

Water for All:
An Analysis of A Human Rights Based Approach to Water Access

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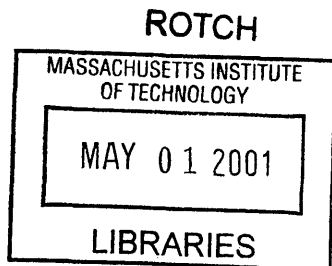
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ABSTRACT

An interdisciplinary and qualitative study was undertaken to determine whether a human rights based approach would ensure each person's access to a water supply sufficient to meet her basic needs. A human right to water shows promise as a strategy for ensuring universal access to water if a broad, comprehensive human rights theory is ascribed to. In a coherent, comprehensive human rights theory, human rights are interdependent and indivisible from other human rights and are predicated upon a core unifying principle such as justice or human dignity for all.

The language of many human rights documents indicates that a coherent, comprehensive human rights system was envisioned, but the practices and actions of many countries over the past fifty years indicate that this vision is strongly resisted. Absent such a comprehensive theory of human rights, a human right to water can have great impact as a moral and ethical justification that planners and policy-makers can use to implement programs that increase access to water. A human right to water can also increase participation in a dialogue about water management. This discussion concerning water management must be undertaken soon since a water crisis is looming and water wars are predicted.

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Chapter 1: Introduction

The environmentalism that gained an ardent voice in the early 1970s in the United States and many other countries is now a global voice. Environmentalists around the world have effectively raised concerns about current practices and how they impact the quality of our air, soil, and water. Issues in the news recently include ozone depletion, pesticide use, and acid rain.

All the consciousness raising about the environment have been aimed at altering the use and management of natural resources. Recognition of the fact that natural resources are limited and that they are, or will become, scarce has almost become universal. Acknowledging the looming scarcity of resources, environmental research has focused on finding the optimal use, allocation, or management of the remaining natural resources.

Water management has become an important national and international concern as droughts, increasing pollution, and increasing demands on water threaten water supply. These problems have increased competition over water resources and intensified conflicts between people, sectors of the economy, and countries. The conflicts over water resources highlight the fact that water is not distributed equally among and within countries. The distributional inequity of water has led some environmental policy analysts to warn that the next wars will be fought over water (Brown, 2000).

The evolving understanding of ecology and the environment has influenced the approaches used in addressing the distributional inequity of water. Until recently, the perceived solution to the water supply problem was to create new sources of water by applying technological innovations. Technological advancements such as damming and boring machinery are used

to tap into inaccessible water sources, thereby in a way, creating new water sources. Other solutions to solving the distribution problems of water are importing water from elsewhere or digging wells (Gleick, 2000, p. 128).

With the rise of environmentalism, however, there has been more criticism to developing new sources of water. Often, protests are organized to prevent the changing of river courses and the dislocation of people and cultures in the name of technologically innovative dams or irrigation projects. In the face of multifaceted critiques, devising solutions to the world's water problems is more complex than ever (Gleick, 2000, pp. 128-130).

The intense competition for water among the municipal, industrial, and agricultural sectors within a country threatens food production, human health and the environment, and the future development of that country. In addition to competition within a country for water, there is also competition between countries over water since water is not distributed equally across the world. Nations in Latin America and North America enjoy water wealth while African, Asian, and Southern European countries experience intense competition over insufficient water supplies.

The allocation of increasingly scarce water resources is a complex and contentious issue that needs to be dealt with sooner rather than later. Some people seeking to reduce conflicts among competitors over propose creating technical or legal rules regarding water management and allocation. Others propose another solution to reducing conflicts over water. These advocates believe there is an entitlement to water and that every person should have a right to water because it is a basic human need for survival. Oxfam, the World Health Organization, and the International Water Tribunal, a body organized in the past

to deal with water issues and policy, have decided that water is one of the basic human rights.

The question this thesis examines, using interdisciplinary and qualitative methods, is where a human right to water can be recognized within the human rights discourse. Upon locating a human right to water within the human rights framework, this study uses cases to illustrate the rights and duties of the various actors. This thesis will also analyze the utility of a human rights approach in ensuring equitable distribution of water resources such that each person has access to sufficient water for survival.

Chapter 2 examines the water supply and the demands made upon it, detailing the water cycle, and the existing water (use) rights systems. Chapter 3 frames the human rights discourse. Chapter 4 applies the human rights framework to water rights, giving definition to a human right to water. Chapter 5 analyzes two cases in which a human right to water was a key argument. It also examines the merits of pursuing a human right to water as a strategy for achieving each person's access. A conclusion that reiterates the key points of the study follows in Chapter 6.

Chapter 2: The Natural Resource of Water

The issues of water demand, supply and management are very complicated and conflict-ridden. Countries have been working together for many years in diverse forums, such as the International Drinking Water Supply and Sanitation Decade (Kalbermatten, 1991), to resolve a variety of water issues (Rodda 1995). In spite of past cooperation among and between countries, many people's water needs are going unmet (Serageldin, 1995), leading activists to advocate a human right to water.

An understanding of water supply and demand as well as the current system of water rights is necessary prior to addressing issues of equitable distribution of water such that every person has water sufficient for their needs. This chapter examines the sources of the water "shortages" that are impeding the fulfillment of human water needs worldwide, the water cycle, water scarcity, and water (use) rights.

2.1: Water Supply

It appears that water is in abundant supply. Water is visible in oceans, rivers, streams and other water bodies. About seventy percent of the Earth's surface is covered by water. Even more water is stored in the ground in aquifers below the surface. Water also exists in the air as water vapor and as moisture in the soil. Yet of this abundant water supply, over ninety-nine percent of all water is unavailable for human use. In fact, less than one percent, about .3% of the world's water in ground water, fresh-water lakes and rivers, is usable by humans (USGS, 2000).

Water is continually changing form and moving around, through, and above the world as water vapor, liquid water, and ice. The Earth is pretty much a closed system, like a terrarium, which means that as a whole the Earth neither gains nor loses much water. This also means that the same water that existed on Earth millions of years ago is still here. The hydrological cycle, or the water cycle, explains how the same water is constantly being recycled all around the globe.

2.1.1: The Hydrological Cycle

The best way to understand the hydrological cycle is to select a point of entry and follow through the water cycle. Starting with a drip in the ocean, the heat from the sun warms it and causes it to evaporate into water vapor. The vapor rises into the air until it is picked up by strong winds that carry it miles and miles until it is over land. Warm updrafts come off heated land surfaces pushing the water vapor up higher where it comes in contact with cold air. When the vapor gets cold enough, it changes back into liquid through condensation. The vapor condenses on tiny particles of dust, smoke, and salt crystals to become part of a cloud. Drips slowly combine to form drops that fall, due to the Earth's gravity, to the ground as precipitation. Or if the water vapor gets even colder than the condensation point, it turns into tiny ice crystals such as those that make up cirrus clouds. As the clouds warm up, the ice crystals melt and join the condensed water vapor drips and fall as precipitation (USGS, 2000).

Drops on land might sink into the ground, beginning the journey down into an underground aquifer as ground water. Or drops might become part of

surface water. These drops might start in a storm sewer and end up in a creek that flows into a river, thereby beginning their journey back towards the ocean. At any point along the journey, water can be extracted or diverted for human uses such as irrigation or cooling electrical equipment (USGS, 2000).

2.1.2: Technology

Freshwater continually circulates within this closed cycle, meaning that nothing more can enter or escape the cycle. Since nothing escapes or enters, the supply of freshwater is thought to be constant and a non-renewable resource. The truth is that the supply of useable water is limited but not really constant. The very slow, almost negligible, melting of glaciers adds some freshwater to the water supply. Human activity and water use extracts some water from the cycle and pollution renders some water unusable.

Technology is constantly being developed that lets humans access more water for personal needs and to increase both agricultural and industrial productivity. For example, boring technology lets people have access to previously inaccessible ground water which they rapidly extract for use (Conger, 1999). Precipitation cannot replace the ground water as quickly as it is being extracted and water tables are falling in regions such as the Middle East and South Asia (Hodges, 1977, pp. 7-8). Engineering technology, such as damming, has allowed the creation of "new water sources", in that it allows new access to water sources that were previously out of reach (Bates, et. al., 1993).

In addition to increasing accessible water supply by creating new sources, technology might also hold the answer to preserving water supply by eliminating water waste. Technology might increase the efficiency of water

infrastructure so that less water is lost in transport (Cowen, 1999). Advancements in production processes, reclamation of water, and waste treatment have been used to reclaim used water or reduce the amount of water used.¹ In addition to technological solutions, education campaigns are also being used to decrease wasteful use of water (*Urban Age*, Winter 1999, *Grist Magazine*, 3 May 2000).

2.1.3: Pollution

While technological innovation might hold the answer to ensuring the water cycle remains pure and the supply of freshwater remains constant, it also increases the potential for polluting existing water sources. Over-extraction from bore holes and wells, if near polluted rivers with permeable beds, can lead to the pollution of the good sources (Hodges, 1977, p. 8). Ultimately, polluted water that is not reclaimed, or rendered un-reclaimable, reduces the amount of useable freshwater supply.

Water pollution is a cause of much of the decrease in useable freshwater supply (International Food Policy Research Institute, 1995). Mingling with waste from cars, industrial waste, or agricultural runoff filled with pesticides, freshwater becomes contaminated and useless for human consumption (without peril to human health). Even if this water were reclaimed, some amount of it would remain outside the water cycle as waste.

