



PROGRAM ON  
WATER GOVERNANCE



EDGES

ENVIRONMENT & DEVELOPMENT:  
GENDER, EQUITY, SUSTAINABILITY

# Revisiting the Human Right to Water from an Environmental Justice Lens

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Final version: L. Harris, L. Rodina, C. Morinville (2015) Revisiting the Human Right to Water from an Environmental Justice Lens, *Politics, Groups and Identities Journal* DOI: 10.1080/21565503.2015.1080619

Citations of this work should use the final version as noted above

## TABLE OF CONTENTS

Abstract .....	1
Introduction.....	2
How Does the HRW fit With, or Exist in Tension With, EJ gGoals and Debates? .....	4
Towards Novel Pathways and Research Agendas .....	6
Bibliography.....	8

## ABSTRACT

In this essay we investigate the discourses around the human right to water (HRW) and the growing acceptance of the importance of this right in environmental justice agendas. We argue that there is a need to constructively engage in conversations about what the HRW should mean and how it should be realized. We see significant promise in the aspirational value of the HRW as well as the potential discursive and conceptual possibilities it opens up. The HRW has the potential to directly question conditions of water access and governance and thus to also highlight key social and environmental justice concerns. The HRW debate also enables us to unpack and scrutinize state-society relations around key environmental resources. For all of these reasons, we believe there is value in further debates around the HRW with the goal of imagining more socially just and environmentally sustainable water futures for all.

**Keywords:** human right to water; neoliberalization, environmental justice, water futures, water governance

## INTRODUCTION

Environmental Justice (EJ) issues have risen to the forefront of governance agendas over the past several decades. Previously considered marginal or even opposed to mainstream environmental goals, many non-governmental organizations and social movements now highlight social justice and equity as inherently linked to environmental concerns. As highlighted throughout this special issue, EJ concerns center on how particular populations (especially impoverished, racialized, or other marginalized groups) are affected by environmental conditions, as well as how different groups engage in struggles for access to natural resources or improved environmental possibilities – whether through protest, legal action or enhanced participation in governance (cf. Agyeman, 2008; Agyeman et al., 2002; Bullard 1993, Thompson and Nleya, 2010). Despite achieving some progress on these issues in varied contexts, EJ concerns continue to be relevant, as resource access remains highly unequal. As well, a number of environmental and political economic changes threaten to further aggravate some of these issues—whether due to climate change or ongoing privatization or commodification associated with neoliberalization processes.

Specific to water, it has been argued that the adoption of the Human Right to Water (hereafter HRW) in international discourses and institutions marks significant progress towards redressing inequalities (Perera 2014; Loftus and Sultana, 2012; Miroso and Harris, 2012). Yet, a number of cautions have also been highlighted. In one of the most pronounced critiques to date, Bakker (2007) questions the degree to which the HRW serves anti-privatization agendas given that there is no reason why private companies cannot be part and parcel of an HRW agenda (indeed, many companies have adopted the HRW discourse). In a similar vein, Parmar (2008) cites evidence that the HRW can be particularly hostile to the needs and goals of historically marginalized communities, including indigenous populations, particularly given the Western lineage and biases of focus on individuated rights. Mehta (2006) problematizes the HRW focus on domestic water, rather than livelihood needs, and also highlights problems with implementation that can leave marginalized communities with substandard access to safe and affordable water. Further critiques expose how technical framings of the HRW do not allow much room for social mediation or consideration of the often politicized on-the-ground realities and lived experiences of water access (Bond and Dugard, 2008; Goff and Crow, 2014; Rodina, 2013).

These arguments together demonstrate that environmental justice concerns might not be addressed, and may even be worsened, under the ‘guise’ of HRW. This risk is particularly salient when implementation is presented as, or assumed to be, just and impartial: consider the case of South Africa where constitutional guarantees of

HRW are in place, and yet evidence shows ongoing difficulties and inequalities in securing equitable, affordable, or safe access, especially for the most impoverished and marginalized citizens (Loftus, 2006; Mehta, 2006; Rodina, 2013).

