to protect, and to promote access to water for all people. Among the main mechanisms to hold the duty bearers accountable, there has been the development of indicators (Roaf, Khalfan, & Langford, 2005) like those of the WHO-UNICEF Joint Monitoring Program on drinking water and sanitation, and indexes such as the Wash Performance Index (Meier, Cronk, Luh, Bartram, & de Albuquerque, 2018) to compare the performance of different states or to assess a country’s performance throughout time (Luh, Baum, & Bartram, 2013). The UN Sustainable Development Goal (SDG) n. 6, asking states to “ensure access to water and sanitation for all”, can be considered itself as a process indicator (Schiff, 2019), especially if considered that the human right to water is among the few rights explicitly mentioned in the 2030 UN Agenda for Sustainable Development (UNGA, 2015). The efficacy of these measurements has been questioned by those calling for more sophisticated indicators on governance (Anand, 2007) or capacity (Schiff, 2019). A more radical critique points at the need to reflect on the performance of numbers in terms of manufacturing reality (Ballester, 2014), and to look beyond them by foregrounding how politics and uneven power relations impact on the enjoyment of the human right to water.

3 THE HUMAN RIGHT TO WATER AND THE POLITICS OF WATER PRIVATIZATION

Alongside its legal implications, the debate on the official recognition of the human right to water has a significant political dimension, linked to the discussion on whether water should be considered as human right or economic commodity, and consequently on the role of public and private actors in its management. This debate has been triggered by the fact that the initial reference to the human right to water in international declarations such as the first UN Conference on Water in Mar Del Plata (1977) later become subordinated to the acknowledgment that “water has an economic value in all its competing uses and should be recognized as an economic good” and that only “within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price” (Dublin Principles on Water and Sustainable Development, 1992). Hence, the reference to the human right was later replaced by more ambiguous expressions, considering water as “human need” (Second World Water Forum, The Hague, 2000) or “basic requirement” (United Nations, 2002).

Activists responded to this shift as the attempt to legitimize a greater role for the private sector in water management, advocated by transnational corporations, international financial institutions (World Bank, International Monetary Fund), professional organizations and fora like the World Water Council and the World Water Forum. Thus, at the end of the 1990s the conflicts for the explicit recognition of the human right to water at the international, national and local scale, become a worldwide struggle against the privatization of water services. Given water symbolic power, this battle further surged to a paradigmatic struggle against neoliberal policies and the commodification of life and nature (Barlow, 2007; Petrella, 2001; Shiva, 2002). The main question prompted by two decades of struggles can be summarized as follow: is the human right to water the most appropriate and effective tool to counter the privatization of water services?

From a technical point of view, the human right to water is not incompatible with privatization: Under international law, acknowledging a human right does not entail any prescription on the political or economic regimes that need to be put in place to promote that right (UNCESCR, 1990). Consequently, General Comment 15 sets standards and obligations in terms of process, conduct and results (Langford, 2006), with primary responsibility of the state to ensure that adequate regulatory framework are in place to ensure that “where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water” (UNCESCR, 2002). Similarly, the UN Special Rapporteur has clarified the private sector's obligations and responsibilities that derive from the human right to water (UNHRC, 2010b), as well as the meaning and standards of affordability for regulating and monitoring purposes, discussing the human rights implications of financing mechanisms, tariffs or disconnections, but without blessing any specific governance regime (UNHRC, 2015).

This limitation led geographer Bakker (2007) to challenge in a seminal article the human rights approach as the most effective conceptual tool and activist strategy to counter water privatization. She concurs that the human rights approach is
compatible with private sector and market oriented management of water supply systems, and that the human right to water risks of becoming an empty signifier, being diluted into heterogeneous claims, or deprived of its transformative charge by the technical language of the UN and its global development goals. To sustain these thesis it is often recalled that, after initial skepticism, even private sector advocates like the World Bank or transnational corporations started to refer the human right to water in their official documents and corporate social responsibilities initiatives (Russell, 2011; Salman & McInerney-Lankford, 2004). Bakker also argues that anti-privatization strategies “centred on concept of the commons are more conceptually coherent and also more successful as activist strategies” (Bakker, 2007).

