



# The Human Right to Water: Critiques and Condition of Possibility

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This Advanced Review analyzes recent debates over the human right to water. While accepting critiques from scholars that the right to water risks entrenching unequal and unjust forms of water governance, the paper nevertheless takes a more sympathetic view of the potentials within struggles for the right to water. Recognizing that such struggles can take many different forms, we urge scholars to adopt more nuanced and geographically sensitive analyses of the conditions out of which movements for the right to water have emerged. We reject the claim that the right to water depoliticises struggles for water justice and we instead find conditions of possibility for deeper and more lasting changes to water governance within struggles for the right to water. © 2015 Wiley Periodicals, Inc.

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## INTRODUCTION

Is the struggle for the right to water a progressive one that will improve conditions for those lacking access to water? Or is it likely to advance the interests of the wealthy and powerful to the detriment of those most needy? This advanced review addresses this dilemma, one that the global water justice movement is now being forced to confront. The review covers the scholarly literature—we, after all, remain academics—but our hope is to speak to an audience well beyond the privileged few. We will argue that hope for the water justice movement lies not in winning a scholarly battle—a dramatic duel over the pages of *WIREs Water*—but in being better able to learn from existing struggles over access to water and the contradictory ways in which the right to water is often mobilized within these. In making this claim, we draw inspiration not only from the activists we have met and worked with but also from Antonio Gramsci's writings, animated as they are by a sobering intellectual pessimism and combined with an unflinching

belief in the possibility of subaltern groups to build on the fragmented shards of their own common sense. While neither romanticizing nor homogenizing this common sense, Gramsci saw the starting point of any critical analysis as necessarily lying therein. Although struggles for the right to water can be contradictory, often motivated by a range of different concerns, and often ineffectual in their ability to transform conditions for the better, our own experience of working with disadvantaged groups in Bangladesh and South Africa—along with activists from Asia, Africa and Latin America—demonstrate that the call for the right to water springs from an emergent critique of water injustice. This emergent critique contains the germ from which a broader movement might begin to grow. Rather than rejecting the right to water as inherently problematic, we therefore call for an approach that learns from struggles to achieve this right, and which is inspired by what Gramsci refers to as the kernel of good sense at the heart of the contradictory framings of common sense. We will begin by reviewing the institutional background to the right to water before moving on to what we consider the more important situated understanding of struggles for water justice from which the call for the right to water has emerged. Throughout, our focus is less on the legal approaches to the human right to water—on which there is a rich literature already.<sup>1</sup> Instead, we focus on

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the ways in which activists struggling for water justice are currently grappling with the right to water and the political possibilities that might be found within such struggles.

## WATER RIGHTS AND WRONGS

Although recognizing the right to water was in part formalized in the UN Committee on Economic, Social and Cultural Rights General Comment No. 15 of 2002,<sup>2</sup> and embodied in the 2005–2015 UN International Decade for Action on ‘Water for Life’, it was not until July 2010 that the UN General Assembly finally adopted a resolution that ‘recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights’<sup>a</sup>.<sup>3</sup> Shortly thereafter, in September 2010, the UN Human Rights Council further confirmed that it was legally binding upon states to respect, protect, and fulfill the right.<sup>4</sup> These major international policy shifts have been heralded by many as a move in the right direction toward addressing global water inequities. Many commentators recognize how they spring from mobilizations and struggles in a range of locations.<sup>5–13</sup>

However, in recent years, some scholars and activists have sounded a note of caution, bringing attention to the challenges in materializing this right, as well as questioning what the right to water will really mean for the politics of water governance, equity, and justice.<sup>14–16</sup> Some build on a longer tradition of left critique of the notion of rights.<sup>17</sup> Rights are seen as inherently individualizing and, in the case of human rights, they are seen to neglect the economic injustices that permit the continued violation of people’s basic dignity, building instead on a liberal democratic framework that fails to recognize the reproduction of unequal power relations within capitalist societies. In spite of these limitations, given the moral weight behind calls for the right to water, few would argue, unequivocally, against it: perhaps few would dare. Nevertheless, in what appears to be an emerging consensus around the right to water, much of the critical power within the current movement has been negated. The right to water thereby risks becoming an empty signifier used by both political progressives and conservatives who are brought together within a shallow postpolitical consensus that does little to effect real change in water governance. The situation is not helped by the conflation of quite different terms as the right to water is often collapsed into broader discussions of ownership of ‘water rights’ and more ecocentric conceptions of ‘the rights of water.’