More often than not, though, water is thought of as a free and plentiful commodity and once used is thrown out as wastewater and never fully treated and returned into the water cycle cleanly (Kalbermatten, 1999). Such polluted

¹ Industrial ecology literature can be examined for further details about the design and implementation of industrial processes that reduce water pollution. Possible sources of

water then follows its path in the water cycle where it joins other polluted water or contaminates clean water sources. For example, industrial waste in the form of air emissions from coal burning plants in the American Midwest travel in the air currents where water vapor mixes in and ultimately polluted water falls to earth later on in the water cycle as acid rain in the American Northeast.²

2.1.4: Spatial Constraints on Water Supply

Certain people experience water supply problems because of their location. Many reasons, such as land scarcity, drive people to locate and live where they do. Sometimes, though, these locations are far away from an obvious water source or from infrastructure that brings water to them. Thus, there is a mismatch between where water is located and where people are located.

National boundaries also impact whether there is sufficient water supply for all of the nation's citizens. Sovereignty grants control of waters within and along a nation's territory to that nation. Situations often arise where water-poor sovereigns have to import water from water-rich nations to meet the demands of their citizens since there is insufficient water within national boundaries.³ Within a nation, water-poor states and regions might have to import or divert water from water-rich areas to meet citizen needs. In solving the distribution problems within their territories, countries might have to transfer water from rural to urban areas, from the agricultural and industrial sector to municipalities

information are John, 1994 and McDonough and Braungart, 1998.

² Discussions about transboundary air pollution in a course on transboundary pollution and the law at Harvard Law School, Fall 2000. Guest speaker, Bill Pardee of the Massachusetts Office of the Attorney General explained the acid rain problem in Massachusetts and its origins.

³ Canada has twenty percent of the world's freshwater supply and recently banned bulk exports of water (Lowe, 2000).

to meet private consumption needs, or from certain citizens to others. Such decisions will impact the economic futures of the countries as well as the development of their citizens.

Most people consider water to be a free unlimited resource that cycles through a closed system. Essentially, many think that there is a constant and renewable supply of water. Yet the fact is that water is a non-renewable resource in limited supply. Water supply problems exist due to distribution mismatches between people and water sources, water pollution, inefficient water diversion due to technological innovation, and poor wastewater management. Since there appears to be insufficient water to meet everyone's needs and plans for growth, many predict there is water scarcity (IFPRI, 1995). Others believe that the cause of water scarcity is due to the increasing human demands on freshwater.

2.2: Increasing Human Demands on Water

In addition to contaminating and over-extracting from the freshwater supply, demands on freshwater are intensifying. The fact is that demands on water have increased and since the water supply is limited there is increased competition among municipal, agriculture, and industrial sectors (Kalbermatten, 1999).

Agricultural practices are increasing demands on water as well creating more water pollution. Increasing irrigation demands are intensifying competition with other sectors (industrial and municipal) as well as creating pressure for changing watercourses, building dams, and over-pumping.

Competition for land, particularly agricultural plots, can lead to deforestation.⁴ Many areas are experiencing massive rates of deforestation, which leads to the extinction of thousands of species, intensifies flooding and droughts, increases erosion, and clogs downstream rivers and hydroelectric reservoirs. Coastal resources are used unsustainably and soil fertility is exhausted by poor agricultural practices thereby pushing poor farmers onto ever more marginal plots of land (Andreen, 2000, p.17).

A growing human population and its consumption patterns are also increasing demands on natural resources, especially water, and intensifying the severity of the environmental problems facing nations (Brown, 21 June 2000). Worldwide, 1.1 billion people, about one in five, lack an adequate and safe supply of water for their daily needs (Andreen, 2000, pp. 18-19). Over one-fourth of the developing world's population lacks access to a safe and reliable water supply, and approximately fifty percent lacks sanitation services (Andreen, 2000, p. 19). Over 420 million people lack access to basic sanitation facilities (Andreen, 2000, p. 19).

Access to basic sanitation services, however, does not mean that collected wastewater is treated. Over ninety percent of the sewage that is collected in the developing world is discharged without receiving any treatment at all. As a result, waterborne diseases and infections are responsible for eighty percent of all illnesses in the developing world (Andreen, 2000, pp. 18-19).

⁴ Training and experience as a Peace Corps volunteer (1996-1998) in the agriculture sector in the Caribbean shows that slash and burn agriculture is a prevalent agricultural practice. As new farmers enter the society, The inability to leave land fallow due to economic reasons results in sterile land which is left behind. Farmers leave such sterile plots for newly cleared plots, which ultimately leads to deforestation.

Industrialization and urbanization in the pursuit of economic growth have also increased demands on and pollution of water (*Developing Ideas Digest*, 5 September 1996). The urban population of the developing world is skyrocketing at the rate of 150,000 people every day. Of urban residents worldwide, at least 220 million have no access to clean drinking water. In hundreds of cities around the world, industrial as well as municipal wastewater is dumped directly into rivers and harbors with little or no treatment (Andreen, 2000, pp. 18-19).

Developing countries are and have been aware of the multitude of environmental problems they face, but have viewed environmental protection as a luxury that only wealthy countries could afford (Andreen, 2000, pp. 19-20). Most governments, especially in developing countries, have focused on meeting the basic needs such as food, shelter, and ensuring economic growth of their people. In fact, many in the developing world believed that environmental destruction was an inherent by-product of development, and that a clean environment would mean less economic growth (Andreen, 2000, p. 21). In spite of the recognition that growth and environmental protection are compatible and linked together,⁵ little account was taken of the impact of development activities upon the environment until the 1980s.⁶

Population growth and economic growth (in the form of urbanization and industrialization) increase the demands made on water. Rising affluence in itself generates additional demand for water. For example, flush toilets, large washing

⁵ Several principles, such as Principle 13 of the Stockholm Declaration, arising from the 1972 Stockholm Conference on the Human Environment acknowledge the connection between development and the environment. Printed in part in Andreen, cited as Stockholm Declaration of the United Nations Conference on the Human Environment 1972, 1,4, U.N. Doc. A/CONF. 48/14/Rev. (1973), reprinted in 11 I.L.M. 1416 (1972).

machines, and activities such as washing cars and running water while brushing teeth all lead to the use of more water than alternative means of dealing with sewage, cleaning clothes, or brushing teeth with a limited amount of water.⁷ Rural villagers traditionally relying on village wells move to high-rise apartments with indoor plumbing and increase their residential water use as much as three times (Brown, 21 June 2000). Increasing economic activity in cities usually leads to transfers of water from agriculture to other sectors (Brown, 21 June 2000). Untreated waste leads to water pollution⁸ thereby decreasing water available for certain uses as well as increasing the suffering of water related illnesses such as cholera and diarrhea (Lowe, 3 May 2000).

As the demand for water in the region's cities and industrial sector increases, competition with rural towns and the agricultural sector increases. In settling conflict among the sectors, water is almost always diverted from the agricultural sector which in turn threatens a nation's food production capacity (Brown, 21 June 2000). In an attempt to maintain food production capacity, water is used in an unsustainable way. In the past fifty years, the development of diesel and electrically driven pumps have led to the ability to pull water out of aquifers faster than it is replaced by precipitation (Brown, 21 June 2000). Furthermore, once aquifers are dangerously over-pumped and food production capacity is low, regions, and even nations, look to importing water and grains.

⁶ Andreen at 20-21. Projects that were highlighted were mining projects, hydroelectric dams, and specifically, the paving of a 1,500-mile road in the central rainforest of Rondonia in Brazil.

⁷ Sevin, *Grist Magazine*. Five gallons of water, on average, go down the drain if you leave the tap running while brushing teeth. One hundred and fifty gallons of water, on average, are used to wash a car with a hose. Fourteen percent of the water consumed in the average American home is used to operate a washing machine and seventy-five percent of the water consumed is used in the bathroom.

The water required to produce grain and other foodstuffs imported into North Africa and the Middle East in 1999 was roughly equal to the annual flow of the Nile River (Brown, 21 June 2000).

Agricultural practices, a growing world population, industrialization, and urbanization all increase demands on a water supply that is threatened by over-use, poor management, and pollution. All these problems indicate that water allocation is becoming an increasingly contentious issue. Actions need to be taken to prevent conflicts, both between (Serageldin, 1995) and within nations (Corell and Swain, 1991, pp. 123-148). Any proposed solutions must recognize that there are official and unofficial water use mechanisms already in operation. Water use and water rights involve history, culture and custom, and law and any proposed solutions must be cognizant of these.

2.3: Existing Water (Use) Rights

The transboundary nature of environmental problems, such as acid rain and intense competition over a limited water supply suggest cooperation is necessary to ensure water for everyone. An understanding of existing water rights or systems of use is necessary prior to creating innovative mechanisms and policies to achieve the goals of improved water management and universal access to water. This is because existing systems either limit or create opportunities to develop and implement policies.

When water is plentiful (and free) and everyone has enough for their use, water rights are of little concern to individuals, communities, or companies.

⁸ The World Commission on Water for the 21st Century that met on August 1998 in Paris, France released a report stating that more than half of the world's rivers are seriously polluted (Rice 2000).

Conversely, as water becomes scarce or demands on a limited resource increase, water rights issues and conflicts rise to the fore. In the face of water scarcity, possessors of rights will litigate to enforce their rights against all others. Or individuals will be more willing to create and pursue conflicts based on the belief that strife will lead to an official declaration to a right to water of their own.

Enforceable water rights are granted at some point in time in response to a particular set of interests. With the passage of years, different sets of environmental and societal problems highlight the inadequacy of previously granted rights. Subsequently, new laws and policy must be developed to ensure that everyone's present needs are met.

The western United States provides an excellent example to illustrate how existing water rights and water scarcity create a tension that is difficult to solve such that everyone's water needs are met.⁹

“Water resources are needed by the whole community, not just those parts that were there first or that have money or power. This is especially critical in areas where water is scarce, such as the Western US. Recent changes in water law and policy soften the hard edges of the old system. But if those changes are no more than political responses to the newest set of special interests, the emerging policy will have little lasting value. Meaningful and enduring change in western water law and policy must be rooted in a set of principles that reflect westerners' core values and concerns. . . . Westerners have been willing to fight about water, especially when they believe that someone is interfering with their use of it. But it is unusual to talk about principles directing uses of water instead of short term expediency, to talk about what is right instead of who has rights (Bates et. al. 1993, pp. 178-179).”