While acknowledging these critiques, other scholars have argued that the human right to water still holds political relevance in the fight against privatization, calling for a more situated understanding of local struggles and for coalitions among scholars, activists and politicians in the name of environmental and social justice (Harris, Rodina, & Morinville, 2015; Sultana & Loftus, 2015, 2019). These analysis build also on successful struggles against privatization at national—i.e., Colombia, South Africa (Mirosa & Harris, 2012)—or transnational level, like the European Citizens Initiative “Water is a human right” (Bieler, 2017). Practice also indicates that often the human right to water and the commons are mobilized not as alternative but rather as complementary concepts and strategies (Perera, 2015), allowing to build vast coalitions, including trade unions, environmentalists, local authorities and religious actors among others (Carrozza & Fantini, 2016). This is not surprising as the human right to water discourse for instance clearly resonates with Catholic Social teaching (Zenner, 2018) inspiring Catholics’ participation in anti-privatization movements (Fantini, 2014).

Sharp in principle, dichotomies such as human right versus commodity, or public versus private, get often blurred when translated into policies or mediated by existing technologies and infrastructure. Yates and Harris (2018) have analyzed how free basic water packages inspired by the human right to water intersect with neoliberal logics of efficiency and cost recovery, generating hybrid and contradictory regulatory landscapes. Similarly, the remunicipalization processes that aim at bringing back public control of water and ensuring participation in its management (McDonald & Swyngedouw, 2019; Pigeon, McDonald, Hoedeman, & Kishimoto, 2012) often clashes with the complexities of urban water provision as capital and technology intense industrial service.

4 | WESTERN, INDIVIDUALISTIC AND ANTHROPOCENTRIC: BEYOND THE HUMAN RIGHT TO WATER?

Epistemological, ontological and ethical considerations developed in the fields of anthropology, political ecology, critical geography, and feminist studies, have advanced critiques to the human right to water’s implications in terms of how we know, understand, and distribute water, pointing at the need to decolonize or decenter its Western or Eurocentric, individualistic, liberal, and anthropocentric approach (Bakker, 2007; Neimanis, 2014; Parmar, 2008).

A first critique challenges the universality of human rights—not only when applied to water—by pointing at the fact that they stem from a specific philosophical and political tradition, that of 18th century European Enlightenment and liberalism. Thus the human right to water would promote a Western way of understanding and managing water, whose pertinence to the rest of the world should be scrutinized. On the one side there are those emphasizing the universal meanings and common understanding of water shared across places, times and cultural traditions—associating water to life and calling for its equitable sharing (Strang, 2005) as for instance in the case of three monotheistic religions of Islam, Christianity and Judaism (Lefers, Maliva, & Missimer, 2015). On the other side stand those advocating for a relational approach to water justice (Boelens, Perreault, & Vos, 2018) acknowledging that moral and political ideas about just distributions of water and its value are plural, dynamic and always situated (Zenner, 2019). In its Principles on Valuing Water, the UN High Level Panel on Water has attempted to hold together universality and situatedness, acknowledging both that “Valuing water means recognizing and considering all the diverse benefits and risks provided by water, and encompassing its economic, social, and ecological dimensions as well as its diverse cultural and religious meanings” and that “Universal access to safe drinking water and sanitation is a fundamental human right” (UNHLPW, 2016). However what looks coherent on paper might create dissonances in practice. Concepts like remunicipalization or initiatives like the SDGs, underpinned by the human right to water, tend to promote governance and infrastructures models based on blueprints historically developed in Europe or North America—i.e., access to water through connection to centralized piped networks—that might not work everywhere to ensure inclusive and universal access to water (Kooy, Walter, & Prabaharyaka, 2018). As alternatives to fulfill the human right to water, researchers have started to explore new forms of partnerships among water operators (Beck, 2019), as well as the role of unconventional sources like bottled and packaged water³ or informal vendors (Wutich, Beresford, & Carvajal, 2016).
A second critique—linked to the first—points at the individualistic approach that informs human rights, overlooking collective rights and ways of accessing and enjoying water. It applies in particular to the recognition of indigenous peoples’ distinctive claims, knowledge and management of water, among other natural resources. Such claims have also been framed in human rights terms: the UN Declaration on the Rights of Indigenous people acknowledges their right “to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources” (art 25) and “to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired” (art 26.2). While significant in legal and political terms, this frame might create frictions in practice. Indigenous cosmologies often entail claims about the place of human beings within nature and legal and metaphysical sovereignty over natural resources that are incommensurable with the human rights approach and can hardly be diluted within it.