While many see the rights discourse as addressing broader issues of justice, others warn it can subvert water equity if efficiency and full-cost recovery are prioritized.<sup>18–20</sup> Since the Dublin Principles of 1992 that, in part, framed water as an economic good, concerns have been raised that full cost recovery will further exclude the poorest from water provision. Commercialization, privatization, and commodification of water have resulted in a situation where those who can pay for water have it readily, leaving many without affordable or accessible water sources. The bulk of such critiques have focused on the privatization of municipal utilities, the growth of the bottled water industry, and the trading of water as a commodity, all of which have contributed to the calls for water to be held in the commons and as a public trust (for greater detail, see Refs 7, 8, 11). Pro- and antiprivatization debates have often been framed in terms of commodification-versus-rights, as critical attention has been focused on how and why certain modalities are followed and with what outcomes vis-à-vis financing water provision as well as the impacts on the lives of vulnerable groups.<sup>21,22</sup> Many continue to see the rights discourse as necessarily addressing broader issues of justice in the struggle against the marketization of water provision. Overall, concerns continue to exist over the role of the market, private sector, and for-profit provision for its potential disruption of the goals of water justice within the struggle for the right to water. Perhaps more importantly the discourse of the right to water has been appropriated and co-opted by those promoting full cost recovery, leading to some awkward and problematic alliances, which echo earlier liaisons between the environmental movement and proponents of full cost recovery.

Nevertheless, ever since the emergence of calls for the right to water, critics have shown how some of the demands can obfuscate as much as they clarify. Some have made the point that major corporate interests are among the more unlikely—and yet most vocal—supporters of the right to water, viewing the latter as a means for greater expansion of business opportunities: in this case a struggle to achieve fair access to water is in danger of producing its own nemesis.<sup>21,1,23,24</sup> Thus, when in 2010, Catarina de Albuquerque (the UN’s Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation) stated that there were no prescriptive models of service provision,<sup>25</sup> concerns emerged whether this opened the floodgates to further commercialization within the water sector. Such concerns are real, as rights discourses do not necessarily preclude marketization, privatization or dispossession. This, in turn, as we demonstrate later,

underscores the need to rearticulate debates with political questions around democracy, justice and equity.

It would be naïve in this context to assume that private sector participation and the influence of for-profit water industries will ever be negated by achieving legal recognition of the right to water: indeed the response of the global water industry to the UN's resolution is somewhat disconcerting. Immediately following the 2010 UN resolution, *Global Water Intelligence* took the opportunity to reassure investors that the resolution represented a 'massive defeat for the Global Water Justice Movement'.<sup>26,27</sup> The reasoning behind this claim was that the right to water remained perfectly compatible with private sector participation and contained no obligation on utilities to provide subsidies to poor communities. Therefore, if rights frameworks can outline the basic issues and provide legitimacy to pursuing equitable water allocation, they do not guarantee that there will be fair implementation.<sup>1,28</sup> Indeed the right to water says little about how people might be provided with water. And equally little is stated on who will provide the service that ensures the right.<sup>29</sup> While learning from 'good practices' can become part of a new dialogue, it is imperative to be alert to problematic implementation plans or policies. Without imputing such critical meaning, even in contexts in which national governments and the international community have recognized the right to water, the achievement of this right could fail to achieve equitable access to safe water.<sup>30</sup> Simultaneously, it is vital to question the conflation with polyvalent and contentious notions of development, participation, community, empowerment, and sustainability, since water policies often invoke such terms.<sup>31,32</sup> While such notions can enable the discursive thrusts to push for more equitable water provisioning, a critical eye has to be maintained on what these translate to on the ground. A reflective praxis in materializing the right to water thus becomes essential.