⁹ Bates, et. al. 1993. This book is very informative on the Western United States. The book discusses the history of the prior appropriation doctrine, sovereignty over resources within boundaries, and recognition of water as property and water rights that the courts have helped define and uphold.

The dams, diversions, depletions and degradation of water quality are the direct results of laws and implicit policies adopted over one hundred years ago to meet the needs of a frontier society and these rules still govern water allocation decisions today (Bates, et. al., 1993)

Before attempting to create enduring change in law and policy, the core values and interests of a people must be understood. So too must the current system of rights and duties and how they reflect community concerns and interests be understood before changes can be proposed.

Generally, existing systems of water rights tend to fall into four broad categories: community use and management systems, riparian rights systems, prior appropriation systems, and administrative disposition of water. There is a tendency for national governments to play a larger part in water control as water becomes scarcer. The natural swing of all water rights control is towards administrative control; essentially meaning in the long run water use rights are controlled and given by governments (Hodges, 1977, p. 3).

2.3.1: Community Use

In non-western societies, there are some communities that own the water use rights to a certain water source. These communities have, and choose to exercise, the right to manage water resources communally.

For example, in the Sa'dah Basin in Yemen water management has been left to the tribes that have resided there for centuries. Some tribes have chosen to sell land (and water) to non-tribe members and have lost control of their water resources. One tribe in the Basin exercises its water rights by collectively managing their groundwater resources and land. It has refused to sell any rights

to non-tribe members and maintains a community use system of water rights. Customary law that is based on Islamic belief informs and underlies all community decision-making (Lichtenthaler and Turton, 1999).

2.3.2: Riparian Rights

Riparianism is among the oldest existing water use regimes. In a riparian rights system, the right to use water comes from the occupation of land bordering a watercourse. This system is based on customary law and has been exported to many countries by colonialism. For example, riparianism has been exported from England to Australia, from France to the African continent. Today, however, codification or regulation has modified the traditional riparian rights systems.

Defined strictly, a riparian owner is entitled to the benefit of the natural flow of water bordering her land. The riparian owner is entitled to receive water from her immediate upstream riparian neighbor without material change. Furthermore, the riparian owner must pass on water to her immediate downstream neighbor without material change. The owner is entitled to use the water for her ordinary use, which generally means for the use of the household and cattle. The owner is also entitled to abstract water from underground aquifers without restriction, irrespective of the effect the abstraction has on other persons, provided that the water is percolating underground. Any other uses by a riparian owner are permitted, as long they do not interfere with the rights of other riparian owners upstream or downstream of her. Also, other uses of water are permitted as long as the use of the water is reasonable and for the use of her land (Hodges 1977, pp. 3-5).

Riparian rights depend on a model of property rights where there is a sovereign, an authority that inhibits access of, or encroachment by, others. At the international level, sovereignty is paramount and nations control resources within their territories, including water. Issues of sovereignty have made modifying riparianism between states very difficult to modify.

A true riparian system is too archaic for today's world. These rights go with the watercourse and land and cause major problems for land not located near a watercourse. The riparian system stultifies water transfer, an integral necessity in achieving access to water to meet basic needs for everyone, especially those living far from water sources.

2.3.3: Prior Appropriation System

The principle with prior appropriation systems is "first in time, first in right." Essentially this means that the earliest abstractor or appropriator has a superior right to any later appropriator. A later appropriator can only appropriate what earlier appropriators leave. At times of low flow, the first appropriator can claim the whole amount, including ground water, irrespective of subsequent appropriators (Bates, et. al., 1993).

This system goes back to Roman times and is used by the Western American states. The problem with this system occurs when subsequent settlers arrive and there are no more water rights to acquire. Generally, true appropriation systems have been superseded by partial or full state ownership system that grants appropriation permits (Bates, et. al., 1993). This is because some manner of planning and water management control needs to be imposed to ensure access to water by greater numbers of people.

2.3.4: Administrative Disposition of Water-Use Rights

These types of systems have the common factor of an administrative authority that controls the water and grants permission for users to abstract water. In these systems, it is important to examine the ownership of water. There can be full state ownership of all the water in the country, including surface and underground water, or there can be a combination of state and private ownership (Wohlwend, 1981, pp. 4-6).

2.3.5: Water Rights and Priorities for Use

A water right possessed by an individual or a corporate body to either abstract water or divert water for a subsequent abstraction is a legal right. In many countries, it is embodied in a legal document showing ownership of property. The type of water right depends on the legal system in the pertinent jurisdiction. It may well be that the rights have originated in different systems since over time changes occur in the rules of the jurisdiction or country.

Water rights have a significant impact on determining water resource availability. Water rights need to be quantified and registered so that a country can determine if there is sufficient water (not yet taken up by private individuals or companies) available to portion out to fulfill all its citizens' needs and its economic and social growth. Furthermore, the sum of water rights does not necessarily equate with the quantity being beneficially used. For example, an owned right to abstract that is not actually exercised means that the use of this water is sterilized, meaning that this water is essentially unavailable for alternative beneficial uses (Hodges, 1977, Wohlwend, 1981, Floris, 1997).

Any new plans to shift watercourses, to develop new irrigation schemes, to grant new rights, or to abstract and store water for municipal waterworks, require accommodation of existing water rights or compensating owners for those rights. Issues and decisions about water rights and water management are complicated and difficult to make. Judges, lawyers, engineers, and geologists must work together to understand present systems and develop coherent future schemes to meet people's needs for water.

To aid in settling water disputes, countries often order uses by priority. In general, most countries tend to specify domestic (household) use as having first priority (Floris, 1997, p. 622), but few have specified a full order of priorities for each watercourse. In the United States, though, the Clean Water Act requires each state to attribute uses to each of the state owned watercourses so that water quality standards (corresponding to the use) can be attributed to each watercourse.¹⁰

The complexity of water allocation decisions, water rights, and priorities of use indicate that holistic water management is a difficult task. The information required before significant changes can occur is extensive. Furthermore, any new institutions created would need a lot of capacity to implement new policy.

Systems of water use rights arise from traditions and customs as well as the law and institutions that define and uphold them. As water becomes scarce or as demands for water increase, competition for water among citizens and sectors intensifies. Implementing any enduring change in water allocation and

¹⁰ From discussions on transboundary pollution and the law. See note 2.

water management, such as a human right to water, will require an understanding of water rights, community, national and international water concerns and demands.

Chapter 3: Human Rights

A human right to water is a proposed water allocation mechanism to ensure that everyone's basic human needs for water met. Prioritizing some uses over others and redistributing water resources to meet these needs will be necessary. To discuss the merits of declaring a human right to water, an understanding of the human rights discourse is needed. The previous chapter explained the water supply and demand issues as well as the potentials for conflict. This chapter explores the human rights discourse. The subsequent chapter will explore the intersection of water policy and human rights by giving definition and context to a human right to water.

The universality and ethical superiority of human rights arguments are what make them so appealing to activists. Human rights get their content from state treaties, custom, and general principles of international law. Translating the provisions and positive dicta of human rights law into concrete actions, however, remains one of the greatest challenges facing the human rights movement and the community of nations.

There are several modern human rights theories that impact how actors are identified and what their duties and obligations are. One of the most prevalent modern human rights theories is that of rights based on natural rights, essentially leading to the identification of core rights. In the aftermath of World War II, natural rights theory was revived in reaction to the horrors that (could) emanate from a positivist system in which the individual was minimized and the state was given primacy. The common theme of the revived natural rights thought is that "a minimum absolute or core postulate of any just and universal

system of rights must include some recognition of the value of individual freedom or autonomy” (Shestack, 1998, p. 215).

The core principles of inherent human dignity and equal inalienable rights based on freedom, justice, and peace are eternal and changeless (Shestack, 1998, pp. 216-217). These basic, core principles are affirmed in key human rights treaties and have influenced conventional international human rights norms. “However, the creation and maintenance of human rights in international law is a temporal process moving from general declaration through the formulation of specific legal norms to the elaboration of procedures and mechanisms of implementation” (Wellman, 2000, p. 640). The metaphor of generations is one of the ways to understand and organize human rights development over time. This framework is utilized in this and the subsequent chapter.

The metaphor of generations can, however, be misleading and potentially harmful since there is an attribute of succession that is contrary to the indivisibility and interdependence of human rights (Wellman, 2000, p. 640). The indivisibility and interdependence of human rights means that no subset of human rights can be realized in a world in which other human rights are absent or violated. The indivisibility of human rights is asserted in several United Nations (UN) documents such as the Declaration on the Right to Development adopted in 1986 (Resolution 41/128).¹¹

Several modern human rights theories seem to treat the concept of indivisibility as integral in their formulation of a complete system of rights. Among these theories are rights based on justice theory that arises from John

¹¹ All major UN documents that are referred to in the thesis can be found on the United Nations website, <http://www.un.org>.

Rawls' *A Theory of Justice* (Shestack, 1998, pp. 217-224) and rights based on human dignity theory explained by the work of many theorists¹² (Shestack, 1998, pp. 225-226). These modern human rights theories consider disparities of resources that lead to varying degrees of justice or human dignity. These modern human rights theories recognize the individual and her universal demand for justice or human dignity. But they also recognize that the individual lives in a society where disparities of justice or human dignity exist. These human rights theories are very concerned with the disparities and the distributive elements of human rights.

In the fifty-two years subsequent to the signing of the UN Charter, the body of international human rights law has grown dramatically. The high level of formal acceptance of these international agreements suggests a substantial progress towards universal recognition of human rights norms (Felice, 1999, pp. 563-564).