This leads to the third critique, on the anthropocentrism of the human right discourse describing water primarily as resource essential for human life and well-being, and neglecting the rights of other species, as well as the right of nature or water itself (Neimanis, 2014). From a utilitarian perspective, the exclusive focus on water for human consumption might put in danger the very ecosystem that should sustain the right to water. From a legal perspective, human rights' anthropocentrism might be challenged by the recent trend of granting legal rights and legal personality to rivers, like in the case of the Whanganui in New Zealand, the Ganges and Yamuna Rivers in India, and the Rio Atrato in Colombia (Eckstein et al., 2019).

The three critiques point at the urgency to rethink the human right to water, breaking the artificial boundaries between nature and society, and reconsidering the place of humans in the World. Such intellectual and political project seems particularly relevant also in relation to the Anthropocene debate on human activity becoming the dominant agent in transforming the Earth (Kotzé, 2014).

5 | CONCLUSION

The intersection of the debates illustrated above opens up plenty of avenues for future research on the human right to water. Such richness is exemplified by the following three crosscutting themes, which of course do not exhaust the list.

First, within the debate on legal pluralism in water systems and governance, it would be interesting to further explore the relation between the rights of nature and human rights law. Do water or water bodies have rights too? What about other species' right to water? How to address the conflicts that might arise between different sets of rights? From a political point of view, who is legitimated to speak on behalf of nature and in which fora? How does this affect distribution of resources and voice between different human and nonhuman actors? From an epistemological point of view, it can be worth to explore how different ways of knowing and relating to water resonate or clash with the human rights approach.

Second, understanding the human right to water within different cultural and religious stances can offer a fresh contribution to discuss universal claims about the human nature versus particularism and situatedness within debates and practices of water justice, water ethics and valuing water. In terms of scope and definition, do world religions share a common view about water being a human right and the moral obligations stemming from it? From a political perspective, which role do spiritual believes, theological considerations or religious actors play in struggles for the human right to water? From an epistemological point of view, how different cultural and spiritual traditions hold together people needs and rights with the care and custody of environment and other species: Does this reinforce or challenge the anthropocentric approach?

Third, the increasingly scholarly attention to the socio-political dimension of infrastructure and technology could also inspire meaningful reflections on the human right to water: How does technological innovation redefine the content of this right and the way we measure it? How do water infrastructures inform governments' techno-politics or people's understanding and practices of water citizenship? Can the focus on the contingency and materiality of unconventional everyday practices of access to water, such as packaged water, bring new ideas in planning and policies to decenter the human right to water and ensure universal access?

Ultimately, all these questions clearly point at the interdisciplinary program of research and action needed to better understand the content and the scope of the human right to water at the intersection of politics, infrastructures and ecosystems. The role of science and its different disciplines in knowing, managing and distributing water, as well as the political and ethical implications of this knowledge, are topics that should interrogate every researcher or student caring about the human right to water.
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CONFLICT OF INTEREST

The author has declared no conflicts of interest for this article.

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ENDNOTES

1 The first Special Rapporteur was the Portuguese lawyer Ms. Catharina de Albuquerque (2008–2014), followed by Leo Heller, former professor of the Department of Sanitary and Environmental Engineering at the Federal University of Minas Gerais, Brazil.

2 The full record of the vote and its motivations are available in the minutes of the General Assembly plenary meeting (UNGA A/64/PV.108); https://undocs.org/en/A/64/PV.108

3 Packaged water refers to drinking water usually packaged and hawked in cellophane or plastic bags.

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