Yet, the passing of the 2010 UN resolution<sup>1</sup>, as well as its adoption in a range of national constitutions, suggests that the HRW as a discourse and policy is here to stay. A number of water justice activists also clearly view the HRW as a potentially effective mechanism to make progress towards realizing the lofty goal of safe and affordable water for all, regardless of the ability to pay (Miroso and Harris, 2012). Politically, we find a need to be cautious regarding particular framings and implementation of the HRW. However, we also find clear evidence that the HRW has been effective, in some cases, to further access to resources for marginalized and underserved communities. In this dialogue essay, we side with Parmar (2008), Sultana and Loftus (2012) and others regarding the urgent need for ongoing conversations about the meaning, implementation, and political possibilities associated with the HRW.

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<sup>1</sup> (A/RES/64/292 of 28 July 2010; A/ HRC/15/9 of 6 October 2010)

## HOW DOES THE HRW FIT WITH, OR EXIST IN TENSION WITH, EJ GOALS AND DEBATES?

We make four primary points about the political potential of the HRW from an environmental justice perspective. First, in a context where there has been a documented increase in focus on marketization in the water sector (e.g., the Johannesburg summit of 2002, Goldman [2007], as well as strong discourses of ‘efficiency’ and ‘cost recovery’), the HRW can potentially counter these trends. HRW as a discourse and practice can support important counter-narratives to hegemonic water policy and governance, including those associated with broad neoliberalization agendas (Miroso and Harris, 2012, Harris et al, 2013). With respect to EJ issues and goals, this potential is particularly important in terms of the possibilities of extending water for all, regardless of ability to pay, rather than privileging the most productive uses, or those who are able to afford a connection or monthly bills as part of cost recovery efforts.

Second, the HRW has in some instances provided a legal basis for communities to argue for improved access. As such, even if not sufficient, the HRW can provide a legal pathway for redress, and might serve as a tool available to marginalized and impoverished communities to make demands for improved water access or conditions. Among other examples, consider the legal case successfully pursued by the San and Bakgalagadi against the government of Botswana regarding access to water in the Central Kalahari Game Reserve. In this example, the HRW was effectively used in court to support the case for access to ancestral land, previously denied to indigenous residents of the Reserve. In short, HRW opened up new legal avenues for access to land, the reintroduction of water access, and contributed to furthering livelihood interests of these populations in the Kalahari (Morinville and Rodina, 2013, see also use of the HRW by indigenous populations in the context the Latin American Water Tribunal (Miroso and Harris, 2012).

Third, the legal bases of the HRW also have the potential to scale up and to have importance beyond national contexts, holding potential to counter broader historical and geographical power dynamics associated with colonialism, developmentalism, and the ongoing power of international actors and institutions. As one key example, several Latin American countries have adopted new constitutions that include the HRW (as well as anti-privatization language in several cases). These changes have clear discursive and aspirational value in terms of offering alternative ways of viewing water, both legally, and more broadly (socially and culturally). As argued by Harris and Roa-Garcia (2013), these constitutional shifts also have some potential to offer protection against the power and influence (present or future) of international financial institutions (IFIs) and transnational corporations. To this point, these authors offer evidence that in

several cases, the adoption of the HRW in national constitutions (e.g., Uruguay, Ecuador) was the outcome of resistance to structural adjustment policies and influences of the IFIs. Even if imperfect and difficult to implement, a constitutional provision for HRW, or outlawing of privatization, could be one way that these countries might be able to resist imposition of privatization or similar aspects of structural adjustment agendas in the future. As such, even as conflating anti-privatization and HRW likely involves a strategic error (Bakker, 2007), it is also possible that this combination makes strategic sense given the historical and institutional influence of IFIs and their considerable focus on privatization, cost recovery and similar marketization agendas (see also Harris et al, 2013). Related to EJ broadly, these examples show the ways that long-term and deeply embedded power dynamics between global North and South may also be subtly shifted with HRW discourses and agendas.