Contemporary history of the development of human rights goes back to the UN Charter. Even though the UN Charter has been described as a constitution without a bill of rights, it does mention one of the UN's purposes is to "promot[e] and encourag[e] respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." In general, references to human rights are infrequent and vague. This lack of specificity led to immediate efforts to rectify the problem (Keith, 1999, pp. 95-97).

¹² More information on this rights approach is included in Myres S. McDougal et. al., *Human Rights and World Public Order*, (1980) as cited in Shestack, 2000, footnote 54 and full text citing the

3.1: The Universal Declaration of Human Rights

The first attempts to add specificity to the UN Charter's principles led to the Universal Declaration of Human Rights. The Universal Declaration of Human Rights was presented to the United Nations General Assembly on December 10, 1948. Three years after World War II, the newly formed United Nations gave expression to the "very loftiest of human aspirations" such as freedom and equality (Black, December 7, 1998). The Universal Declaration's language is simple and powerful, as is its political and social intent. The Declaration begins, "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Fifty original signatories made a commitment to a world free from slavery and torture and endorsed an array of human rights that are now considered commonplace. The Declaration simultaneously covers a large range of economic, social and cultural rights in addition to traditional civil and political rights.

The Declaration served as a springboard for several principal international human rights documents. The two principal treaties are the International Covenant on Civil and Political Rights (ICCPR), opened for signature in 1966, and the International Covenant on Economic, Social, and Cultural Rights, which opened for signature in 1966 and came into force in 1976 (ICESCR) (Keith, 1999, pp. 95-97).

Several declarations and conventions that spring from the 1948 Universal Declaration of Human Rights and the two covenants impact upon a human right to water. The 1992 Declaration on the Rights of Persons Belonging to National or

work of Professors McDougal, Lasswell, and Chen on pp. 225-226.

Ethnic, Religious and Linguistic Minorities is inspired by article 27 of the ICCPR and implicates article 13 of the ICESCR. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 is also part of the human rights discourse that impacts a human right to water. Other important components of the human rights discourse are the Declaration of the Rights of the Child and the Declaration of the Right to Development.¹³

3.2: The International Covenant on Civil and Political Rights

The Civil and Political Rights Covenant includes and elaborates upon most of the parallel rights enumerated in the Universal Declaration. While it does not include the right to own property or the right to asylum, it does include additional rights such as the right to self-determination and certain cultural rights for ethnic, religious, and linguistic minorities. By 1999, 142 countries had signed, ratified, or acceded to the International Covenant on Civil and Political Rights (Harland, 2000, p. 192). The rights that are part of the ICCPR are considered to be first generation rights within the generational approach to human rights. The tendency is to think these rights are easier for states to grant since they require the state to refrain from infringing on these rights (Umozurike, 1998, p. 539).

The ICCPR requires the establishment of the Human Rights Committee (HRC), an independent group of experts to supervise the implementation of the Covenant's provisions. This Committee demonstrates an attempt to ensure that human rights do not become politicized. By locating the implementing authority

¹³ Consult the UN High Commissioner for Human Rights webpage from UN website, <http://www.un.org>.

in an independent group, the hope was that human rights would not become the ambit of the most politically powerful.

The HRC studies reports of the individual states' efforts to guarantee the rights included in the ICCPR. The HRC's power was enhanced by the passage of the First Optional Protocol that allows for communications from individuals whose civil and political rights have been violated. If both parties have joined the Optional Protocol, the committee has the power to investigate and make recommendations concerning one state's allegations about another state's violation of the treaty (Keith, 1999, pp. 95-98).

By January 1998, there were 92 parties to the Optional Protocol and the HRC had considered some 800 complaints and adopted 270 decisions on their merits. The views of the HRC interpreting the substance of the ICCPR can be termed a strand of international human rights jurisprudence. National courts, such as the Constitutional Court of South Africa and the Supreme Court of Zimbabwe, refer to the decisions and views of the HRC. This interplay between UN treaty bodies and national juridical courts is a very positive development because it indicates that the authority of the HRC is respected (Felice, 1999, pp. 570-571).

Individual complaint procedures have been refined. After exhausting all domestic remedies individuals may submit complaints directly to the UN. Once the UN body determines the complaint is admissible, a special rapporteur views a summary of the case and reports to the HRC, which makes the final decision. If the committee determines that a violation has been committed, the violator, usually a state, can implement the HRC decision through compensation, a change in legislation, or some other action (Felice, 1999, pp. 569-571).

There are, however, several weaknesses in the implementation schemes. First, reports are filed by the states' own officials and there are allegations that the reports will not be totally objective accounts of the state's behavior. States have also been tardy or delinquent in filing reports. In general, however, states have taken their reporting requirements seriously as far as filing reports. The content of the reports is still at issue. Second, the impact of HRC decisions is debatable since the HRC cannot compel states to take action in response to its findings. Third is the difficulty for individual complainants to make their cases before the UN since they must navigate the systems in their own countries before they can be heard in the UN (Felice, 1999).

3.3: The International Covenant on Economic, Social and Cultural Rights

By 1998, 137 had signed, ratified, and acceded to the International Covenant on Economic, Social and Cultural Rights. In the generational approach to understanding human rights, rights of the ICESCR are second generation rights. In a statist model, these rights require action of part of the state to give substance to them. It is posited that the extensive expenditure and planning required on the part of the state is a reason why articulation and attainment of these rights lag behind civil and political rights (Umozurike, 1998, p. 539).

In practice, the 137 nations have failed to take the necessary implementation steps, legislative, administrative or judicial; to make these claims equal to civil and political rights (Keith, 1999, p. 97).

Although the international community has consistently reiterated the proposition that all human rights are intertwined within a coherent system of law, responses to violations of economic, social and cultural rights—both procedural and substantive—have paled in comparison to the seriousness accorded

infringements of civil and political rights . . . Problems of perception and resolve, rather than any inevitable limitation of law or jurisprudence, have kept economic, social and cultural rights wallowing in the relative purgatory of global efforts to secure human rights (Leckie, 1998, pp. 81-82).

For example, observers readily hold a state responsible if a person's right to speak freely is restricted, but when people die of hunger blame is cast upon economic or developmental factors before placing liability on the state (Leckie, 1998, p. 82).

Altering attitudes about violations of economic, social and cultural rights will be difficult. Yet there have been extensive efforts to do so. CEDAW, the Declaration of the Rights of the Child, and the Declaration on the Rights of Persons Belonging to National or Ethnic or Religious or Linguistic Minorities indicate strides that have been made in conceptualizing economic, social and cultural rights.

There are several differences between the ICESCR and the ICCPR that contribute to the popular perception that the responsibilities and violations of human rights under these two covenants differ. One of the main differences in the implementation procedures between the ICESCR and the ICCPR is that the ICCPR calls for full and immediate implementation while the ICESCR only requires steps to the maximum of a state's available resources with a view of progressively achieving the full realization of rights. Yet there are immediate obligations with regard to the ICESCR. Specifically, states must show discernable progress toward the enjoyment by everyone of the rights established by the ICESCR.

There has been an Optional Protocol complaint procedure drafted for consideration of communications concerning non-compliance with the ICESCR

but there is “widespread refusal of governments to give active support” to it (Leckie, 1998, p. 83). Under CEDAW, though, there is a communications Optional Protocol that allow individuals or groups to submit complaints of rights violations.

The ICESCR does not establish an independent group of experts to supervise its implementation. But the UN’s Economic and Social Council (ECOSOC), a body of governmental representatives charged with implementation responsibility, set up a working group to help with these responsibilities. In 1987, the working group was replaced with a body of human rights experts operating in their personal capacity. The Committee on Economic, Social and Cultural Rights’ (CESCR’s) existence depends upon the continued support of the ECOSOC (Felice, 1999, p. 569).

The CESCR of experts has developed guidelines, called the Limburg Principles and the Maastricht Guidelines, to aid in the implementation of the ICESCR.

“The CESCR attempt to establish a minimum threshold that should be achieved by all states at the earliest possible moment irrespective of their economic situation has appeal. It is then possible to speak of the widespread violation of economic, social and cultural rights in a technical legal sense instead of merely as a moral injunction. The burden of proof shifts to the state. It must prove that existing poverty, hopelessness and hunger are due to factors beyond its control and that it has mobilized its resources to meet the needs of the most vulnerable. The CESCR thus works to establish universal criteria through which states can be held accountable (Felice, 1999, p. 573).”

In the absence of a precise elaboration of the normative content of each economic, social or cultural right, the determination of violations of rights are difficult to determine, except in the most egregious abuses of power. In the past

decade, the human rights community has been concerned with identifying both the core and supplemental contents of economic, social and cultural rights norms, as well as clarifying the obligations attached to each entitlement found under this group of rights (Leckie, 1998, pp. 87-88).¹⁴

There remains some confusion as to when violations of ESCR can be declared. For example, can violations be automatically declared when a portion of society is denied them, or when a state reduces social expenditure? Or has a violation occurred when individual detriment is added to gross and systematic acts or omissions? “The Limburg Principles have proven very useful to human rights advocates as an interpretive adjunct of the norms of the ICESCR within domestic legal spheres” (Leckie, 1998, p. 89).¹⁵ The task that remains is to expand international attention towards understanding, clarifying, preventing and remedying violations in a clear, universally relevant manner. If such expansion could occur then perhaps it would be an effective method of preventing future violations.

3.4: The Third Generation of Human Rights

The third generation rights, also known as solidarity rights, include the right to peace, the right to development, and the right to a healthy environment. The third generation rights arose partly from the idea of permanent sovereignty over national resources, which was especially important to formerly colonized countries that had had their resources used to serve imperial priorities. Third

¹⁴ Leckie references Henry Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, pp. 256-328 (1996) for greater evidence as to the expanded precision accorded the contents of economic, social and cultural rights.

generation rights developed out of a concern about underdeveloped territories and were intended to provide a decent standard of living in these areas. Third generation rights also arose from the acknowledgment that there were finite natural resources and creating a “livable world” involved peace, cooperation and conservation of the environment (Hassan, 1983, p. 52-58).