The move toward making the right to water legally binding means that concrete action on the policy imperatives becomes important for institutions and nation-states; however, it also highlights the challenges inherent in operationalizing the universal call for a right to water. Clearly the legal instruments, institutions, processes, and outcomes need to be critically and carefully analyzed contextually.<sup>33,34</sup> Factors such as availability, accessibility, acceptability, appropriateness, affordability, and quality are often highlighted in policy overtures as being already present in discussions over the right to water (e.g., Ref 35), but these cannot be assumed or taken for granted, rather they have to be negotiated and realized in each context.

The debates around the right to water underscore the need for a greater focus on power relations in decision-making about water and on how water governance is enacted across sites and scales. Recognizing the right to water signals that authorities can be held politically and legally accountable, enabling those who are denied water to have means to contest and struggle for water. Opportunities can be created for marginalized communities and peoples to enter into (often elitist) decision-making processes of water policies, management systems, and institutions. Multiple actors and processes can converge to rearticulate the specificities of a context, but embody the general concerns of equality, social justice, and deep democracy.

## JUSTICE, POLITICS, AND STRUGGLES

Writing about one instantiation of the global water justice movement, Barlow<sup>11</sup> states that it consists of 'environmentalists, human rights activists, indigenous and women's groups, small farmers, peasants, and thousands of grassroots communities fighting for control of their local water sources'. According to her reading, participants in this movement believe that water is the common heritage of all humans and other species, as well as a public trust that must not be appropriated for personal profit or denied to anyone because of inability to pay'. Calls for greater public reinvestment, accountability, transparency, monitoring, and regulation are often built into goals of the water justice movement, as is an implicit recognition of the value and sanctity of water for both society and nature. Although only one such reading of the movement and her comments can be read as concerned with a particular historical moment, Barlow<sup>11</sup> points out that critical attention is needed around concerns of displacement, mismanagement, and capture of water, with continued attention to issues of power and control. Such power relations become constitutive of the re-evaluations of the priorities, visions, and principles that guide water governance in any context. In the goals of democratizing water regulation, management and policy-making, a reflexive practice thus becomes imperative. Such an underscoring of the need to deconstruct given systems and engender critical debate remains crucially important to the water justice movement. To this end, Barlow views the UN's recognition of the right to water as an important moral statement that prioritizes water for life and serves as a way to begin challenging the view of water as a commodity as well as its valuation as a purely economic good.

We are sympathetic to such epistemological and political concerns. However, we are also acutely aware

of the dangers of terminological slippage, of the banalities of some claims to the right to water, and of the dangers of deliberate or naïve political misappropriation of the water justice movement's gains. Rather than rejecting struggles for the right to water, nevertheless, such difficulties and ambiguities can be seen as the starting point for developing a more sound political analysis. Rather than be reactive to the efforts to co-opt the struggle for the right to water, we highlight the necessity to be pro-active in defining what this struggle *could* mean and how it might be taken forward in a far broader transformative politics. Above all, we seek to build on the immanent potentials in local, national, and global struggles for the right to water, thereby enhancing understanding and insights into the ways in which a global movement is influenced and shaped by local political economic and cultural dynamics. We encourage elucidations of how universal calls for rights articulate with local historical geographical contexts, and the barriers and potentials that emerge from this. In recognizing the importance that water activists place on the concept of rights, we seek to engage productively with, rather than dismissing, the human right to water. Rather than foreclosing possibilities, it is imperative to seek out and explain critical opportunities. As Harvey<sup>36</sup> has noted, the maelstrom of contradictions opened up by the question of rights can serve as a prelude to a far more radical political project. We thus call for a geographical sensitivity to calls for a universal right to water: within this, we see the right to water as one necessary but insufficient moment in the struggle to achieve equitable access to water for all.