Fourth, the HRW has clear potential to serve EJ goals aspirationally. While the aspirational or symbolic value of the HRW is often discounted, we find particular value in this dimension as it can enable deliberation and visioning related to alternative water justice futures. On this point, we support the idea that the HRW taps into dimensions of what has been called ‘the power of universals’- referring to the influence that universalizing concepts such as rights might have (Perera [2014], citing Tsing [2005] and Harvey [2000]). Particularly when certain concepts and tools in water governance have become hegemonic—put forward as if there are ‘no alternatives’ (Sneddon, 2013)—it is crucial to be able to imagine, debate, and envision other ways forward. As such, the HRW helps to offer a corrective to a policy field where there seems to be a dearth of alternative visions and pathways. Given that environmental justice is not only about patterns of distribution and access, but also who has the ability to imagine possible alternative and futures, this aspect of the HRW is one that is particularly ripe for further consideration.

## TOWARDS NOVEL PATHWAYS AND RESEARCH AGENDAS

With the potential pathways noted above, it is clear that HRW has enabled some progress towards an environmental justice agenda for water, particularly given that the HRW offers discursive and policy focus on universal access to safe and affordable water, regardless of ability to pay. Yet, it is also clear that much more work needs to be done in framing and realizing such a lofty goal. There are several possible avenues, both in terms of research and practice, which are likely to enable new conversations and continued progress towards this end. In further elaborating and enriching the potential for HRW to contribute to more just, equitable and sustainable water futures:

1) We see promise in drawing parallels and insights from allied literatures. In particular, literature on the ‘right to the city’ can offer some exciting points of engagement (e.g., Bond [2012]). The “right to the city” engages a conversation around notions of democracy as well as the universal right to shape urban environments (drawing on work by Lefebvre). Both the right to the city, and the right to water, require that we take seriously the complex social relations of power that emerge from particular understandings of these rights. The ways rights are defined shape the forms and scales of governance and the “flows of water to which they lead” (Perreault 2014). Critically unpacking these relationships can help us reimagine and redefine rights (including HRW) in more socially and environmentally just ways.

2) We can further learn from thinking about water as commons. The human right to water is not inherently incompatible with conceptions of commons (Perera, 2014), which can be a powerful alternative to dominant discourses of HRW as aligned with western, technocratic and neoliberal agendas (including associated notions of water rights that might reaffirm individualistic or market bases). As such, more can be done to refashion what the HRW might mean, and what forms it might take in ways that can support commons agendas.

3) Another direction for reconceptualization flows from work on hydro-social relations, which may allow consideration of a broader range of actors in how the HRW is conceptualized and realized (e.g, technologies, standards, policies, natures, transnational flows, etc.) (cf. Swyngedow [2004], Kaika [2005] and others). By moving beyond the notions of the autonomous individual, and the singular ‘state,’ and instead thinking about the range of actors and ‘things’ that together might help to realize universal access to safe and affordable water, there is the potential to open a wider range of possibilities to re-envision water in more environmentally sustainable and socially just ways.

4) Finally, we think that there are yet other ways to push forward, and continually



reimagine, what ‘HRW’ might mean, including going beyond an anthropocentric basis (potentially including environmental rights of water). As well, rather than placing responsibilities for ‘rights’ solely in the realm of the state, we think that rights frameworks potentially open up important conversations related to shifting state and citizen roles and responsibilities. All of these questions require further elaboration, and debate, to continue to enable progress towards water justice.

In summary, we acknowledge that discourses around the human right to water and related policy tools have been problematic. However, we have also seen a growing acceptance of the importance of this right in development agendas (e.g., the post-2015 development agenda). As such, we find a continuing need to critically and constructively engage in conversations about what the HRW should mean and how it should be realized. We see promise in the aspirational value of the HRW as well as the potential discursive and conceptual possibilities it opens up. As we have seen in certain cases, the HRW has directly questioned the conditions of water access, highlighting livelihood considerations for underserved and marginalized groups. The HRW debate has also enabled us to unpack and scrutinize state-society relations around key environmental resources. These debates inevitably expose and tease out tensions in environmental governance that may otherwise not be as visible. The HRW has also drawn attention to the lived experiences with access to environmental resources for marginalized, underserved and racialized groups (in cases from the Global South, but also in the Global North, e.g, Detroit). In all of these ways, we believe there is value in further debates around the HRW with the goal of imagining more socially just and environmentally sustainable water futures for all.

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