There seems, though, a deadlock between the countries in the North and South over economic human rights and development. William Felice (1999, p. 563) describes two encounters in Geneva that demonstrate the deadlock. The human rights officer of the Pakistani Mission to the UN told him (and his students) that the right to development is the most important human right and that the Pakistani government would fight to have that right included as part of the Bill of Human Rights. In another discussion, the American human rights officer at the United States Mission to the UN declared that the right to development was simply rhetoric and held no real meaning.

Some see solidarity rights as a means of incorporating actors beyond the state and the individual, such as the community and society in which the individual resides, into the realization of human rights. These third generation rights impose obligations upon all actors—the individual, the state, the public and private groups, as well as the entire international community.

The third generation of human rights is still being articulated. But indigenous peoples have been very effective in using these rights to preserve their cultures (usually vis-à-vis the national majority) (Boyle et.al. 1996, pp. 6-7). Third generation rights may be the means by which the inequity of distribution

¹⁵ The Limburgh Principles can be found enumerated in *Human Rights Quarterly*, volume 9, p. 122 (1987).

of resources can be addressed. They can be a means of highlighting disparities that exist and that such disparities are a means of denying some human rights to certain individuals or groups.

3.5: The Indivisibility and Interdependence of Human Rights

The distinction between the different generations of human rights should not be used as a way of prioritizing some rights over others. There is a statist bias to the first and second generation approaches to human rights. However, human rights empower vulnerable individuals and groups and impose certain fundamental standards for state activities.

Any modern approach to human rights must be coherent and start from a full range of human rights and from the axioms of indivisibility and interdependence. Existential security is not possible without some sort of cultural or spiritual identity, or without participation. Identity requires existential security and participation. Therefore, almost all human rights are related to or derivable from several fundamental rights and the core principle of “human dignity in all” (Künnemann, 1995, p. 323).

Full realization of human rights is reached once human rights-related deprivations have vanished everywhere and any new incidents of deprivation can be remedied by established procedures in courts or elsewhere that are available to everyone. For this to happen, a broader interpretation of human rights obligations is necessary involving both private and state duties.

Today’s governments are besieged by a host of outside actors over whom they have an ever-decreasing capacity to control. Rapid privatization, free trade agreements, economic integration, and the explosion of transnational corporations (TNCs) have tremendously

limited government prerogatives, particularly among the smaller, developing countries (Jochnick, 1999, p. 63).

Also, international financial institutions such as the World Bank should at least be obliged to uphold customary international human rights law since they have an impact on human rights. International financial institutions and TNCs impact human rights since their decisions influence the distribution of resources and justice.

Human rights obligations must therefore be applied to non-state actors to have a comprehensive system of human right and there is support for such application.¹⁶ Furthermore, as states recognize more fully their global interdependence, they will recognize some joint obligations. Third party states (those not directly involved between a citizen and her state) must recognize that they have impacts beyond their borders and several human rights documents and bodies have been established to govern the consequences. For example, the Declaration on the Right to Development mentions that states have a responsibility for creating international conditions favorable to the realization of the right to development (Article 3). The preamble of the Universal Declaration of Human Rights mentions “that every individual and every organ of society shall . . . promote respect for these rights and freedoms.”

There will likely be a resistance from many interests to a fuller interpretation of human rights that attributes obligations to private actors and third party states and recognizes the indivisibility of all human rights. Some powerful interests support narrower, statist conceptions of human rights.

¹⁶ Within international law there is support for attributing duties for non-state actors. Early treaties outlawing piracy and slavery were directed at private parties and the Geneva Conventions. See Jochnick, 1999, pp.61-63.

“However, in a world of growing poverty and marginalization, the constituency for a broader and truer vision of human rights grows ever larger, and thanks to new communications technology, ever more united” (Jochnick, 1999, p. 79). The human rights regime could, and should, include the full range of actors and human rights, recognizing their interdependence and indivisibility unified by the principle of human dignity.

3.6: A Concluding Assessment of the International Bill of Human Rights

On the fiftieth anniversary of the Universal Declaration there was much reflection on the strides made and goals yet to be achieved. Mainly, rights are easily stated and portrayed as concrete and tangible. Yet there is little or no discussion about how to move beyond declaring rights to recognizing their evolving nature as well as how to turn them into practice.

Practical meaning still has not been given to new concepts of rights and duties that are not easily enforceable. In certain instances it is easier to make the connections between rights such as the right to be free from torture to the duty not to torture and the enforcement which brings the torturer to face charges in court. Yet in other instances such as a human right to shelter or food or a human right to water, the connections between the right and the obligations and actors necessary to actualize the right are not easily made.

In particular, the economic and social rights “that provide a cornerstone to a liberal conception of capitalism” (The Observer, December 8, 1998) have not been given the broader definition they need if they are to become universally respected. “In regions where millions live in abject poverty, Western concepts of civil and political rights can mean little if basic economic and social rights are not

guaranteed" (Black, 7 December 1998). Nor are the duties that necessarily follow from economic and social rights easily defined and attributable to different actors, from governments, society and its groups to individuals. "Duties, therefore, may not be obvious, they may not be immediate, they may relate to people thousands of miles away or to individuals not yet born" (Woollacott, 12 December 1998).

The challenge of the next fifty years must be accepted as difficult but necessary. If human rights are truly to be universal and if people are to achieve the human aspirations of freedom and equality, broader definitions and clearer standards must be given to rights and duties. Furthermore, the human rights regime must be extended beyond judging and monitoring actors according to international standards to enforcing and punishing violators of human rights. The regime must include obligations and duties attributable to the full range of actors, both public and private.

The problems of the next fifty years of human rights will involve a different set of issues than those upon which the human rights work of the past fifty or so years have focused. Attention has shifted to second and third generation of rights and to gaining acceptance for a comprehensive vision of human rights. Development workers and activists are cautiously hopeful that attention will shift to giving greater articulation to such rights as the right to food, the right to housing, the right to education, and the right to a healthy environment. For advocates of a human right to water the trend of focusing on human development within the human rights community is promising.

Chapter 4: A Human Right to Water

Among the array of value based arguments, the human rights argument seems to be the most superior. The strength of a human rights argument lies in the notions upon which the argument is based. Underlying a human rights argument is the ethical idea that there are certain rights that human beings possess or should possess simply as an aspect of being human. If a right is to have a serious claim as a human right it must be a universal right to which every human being can ascribe. (This means there is should be no cultural relativism to human rights as have been argued by certain nations (Woollacott, 12 December 1998).)

The universality and ethical superiority of human rights arguments are what make them so appealing to activists. A serious commitment to human rights must expand beyond the notion that human rights are whatever the relevant international authority determines them to be to include a discussion about the content of human rights and what it means to have fully realized them.

Since the early 1980s there has been a growth in the human rights movement and a call for more and more issues to come under the human rights umbrella. For example, Dr. Nikolai Napalkov, the then Assistant Director-General of the World Health Organization (WHO), wrote in an editorial, "Water is a basic human need for health – indeed, for survival – and therefore it is not an exaggeration to call it one of the basic human rights" (Napalkov, 1992, p. 3). He said, "[T]he international community, working together, will aim to provide all the peoples of the world with enough water for their need, water which they can trust and use with confidence" (Napalkov, 1992, p. 3).

The idea that a minimum amount of water is a human right for all regardless of their economic or social status is still somewhat new. The concept arose in 1977 at the United Nations Mar de Plata conference, one of the earliest attempts at the international level to address global water problems, and was reiterated at the Earth Summit in Rio de Janeiro (Gillis, 1996, p. 808).

As of yet there has been no clear indication that countries have agreed that there is a human right to water. As recently as March 2000 at the Second World Water Forum at the Hague water officials from 130 countries refused to classify water as a human right. Representatives at the Forum instead included in their closing declaration the phrase “[every person should have] access to enough safe water at an affordable cost” (*The Gazette* (Montreal), 23 March 2000). Activists and experts said that such a declaration did not go far enough and that the joint declaration also lacked concrete measures to ensure a clean world water supply (*The Gazette*, 23 March 2000). Issues remaining unresolved are whether a certain amount of water should be a right or whether access to water should be a right, whether access should be paid for, what affordable means, and what quality standards should apply.

4.1: Defining a Human Right to Water

Activists and advocates are clearly demanding a human right to water but are not stating what exactly they are seeking. It appears that there is conflict even among those that agree there should be a human right to water. A right to water may merely mean access to safe water, which means that the water itself may come with a price and an individual may have to pay for it. The state could recoup some of the infrastructure construction and maintenance costs of

ensuring water access for everyone if water access is priced. Unfortunately, in such a scenario access to water would be a right for all, but only those individuals with sufficient money to pay for the water they need could actually obtain water.

Alternatively, a right to water could mean that every person is entitled to a minimum amount of water per day for their basic needs of drinking, bathing, cooking, and sanitation, which would be provided gratis. Attendees of the Mar de Plata Conference and Nikolai Napalkov of WHO support a right to water that would ensure that each person gets a specific amount of water necessary to fulfill her basic needs. In this instance, states would bear the burden of constructing and maintaining infrastructure as well as ensuring sufficient water runs within the infrastructure to fulfill citizens' entitlements without duties imposed on citizens to repay any of these costs.

An increasing human population and rapid industrialization are creating rising demands on water while supply is "decreasing" due to increased pollution and opposition to creating large new infrastructure projects that open previously inaccessible sources of water (*DI Digest*, 5 September 1996). Advocating a human right to water arises from the acknowledgement that limited water resources are unequally distributed and that a mechanism needs to be created such that everyone can obtain sufficient amounts of water to fulfill their minimum needs (assuming there is agreement about the definition of minimum needs). Another layer of complexity is added by the adoption of the idea of sustainable development in policy circles. Not only must the needs of all today's citizens be met but so too must the needs of future generations. Policy-makers must

therefore consider maintaining and restoring the health of ecosystems to ensure water availability for the future when making decisions today.