Such an approach requires engagement with philosophical framings (e.g., Refs 37–39), the role of law and legal frameworks (e.g., Refs 40–42), and the question of property relations and civil society (e.g., Ref 43). In addressing such questions, scholars underscore the theoretical paradoxes and pitfalls that influence debates over a right to water and over water governance more broadly. Similarly, there is a need to ground theoretical debates within given historical and geographical contexts. In each context activists and policy-makers have sought to define, through processes of negotiation and contestation, what is meant by the right to water. Transforming the 'right to water' from an empty signifier to a powerful tool for mobilizing from the grassroots, such struggles have gone well beyond the new rights-based approaches to development. Indeed, they can be seen as at the cutting edge of a new networked politics crossing geographical locations and narrow disciplinary concerns (e.g., Ref 44) as well as different ways of relating to water (e.g., Ref 42). Often building on the paradoxes that

are opened up within rights-based discourses, scholars, and activists have sought to give real meaning to the right to water while broadening what is seen as a democratic core in the movement for water justice. In South Africa, e.g., ever since the country's new constitution was scripted in 1996, activists in Johannesburg, Durban, Cape Town, and other cities have sought to use 'the right to water' as a means of defining a new direction for the ANC government's postapartheid policy-making (e.g., Refs 45–47).

Elsewhere, scholar-activists are, in similar ways, seeking to reclaim the ground on which the right to water will be defined in coming years, applying their critical tools in order to wrest it away from a narrowly defined, technocratic realm. We suggest several areas around which future debates might find some common ground. These build on the following points. First, there appears to be a crucial desire to ensure that the demand for the right to water does not descend into meaningless technical discussions. If the call for the right to water is to become a genuinely political moment, we need to consider how it might acquire a material force within the world. Secondly, and this is perhaps implicit throughout what has been said, we need to consider ways in which specific struggles for the right to water work with, are shaped by, and influence global struggles for this right. Thirdly, if activists succeed in reclaiming the right to water from more technocratic interpretations, the struggle might mean more than simply achieving access to sufficient volumes of safe water. Potentially, such a struggle would mean achieving the right to be able to participate more democratically in the making of what Linton,<sup>39,48</sup> among others, terms the 'hydrosocial cycle'<sup>b</sup> (see also Ref 49). In this sense, the right to water necessarily implies a remaking of our relations with human and nonhuman others.

Thinking through the challenges of materializing a right to water necessarily involves being attentive to a range of different social relations (cf. Refs 50, 51). For instance, the way that the right to water coalesces around, intersects with, and transforms or challenges other rights (e.g., gender rights) is crucial to the ongoing struggles over the right to water.<sup>50,51</sup> The impacts of water insecurity and injustices are clearly gendered, where women and girls in much of the global South spend countless hours fetching water for productive and reproductive needs. A gendered division of labor, as well as gendered livelihoods, wellbeing, and burdens are deeply affected by water quality, availability, provision systems, and policies (cf. Refs 52, 53). Gender intersects with other axes of social difference (such as class, race, caste, disability, etc.) whereby water crises can exacerbate socially



constructed differences and power relations. Similarly, social movements and struggles over the right to water are gendered, articulating with contextual social differences that shape the nature and outcomes of struggles.<sup>54,55</sup> Historically and geographically situated practices that are defined in relation to water (from the politics of mega-dams to the practice and politics of collecting water) influence everyday life in complex ways. Multiple, situated and place-based struggles can link and contribute to transnational movements (cf. Refs 56, 57), where difference and diversity are constitutive of the broader calls of equality in the right to water.