4.2: Locating a Right to Water in the Human Rights Discourse

The subsequent discussion is premised on the right to water as one of access to water rather than a minimum amount of water. This assumption is credible because states would be reluctant to embrace the much more expensive option of a right to a certain amount of water. The right to a minimum amount of water per person approach has several problems, such as accounting for the water needs of future generations. Other problems are how to design a system that addresses the mismatch between where people live and where water is (especially given notions of sovereignty), and how to accommodate the evolving nature of both rights and water needs. Furthermore, the minimum amount of water approach relies on adjudication as means of redress which might exclude certain people from ever having the capacity to pursue their right to water.

It is important to locate the right to water within the human rights discourse because the rights and responsibilities of affected parties vary according to the type of human right it is. The exact definition of the right to water and the responsibilities of various parties, including the state, depend on where within the human rights discourse the right is located. A human right to water could be a complex right that can have attributes of first generation, second generation and third generation rights. In embracing a broad and comprehensive interpretation of human rights, a human right to water would be interpreted to include attributes of each generation of human rights as well as interdependent with and indivisible from other human rights.

4.2.1: Right to Water as a First Generation Human Right

The right to water as a first generation human right would be encompassed in the right to life that is in Article 6 of the Covenant on Civil and Political Rights. In this instance the right to life must be interpreted broadly as the HRC has shown a willingness to do in the General Comments it adopted (McCaffrey, 1992, pp. 5-6). Most commentators embracing the expansive right to life believe that the realization of civil and political rights is an essential condition for the enjoyment of the entire range of human rights. Environmental activists and proponents of a human rights approach to environmental protection use this interpretation of civil and political rights to “silently and undramatically incorporate environmental rights into the legal system” (Boyle and Anderson, 1996, pp. 4-5).

Given this less dramatic interpretation of civil and political rights, a first generation right to water would essentially mean that the political arena is expanded to allow people to make their demands for water resources, sound water management, and access to water resource data. Gains from a first generation human right to water include political opportunities for activists, data collection for engineers and planners, and participation of local groups in agenda setting and water management. Although these are important gains, they do not in and of themselves ensure water allocation that would meet the basic human needs of each person.

4.2.2: Right to Water as a Second Generation Human Right

The second generation of human rights adds substantive standards of human well-being and arise from the International Covenant on Economic,

Social, and Cultural Rights (ICESCR). The rights in the ICESCR include the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹⁷ These rights could be interpreted to implicitly include a supply of water that is at least adequate to meet basic human needs. One could also credibly argue that the right to the continuous improvement of living conditions implies that people should have the right to enough water to industrialize and increase their economic status. A right to water for rapid industrialization and economic development (with little thought to environmental impact) usually leads to poor consumption choices or threats to food security as water is diverted from the agriculture sector to the industrial sector (Brown, 21 June 2000).

Second generation human rights require “foresight, planning, and considerable expenditure and exertion. A minimum level of development is also necessary to sustain the enjoyment of these rights” (Umozurike, 1998, p. 539). If a human right to water were a second generation right, the state would have the duty to progressively realize each person’s right to water which would involve extensive expenditure. Expenditures would have to be made to ensure that water resource availability data is collected and that an institutional framework exists to make collected data accessible to all interested parties. Other expenses include communications to allow parties to meet and coordinate action, infrastructure to deliver water, and building capacity to ensure that infrastructure is maintained. Other programs requiring state funds might, or

¹⁷ Article 11 of the International Covenant on Economic, Social and Cultural Rights specifically mentions these rights.

most likely would, be necessary to actualize a second generation human right to water.

Second generation rights have been harder to attain than first generation human rights. In theory, as of March 1999, the 141 nations that had ratified the ICESCR agreed that economic and social claims have equal status to civil and political rights. In practice however, these same nations have failed to take the necessary implementation steps to make economic and social claims equal to first generation rights (Felice, 1999, p. 571).

Yet human rights documents such as CEDAW and the Declaration of the Rights of the Child have helped create additional principles and norms that impact the economic, social and cultural dimensions of a right to water. These documents have an impact on a human right to water because they recognize that women and children tend to be responsible for obtaining water and that women generally manage the use of water for basic survival, such as cooking, cleaning, bathing, and sanitation.

4.2.3: Right to Water as a Third Generation Human Right

Consideration should be given to a human right to water as a third generation human right, especially if focusing on certain groups such as women and children and their access to water. The third generation human rights can be used to address the distributive aspects of water resource allocation inequity.

There have been two approaches used to pursue self-determination by environmentalists and other groups interested in pursuing collective rights. One approach relies on the concept of permanent sovereignty over natural resources as a means to assert economic self-determination. Environmentalists have used

the legal space created by the third generation rights to argue for the restraint of environmentally degrading foreign investment. As a means of environmental protection, this has been largely unsuccessful because instead of foreign investments that pollute national natural resources, domestic enterprises pollute (Boyle, et. al. 1996, p. 6).

Territorial sovereignty impedes the creation of ecosystemic, inter-state, regional, or international solutions for water management, allocation, and pollution. Inter-state or regional water management associations or projects require cooperation between two or more riparian states to ensure that all affected people (and their descendents) will have clean freshwater to meet their basic needs. Such necessary cooperation is at risk when there is a strong adherence to notions of sovereignty.

The other approach to third generation rights is that sovereignty should not be absolute in the state, but rather accord distinct groups a degree of political and economic autonomy within existing state boundaries. Indigenous peoples have effectively used this approach to practice their customs and ensure the continuity of their cultures (Boyle et. al. 1996, p. 6). There is potential here for certain groups to articulate and preserve customary water sharing and management systems. Unfortunately, groups interested in pursuing this approach to third generation human rights have been frustrated by the lack of an effective procedural remedy under existing legal regimes.

4.2.4: A Broad, Comprehensive Approach to a Human Right to Water

The interdependence and indivisibility of human rights indicates that there are civil and political aspects of a right to water that cannot be separated

from the economic, social, and cultural rights to water. Ensuring access to clean water is just a part of a broadly interpreted human right to water. For example, a right to water is tied to a right to health, which is intrinsically related to education. It has been quite ineffective to provide water as part of health programs without providing education, specifically hygiene education.

A human rights approach to water management looks not only at the water to which people have access but also at the effects access has on the achievement of a full life. A human right to water can be rooted in human dignity (as a vision of a full life) which is a unifying and core principle for all human rights.

International action, unlike a human rights approach that encompasses the interdependence of rights and the unifying principle of human dignity, tends to focus on specific targets such as clean water for all by a certain time, such as the year 1990. "When specific targets are chosen but not assigned a priority, massive resources can be (and actually are) spent on providing clean water, when a much more cost-effective approach would have been to increase education and access to larger supplies of "dirty" water . . . [B]y focusing on quantities of goods and services, their distribution and effective use can be neglected" (Stewart, 1989, p. 355).

Setting priorities and making decisions about the best, most effective use of water require a lot of data, participation in politics by people of varied views to set an accurate agenda, and social and cultural rights such as education and health that ensure full participation and dignity. A human rights approach addresses all of these issues as well as addressing issues of distribution and attributing duties and obligations to host of actors. A broader, more

comprehensive, although thus far resisted, view of human rights, attributes duties and obligations on non-state actors and third party states in addition to individuals and their states to fulfill every person's human rights. This broader view of human rights is necessary to involve all pertinent actors and all rights that are indivisible and interdependent.

The involvement of the numerous actors and the discussion of distribution and effective use of water reflect the complexity of water management itself. Effective water resource management requires that all actors understand the interconnectedness of their actions and the impact their actions have in either encouraging or denying the development of others.

Chapter 5: Cases Involving a Recognized Right to Water

Examining the impact of a declared human right to water in improving the people's access to water is a way to determine the strength the strategy of human rights for human development. Case studies provide a manner of assessing the merits of a human rights approach to water allocation. Considering other strategies allows a means of comparison that also allows determining the merits of a human rights approach.

5.1: *Manqele v. Durbin Metro Council*

A case that tests rights to basic amenities and might provide interesting precedent for other countries is pending in a High Court of South Africa, where a right to water is recognized in the Constitution. This case is about a right to water that focuses on ensuring sufficient amounts of water (for adequate nutrition). In this instance, a woman, Ms. Manqele, was cut off from her water supply because of her inability to pay. She brought a suit claiming that she is entitled to a minimum amount of water sufficient to fulfill her basic needs. She was willing to use even less than a sufficient water supply - defined as six kiloliters a month - granted users that cannot afford to pay for water (*The African Water Page*, 6 July 2000).

The Durbin Metro Council argued that absent detailed water regulations defining a "basic water supply" drawn up by the National Ministry it had no other choice but to cut off Manqele's water supply. Relying on precedent that denied necessary medical treatment that led to the death of a man, the Council argued states, due to financial constraints, could not be expected to supply water to everyone who needed it. The attorney for the Council presented the position

that constitutional provisions depend upon the availability of resources, placing no obligations on the state and providing no unqualified guarantees. The Council also argued that there was no way to monitor water use to ensure that Manqele only used the basic supply requested (*The African Water Page*, 6 July 2000).

The decision is pending as South Africa tests its commitment to looking after the poorest and most vulnerable. This case can settle, at least in South Africa, if access to water is sufficient to fulfill a human right to water. It also determines, then, whether the ability to pay determines which individuals actually get water. The decision reached in South Africa will set binding precedent there. Yet international law bodies have been known to examine domestic case precedent and assume it as a principle to settle international disputes.¹⁸

5.2: *Galilee Society for Health Research and Services v. Government of Israel*

There is at least one case pursued at the international level where a human right to water was claimed and at issue. This case provides a unique situation to examine how strong a declared human right to water translates to access to water. In some ways, this case relies on the statist model and seeking redress in a “court.” But there are several aspects of the case that are rooted in theories of justice and human dignity that capture the broader, comprehensive interpretation of human rights. The case was brought before the Second

¹⁸ The copper smelter cases in United States jurisprudence were used as reasoning to settle a Canadian-American smelter dispute. From class discussions at Harvard Law School in Fall 2000. More details as to specific cases can be found in course syllabus on <http://www.law.harvard.edu>.