### The right to water: floating signifier, bureaucratic rationality, or political possibility?

As we have alluded to, most people will agree that the right to water is, in principle, a good thing; however, the concept means quite different things at different times and in different places.<sup>58</sup> Thus, the key challenge is to be able to fill this empty signifier with real political content. Such content must surely build on the work of those currently seeking to achieve fair access to water and, if water justice activists are to define this political content, it will involve reclaiming ‘the right to water’ from the technocrats who are currently seeking to write their own script. Instead, activists need to ensure struggles for the right to water are shaped by the efforts of those for whom it offers a long-fought for equitable share of water. Here, we might think of the veterans of the Cochabamba Water Wars,<sup>59</sup> the cosmopolitan subalterns in a variety of contexts,<sup>44,60</sup> the constitutive role of subaltern struggles for indigenous rights to water,<sup>42</sup> efforts to reshape broader geopolitical configurations,<sup>61</sup> and also to challenge the criminalization of efforts to subvert the state hydraulic paradigm.<sup>62</sup> Perhaps most starkly, the South African example shows the dangerous ambiguities remaining if we leave this signifier floating. As scholars such as Bond<sup>46</sup> and Clark<sup>45</sup> have demonstrated, the constitutional guarantee of the right to water in South Africa remains hollow for many of the residents of informal settlements and townships where new forms of violence (ranging from the perversely titled self-disconnection, to the aggressive installation of flow-limiting devices) have accompanied the victory of activists in securing their rights (see also Ref 63).

In seminal contributions to these debates, Bakker,<sup>15,37</sup> elaborates on the pitfalls in a growing movement for the right to water. Perhaps the key point Bakker makes is similar to Naidoo<sup>58</sup>: the right to water has such a shifting meaning that it allows

for agreement between anyone, from large multinational water companies seeking to bid for concession contracts in cities of the global South to activists within those cities fighting the privatization of their municipal services. As argued by Bustamante et al.,<sup>59</sup> this debilitating consensus can imply a postpolitical moment. Working with the conceptual tools that have emerged in recent post-Marxist debates, as well as the grounded realities of activists’ disappointments with the Bolivian government’s continuing concessions to mineral extraction industries, these authors considerably deepen our understandings of the postpolitics of the right to water. Turning to the French philosopher Rancière,<sup>64</sup> they challenge the stable consensus through which all agree about the necessity of the right to water and instead seek a disruption of the stable ‘police’ order—the ‘natural’ logic through which people and resources have come to be governed. Instead they see hope in shifting from a politics of demands, directed at, and to be granted by, the ‘natural’ order, to one that actively seeks to transform this order.

Bustamante et al.’s critique of the postpolitics of the right to water echoes that of others who have expressed concerns over the contradictions within the climate justice movement. On the one hand, climate change is receiving an unprecedented level of attention within political agendas, whereas on the other hand, the shallow consensus that has emerged serves to disavow any genuinely political moment through which lasting change might be effected.<sup>65</sup> Swynge-douw makes the claim that there is a perverse desire for the apocalypse amongst climate change activists and at the same time a fetishization of CO<sub>2</sub>. ‘Debate’ over climate change therefore involves reconciling oneself to the given order of things while operating on an increasingly limited terrain. If we are to read the struggle for the right to water in the same terms, the remarkable international mobilization that resulted in the UN General Assembly adopting a resolution on the right to water can be seen as a quintessentially postpolitical moment. In the same way, Copenhagen, Kyoto, Cancun, and the endless list of high-profile meetings by global leaders over climate change at Conference of Parties (COP) meetings represent the nadir of politics for the climate justice movement. Such an assessment of the UN resolution merely appears to be confirmed when judged alongside the reassurance offered to investors by *Global Water Intelligence* that water governance will continue as normal: in what appeared its moment of victory, the global water justice movement was, paradoxically, defeated.

However, the paradox of such a claim—that the right to water disavows the truly political—is that in

its efforts to criticize processes of de-politicization it focuses an unnecessarily large amount of attention on precisely that of which it is so critical. The COP negotiations, although condemned as postpolitical, come to represent the climate justice movement as a whole. The UN resolution, and the Bolivian, South African or Uruguayan constitutional guarantees, while similarly condemned as postpolitical, are seen as the culmination of a process of de-politicization. Nevertheless, what if we were turn our analyses *away* from these more high-profile manifestations of the right to water statements and instead look to the efforts of those seeking to achieve meaningful change in the provision of water and the ways in which the right to water becomes a focal point for *their* mobilizations. Behind the technocratic fetish of the water point lie relations between providers of water and those lacking access, between residents of informal settlements or remote village and their local authorities, between private and public. The right to water serves as an entry point into reconfiguring these relationships, a way beyond the fetish of the water point or the transformation of local waters into global money. Indeed the simple demand: 'I demand my right to water' opens up a range of different social relations that can be learnt from, and an emergent critique that might be fostered.