International Water Tribunal in Amsterdam in February 1992 (Hey and Nolikaemper, 1992, p. 82).

The International Water Tribunal (IWT) is an independent forum for adjudicating water issues. The IWT was initiated by environmental organizations in the Netherlands and was supported by about one hundred European environmental organizations. The tribunal is primarily funded by Dutch organizations, both governmental and non-governmental and by the German Green Party (Kanaanah et. al., 1995, pp. 193-195).

The IWT jury is composed of independent expert panelists from such fields as biology, ecology, economics, international environmental law, geology, public health, and resource assessment. Cases heard by the IWT must be scientifically documented and presented in writing to the jury. Parties are invited, but not obliged, to argue before the jury, since the jurisdiction of the jury is non-binding and the tribunal cannot force parties to come before it and represent their interests. The decisions of the IWT jury are also non-binding and usually take the form of recommendations upon determination of responsibility rather than judgements and orders (Kanaanah et. al., 1995, pp. 193-195).

The first IWT, held in 1983, was focused on water pollution in Europe and, in spite of its non-binding nature, was quite successful. Spurred by the success of the first IWT, a second IWT was held in 1992 and focused on cases from developing countries. Cases heard in the second IWT were to be judged against a standard set in the Declaration of the second IWT. In Article 1, the Declaration states that the right to water is a basic human right – “All members of present and future generations have the fundamental right to a sustainable livelihood including the availability of water of sufficient quantity and quality.” Other

articles include the right to have one's interest in a water resource duly taken into account when decisions are made about activities that may affect that interest, and the right to participate in decision-making with regard to that water resource. Another right included in the IWT Declaration is the affected members' right to review and appeal any decision taken that affects either the quantity or quality of water resource (Kanaaneh, et. al., 1995, pp. 193-195).

Parties appear to have interpreted the IWT's right to water as attributing the duty of water provision to the state. A Middle Eastern Bedouin village, Husseinyeh, brought a case to the IWT to enforce their right to water and obtain a decision that recognized the government's failure to fulfill its duties to provide water. The team that brought the case to the IWT on behalf of Husseinyeh was comprised of a public health physician, a public health nurse, an environmental engineer, and a human rights lawyer (Kanaaneh, et. al., 1995, p. 195).

Husseinyeh is one of about seventy "unrecognized" Arab communities in northern and central Israel that was settled in 1948 on privately owned land. In 1965, the Israeli government made these unrecognized villages illegal and zoned the land as non-residential. On an ad-hoc basis the government continued to grant permits for a few basic services, including water. In the 1970s, the government refused requests from unrecognized villages for services as a means enforcing its resettlement policy which tried to remove Arab communities from remote locations and to replace those communities with Jewish communities. In 1981, the zoning laws were amended to reflect the resettlement policy. The amendments prohibited the supply of electricity, water, sewerage, healthcare, and telephone lines to buildings without building permits. The government also refused to provide communal taps for water (Kanaaneh et. al., 1995, pp. 191-193).

The Local Planning Board had discretionary power to grant permission for hooking up services which it did not exercise. Recognized communities (which were usually Jewish) less than fifty meters from unrecognized communities had connections to services, especially waterworks. Unrecognized communities were left to collect rainwater and import water purchased from a nearby settlement or kibbutz, in spite of their willingness to pay to have pipes installed if the government granted permission to connect them to the water network (Kanaaneh et. al., 1995, pp. 191-193).

Husseinyeh claimed a right to water under the IWT Declaration and attributed a duty to Israel to provide the water. Then it argued that its lack of water was due to deliberate government action, that Israel was in violation of World Health Organization (WHO) standards on environmental hygiene, and that Israel recognized a duty to provide water and breached this duty (Kanaaneh, et. al., 1995, pp. 198-202).

Israel responded with the argument that Husseinyeh's citizens refused to relocate to government-planned communities where services would be provided for them.¹⁹ Israel also argued that the provision of services at these planned communities meant that it was not in violation of WHO standards, and did not address the final argument of the complainants about the duties it recognized (Kanaaneh et. al., 1995, pp. 198-202).

The IWT decision was that governments must have legal instruments that enable them to balance public and individual interests, thereby upholding

¹⁹ Of course compelling a community to relocate violates the internationally recognized human right to choose one's place of residence, a right stated in Universal Declaration of Human Rights (Article 13) and International Covenant on Civil and Political Rights (Article 12).

Israel's right to developing laws that might sometimes cause individual losses for public gains or vice versa. In its recommendations, however, the IWT was critical about the denial of water and suggested that the Israeli government use its discretionary power to connect communities like Husseinyeh to waterworks (Kanaaneh et. al., 1995, p. 202).

National and local press gave much coverage to the IWT verdict and the whole issue of unrecognized villages. The issue gained political prominence and the Labor government of 1992 agreed to connect unrecognized communities to the water network (Kanaaneh et. al., 1995, p. 203). In fact, the IWT decision was seen as political rather than legal (McCaffrey, 1992, pp. 6-7).

5.3: The Implications of *Galilee Society* Case

This case seems to indicate that a human right to water can create duties that plaintiffs can pursue in a forum to gain access to water. Yet there are some special circumstances that distinguish this case from possible future cases relying on a human right to water.

This case seems to be more about discriminatory practice rather than incapacity to provide water or lack of water resources in the country. It so happens that Israel has a world class health system and is a member of WHO (Kanaaneh, et. al., 1995, pp. 199-200). Acting so as to deny certain health benefits to Arabs while providing them to Jewish settlers made Israeli actions appear discriminatory rather than an inability to provide water services. The publicity and the public pressure that was present in this instance, due to the discrimination, was unique and would most likely not be so strong as to bring about such changes in other cases.

In this instance it appears third party states' citizens rose to the occasion and aided in creating political pressure to push for increased access to water for citizens of Israel. With a broader view of human rights that includes addressing distribution of resources and justice, this aspect of the case can lend evidence to the effectiveness of a human rights approach to water management and allocation.

In this case, the infrastructure was already constructed and the Arabs were willing to pay for any remaining pipe installation required from the network connection (Kanaaneh, et. al., 1995, pp. 191-193). Many countries that have yet to build such extensive infrastructure could and would be overburdened if required to provide water to their citizens. The situation is further complicated by the policy of privatization that is sweeping the globe.

In an instance where state water network exists but water utilities are privatized, the duty to provide water that results from a human right to water is not as easily attributable to the state. In a human rights regime that allows for attributing duties and obligations to non-state actors, the introduction of private parties in water management does not create problems in imposing duties upon them. But this broader conception of human rights is still strongly resisted.

Husseinyeh was fortunate to have a multi-disciplinary team of experts already working in the area and sharing a history of working together (Kanaaneh et. al., 1995, pp. 195-198). There is a unique political situation that involves many interests in the Middle East that allowed Husseinyeh to form such a talented team. Most other communities facing a water supply problem will not have such multi-disciplinary teams focused on their issues. Furthermore, developing such an extensive case file and preparing for litigation involves a lot of time and

expense that few communities or individuals can bear. It seems such a multi-disciplinary team with capacity to develop a detailed case file is necessary to gain a successful verdict, and thus most individuals and communities would be unable to pursue their human right to water in a court case.

Reliance on courts as the forum for redress and legal procedures can be detrimental to a comprehensive interpretation of human rights that relies on a core of human dignity and envisions of a full life for each individual. The detriment arises from the fact that high capacity and substantial financial resources are needed to seek redress for human rights violations. In spite of the idea that each individual possesses the same human rights, only some individuals actually can act to enforce their rights when violations occur. Focusing on establishing an agreed upon value system and abiding by it may be of greater import to ensuring every person's human rights than relying on courts for redress and solutions.

In this instance, part of Husseinyeh's strategy was not to pursue any and all remedies available in Israel for fear of setting negative precedent (Kanaanah et. al., 1995, p. 193). If the implementing procedures of the right to water were similar to those for civil and political rights, then complainants would have to exhaust all state remedies before entering the international forum. State remedies might not reflect the same principles and rights as those in the IWT Declaration. In particular it is important to remember that the IWT has a definite European partiality towards social democracy and a healthy environment. A broader international forum representing an array of views might not express similar sentiments in a declaration. Furthermore, national courts would

probably have a greater role in defining a human right to water rather than international forums.

The fact that the IWT upheld that states' power to create instruments that allow for the balance public and individual interests in a way echoes the progressive realization interpretation of economic, social and cultural rights. The progressive realization aspect of the IWT decision supports a statist vision of human rights provision and enforcement that reinforces sovereignty. A statist vision of human rights does not bode well for recognizing the need for cooperation in managing water resources since water basins and river courses do not recognize national or state boundaries.

Finally, in this instance the Israeli government participated willingly in this case, challenging neither jurisdiction nor a human right to water. In most instances, the nature of international law make human rights easily agreed upon with little specificity to and enforcement behind them. Much of the battle remains to giving specificity to the human right and moving beyond international judgement of violators to actually implementing and enforcing human rights.

5.4: Alternative Strategies to a Human Right to Water

It cannot be understated that a human rights argument has the greatest weight as a moral and ethical argument. Policy makers can and would appreciate possessing a tool like a human right to water to publicize the issue of water scarcity and management, to increase dialogue and move towards mutually agreed upon solutions to water resource management. The power of

human rights in the political arena can be extensive, as the Middle East litigation indicates.