This is not to simplify or reduce the complexity in such struggles. What appear 'common sense' demands for the right to water are shaped by a range of different understandings. From *buen vivir* in Ecuador and Bolivia, to the movement against apartheid in South Africa, the postwar social contracts in the countries of Western Europe, the recent agitations in poor communities of color against water shut-offs in Detroit Michigan, or the collectivizing for legal water connections in the slums of the global South, the basis for a claim to one's right to water is influenced by a range of factors. Struggles for democracy and against profit-motivated control of water services add further complexity. But this complexity should be our starting point. It demonstrates the fatuousness of the claim that the movement for the right to water is already postpolitical or inherently de-politicizing. Recognizing the fluidity and openness of the struggle for the right to water also draws attention away from the fetish of UN resolutions, constitutional guarantees and demands an approach in which the researcher acts as a translator working between different contexts and scales in order to reconfigure sets of social relations. The signing of an agreement is thus far from the end point of a struggle for the right to water, and it is the beginning of a further process of translation. For Gramsci,<sup>66</sup> this act of translation was at the heart of his belief that the kernel of good sense, residing in the fragmented world of

common sense, might be transformed into philosophy of praxis capable of creating a new reality.

Gramsci might appear a curious fellow traveler in such a struggle. What might this Sardinian have to offer in understanding the political terrain of contemporary water politics? First, Gramsci draws our attention to situated practices and the forms of critical knowledge and practice that might emerge from these. This suggests an approach that might draw similar conclusions about the postpolitics of the UN General Assembly's resolution on the right to water but would never see this as an end point and would, instead, return to the situated practices from which the right to water emerges as a call for a better world. Second, Gramsci develops an approach deeply sensitive to historical and geographical specificity but also attentive to the forms of solidarity that might emerge across such difference. Building a different kind of global water justice movement from the bottom up rather than from the technocrat down necessitates attending to such questions. And finally, Gramsci recognized the contradictory forms of common sense, always understood in the plural, out of which people make sense of their own situation. If the sense of injustice out of which the call for the right to water is part of this contradictory terrain of common sense it remains necessarily a vital resource for building a transformative movement.

The key challenge in this respect is to ensure that the right to water comes to refer to a genuinely *political* activity, one through which we might rethink the very foundations on which the world is sensed, made sense of, and lived. A sensitivity to both history and geography are also needed if the right to water is to be able to achieve a politics that works on a global stage without eliding the very differences and specificities that have animated struggles in radically different contexts: we need to consider how 'militant particularisms' might be effectively translated into global ambitions. In many respects, one of the most inspiring aspects of the call for the right to water has been its ability to move across, while also disrupting, a scalar politics. If Bakker<sup>15</sup> is partly right in suggesting that struggles for water justice have been somewhat less effective than anti-dams campaigns, appearing less networked and only weakly articulated within global campaigns, this must also be viewed alongside the remarkable mobilization that resulted in the UN resolution in July 2010. Of course, the claim can be made that the resolution itself only gained the consent of differing groups because it had been emptied of any real political content. However to make such a claim is to turn one's back on the inspirational mobilizations that were able to acquire such a force in

2010. A broad coalition of geographically disparate activists, scholars and politicians managed to coalesce in a struggle to make a truly international politics. It might appear a long shot to suggest that the right to water holds out the hope of remaking our world. But for many water justice activists, this is what makes the movement a truly political one. We have an obligation to build on such struggles rather than simply using them for our own intellectual debates. To this end, the goal is to continue the journey of intellectual and political projects that think through and materialize this right to water: understood as a political moment

and implying democratic participation in producing the flows of water and social power on which life itself depends.

## NOTES

<sup>a</sup> Although the resolution refers to sanitation, the focus in this study is solely on potable water.

<sup>b</sup> In Linton's<sup>6</sup> terms, this 'describes the process by which flows of water reflect human affairs and human affairs are enlivened by water'.

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