A human right to water still needs to be clearly defined so that violations can be determined and then acted upon. Also a modern human rights theory must be agreed upon by a majority of nations because the theory ascribed to determines what is prioritized. If a comprehensive approach to human rights is embraced, then human rights are seen as interdependent and indivisible and duties are attributed to private actors and third party states as well as to the individual and the state to ensure human rights, to the fullest extent, are had by all.

While the discussion about a human right to water continues, other strategies to ensure everyone's access to water also bear consideration. All the advocates of a human right to water share the goal of ensuring each person has access to a sufficient water supply.

In 1992, the International Conference on Water and the Environment (ICWE) was held in Dublin, Ireland. ICWE was convened by the World Meteorological Organization (WMO) on behalf of more than twenty bodies and agencies of the UN system which are represented on the UN Administrative Committee on Co-ordination Inter-Secretariat Group for Water Resources (ACC/ISGWR). Five hundred participants, representing 114 countries, attended the Conference. The Conference resulted in the Dublin Statement four guiding principles upon which to base action at local, national, and international levels (Dublin Statement and Report of the Conference, 1992).

The four guiding principles are:

- Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment.
- Water development and management should be based on a participatory approach, involving users, planners, and policy makers at all levels.
- Women play a central part in the provision, management and safeguarding of water.
- Water has an economic value in all its competing uses and should be recognized as an economic good.

These guiding principles are in themselves in conflict. Recognizing that water is essential to sustain life and that water development and management should be based on a participatory approach intimates increasing access to water for everyone. Contrarily, Principle 4 implies that the conclusion is that water is an economic good and that anyone might be entitled to water if they have sufficient money.

The advocates for a human right to water would do well to focus their struggles on building on the consensus reached by over 114 nations. Countries meet in follow up conferences. Advocates working on water and human development issues can take advantage of these conferences to focus discussions on Principles 1, 2, and 3 and on ensuring universal access to water. Water for all might be achieved more quickly if advocates build on the consensus that exists rather than fight for language and recognition within the human rights discourse. Furthermore, CEDAW in conjunction with Dublin Principle 3 can help women gain greater political voice and participation in discussion of setting priorities (of use) and redistributing water resources.

There are several strategies that can be pursued. Peter Gleick, a vocal advocate of a basic human right to water, has moved beyond the establishment

of a right to water to attempting to set standards for what amounts of water each person should be entitled to (Gillis 1996, Gleick 1996, Gleick 1999, Gleick 2000). This strategy leaves open many problems, such as to how to determine what is an appropriate amount of water per person and how to modify the amount as development occurs and needs change, especially given the difficulty how to plan for future generations. Other problems with this approach are how to get each person their share, who will make decisions about how to redistribute water and who will bear the costs of distribution. Especially difficult to solve are problems caused by sovereignty in the supply-demand mismatch and how to get water-rich nations to share with water-poor nations. Other problems with this sufficient amount of water per person approach have to do with enforcement, such as how to limit water use to the established and how to establish a violation. Because of these problems, the basic needs definition of a human right to water is quite problematic.

Furthermore, the focus on setting a minimum amount relies strongly on an entitlement approach that relies on court adjudication to redress violations. This approach does not address how to solve distribution problems that arise between individuals, sectors, states, and nations. Setting a minimum amount of water per person might constrain the development of individuals and nations which implicates other human rights. The problem of declaring a minimum amount per person would constantly have to be revisited as changes in priorities, technologies, and standards in living occur.

If only broad principles are generally agreed to within the international community, there is some merit to pushing the dialogue among and between nations to discussing the specific amount of water that each person should get as

a human right. The discussion might also spur critical examination of modern consumption patterns. This might push the dialogue in the political arena to include science and ecology and really assess problems such as water supply, demands on water, and water pollution.

Another strategy is to encourage states to form multi-disciplinary teams of civil and environmental engineers, hydrologists, geologists, lawyers, and planners to collect water resource and rights data. Based on this data these experts could determine the water available for distribution in their countries. Under the Dublin Principles the data should be collected and discussed in an open manner so as to invite participation, especially of all water users. Then in light of the newer thinking about ecosystems, water basin management and inclusion of all stakeholders, countries need to think strategically about ensuring water access for all beyond national borders. Co-riparian states must work together as should countries that share basins and aquifers. A legal strategy in this instance might actually increase conflict as jurisdictional issues, rights and duties are litigated and established while pollution or abstraction activities continue.

Most extensive research has been done on the fourth Dublin Statement Principle (Kalbermatten, 1999, Seagraves and Easter, 1983, Easter and Hearne, 1995). The notion of water markets as means of determining efficient uses of water among competing sectors seems to have taken root. Many policy analysts and academics propose the creation of water rights that are similar to (but separate from) property rights that can be bought, traded, or sold, thereby creating water markets. Ironically, the focus on an economic solution seems to

be antithetical to the notion that water is a basic human need that is essential for life.

Based on the experience in Chile with water markets many, like the World Bank, are touting water markets as a successful means of increasing efficiency in water allocation. The water market solution of allocating water resources may deny water resources to the poor, those in rural areas and those in less favored sectors of the economy. Perhaps efficiency should not be the primary goal in resource allocation when resources that are essential for life, such as water, are involved.

A water markets solution still begs the question of how the initial water rights would be allotted, how initial prices would be set, how such a system would operate with already outstanding water rights, and how distribution inequity between and within nations will be resolved. Advocates for economic and social justice are wary of market solutions because markets respond only to the needs of those people who have money (Korten, 12 December 1995). Ironically, it is specifically those who lack an adequate source of income who usually bear the burden of the lack of clean water and sanitation, so a water market solution has the potential of perpetually locking the most vulnerable out of accessing the water they need.

Carl Bauer's work cautions that the Chilean experience might not be the success that others claim. There are some aspects of water (use) rights that make them uniquely difficult to apply a market solution to. Defining property rights to natural resources as commodities is problematic since it fails to recognize that such property cannot be private, exclusive, and transferable because different water uses are physically inter-connected, and people's activities directly and

indirectly affect each other. Also water rights have cultural and historical components that make them difficult to acquire or change (Bauer, 1998).

Markets also need several conditions to make them successful and that might make them inapplicable as a water allocation mechanism. Of particular mention is the fact that markets might work within a sector for achieving efficiency, it might not necessarily work in finding the efficient solution among competing sectors. There are too many social and political consequences of permitting inter-sector and interregional trading. There would need to be clearly defined property rights for markets to work, and institutions and procedures to resolve conflicts (Bauer, 1998).

Advocates for a human right to water and proponents of improved human health and development through ensuring a basic amount of water for each individual would do well to counter the rising tide of supporting water markets as an appropriate solution for water resource allocation. The inclusion of a moral tool like a human right to water can carry some ethical persuasion, but might not have much power in establishing rights and entitlements that individuals and states can demand of each other. Without such concrete standards and duties that all can agree upon and attribute to specific parties, there is little that might be improved upon for the poor in “water poor” states.

Chapter 6: Conclusion

Concerns have been raised about the use and quality of natural resources such as water. News stories report problems such as water pollution, droughts, deaths due to water-borne illnesses, and skirmishes over water. Such problems highlight the fact there is intense competition over water resources. Agricultural practices, industrialization, urbanization, consumer consumption, and a growing population all contribute a looming water crisis.

Although water appears to be everywhere, only the smallest percent is useable by humans. So water is actually a finite resource. The demands made upon the limited supply of water are constantly increasing. Technological innovations are devised in the hopes of fulfilling every demand on water. However, the facts that over one-fourth of the developing world's population lacks access to a safe and reliable water supply, and approximately fifty percent lacks sanitation services indicate that even many basic demands on water are left unmet.

Many people's development, both human and economic, is hindered by the lack of access to water. Many development workers and activists would like to provide each person with enough water for their need, water which they can trust and use with confidence. One of the strategies they pursue to achieve such universal water provision is advocating a human right to water.

This thesis used interdisciplinary and qualitative methods to examine the question of where, within the human rights discourse, a human right to water would be recognized. Upon recognition of a human right to water, the right to water was defined and the duties and obligations of ensuring the right were

examined. This thesis also examined whether a human rights approach would ensure universal access to human right.

The human rights theory ascribed to greatly impacts the definition of a human right to water as well as who is given duties and obligations in ensuring the right. For a human right to water to have the impact of universally ensuring access to water, a comprehensive view of human rights needs to be accepted. Such a human rights theory is built upon a core principle such as human dignity for all. It is concerned about the distribution of resources and the disparities that exist in human rights across communities, groups, and nations. A broad, comprehensive theory of human rights would permit attributing duties on obligations on both private and public entities as well as recognize the interdependence and indivisibility of all human rights.

There are many examples in the language of human rights documents such as the Universal Declaration of Human Rights and CEDAW that indicate that such a comprehensive human rights system was envisioned. Yet the action of countries in the past fifty years indicate that this more expansive human rights theory is not ascribed to, and in fact is strongly resisted.

If such a comprehensive human rights theory were operating, a human right to water would be one that ensures each person's access to water. The responsibility to provide each person access to a water supply sufficient for her basic needs would lie in each person and entity, including TNCs, international financial institutions, third party states, as well as the individual and the state. Such shared responsibility would require cooperation among and between all the relevant actors.

Although the moral triumph of a human right to water is unquestionable, the actual change it can have on water re-distribution and allocation might be minimal. Much depends on the acceptance of a coherent view of human rights, which thus far has been strongly resisted. Therefore, alternative strategies should be pursued concurrently if the poor and underdeveloped are going to have access to a certain amount of a certain quality of water. In light of the threats imposed by water market proponents, privatization, and decentralization, activists and development workers need to build on existing consensus to act as quickly as possible. Consensus such as the Dublin Statement Principles and CEDAW should be exploited as much as possible to ensure water allocation that guarantees that every person, not just those with money or those that got there first, gets the water they need for basic human needs.

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