The Implications of Human Needs for Human Rights-Based Water Allocation: Review of *The Human Right to Water*

**Hugo Tremblay**

The human right to water has recently been the object of much attention. Among the myriad of scholarly publications on this subject, Dr. Inga Winkler’s *Human Right to Water: Significance, Legal Status and Implications for Water Allocation* stands apart as an excellent introduction that provides a thorough and well-balanced legal study of the human right to water in international law. Winkler’s publication also serves as a comprehensive overview offering enough background on related issues to assist further research. The work’s form is as polished as its content, with the arguments clearly spelled out and summarised through an orderly and elaborate structure that is well complemented by an impressive bibliography and a detailed table of instruments and index.

The prioritization of water allocation on the basis of human rights is a major contribution of the book. It restricts human rights-based claims to limited quantities of water and a few selected types of uses. Yet, the prioritization framework proposed by the author does not solve all water allocation issues and trade-offs, as will be seen in the Discussion section of this article. The issue of human needs, that lies at the heart of the conception of the human right to water conveyed by the book, is at the root of the two most pressing challenges left open by Winkler.

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* Post-doctoral Scholar, Faculté de droit, Université de Montréal.

Specifically, these two challenges relate, firstly, to the latent dynamic in favour of a hierarchy between needs-based human rights, and secondly, to the uneasy mediation between the human right to health and the human right to the environment, which both act as opposite poles federating needs-based human rights respectively closer or further away from anthropocentricism.

2. LEGAL FOUNDATIONS

After discussing the challenges that relate to water availability and competing water demands, the book turns to the legal foundations of the human right to water in international law. The author finds that the right is guaranteed as an implicit component of the right to an adequate standard of living under article 11(1) of the UN International Covenant on Economic, Social and Cultural Rights ("ICESCR") on the same footing as the right to food, housing and clothing. Moreover, a number of human rights treaties limited in personal and territorial scope, some of which are almost universally acceded to (e.g. the UN Convention on the Rights of the Child), include guarantees of access to water.

Until this point, the book provides an analysis similar to what can already be found in many doctrinal sources. However, the author pushes beyond treaty law and analyzes customary international law in relation to the human right to water. This covers a significant issue which remains insufficiently addressed elsewhere in the literature but has a clear impact on the right’s binding nature. States that have not ratified the relevant human rights treaties could nonetheless be bound by a customary international human right to water. Winkler’s analysis does not show consistent State practice in upholding a human right to water, without which a customary norm in international law cannot emerge. Thus, the human right to water has not yet attained the status of customary international law. Nevertheless, Winkler considers that recent developments including the recognition of the human right to water by the UN General Assembly and the Human Rights Council elevate the right to water into customary right in status nascendi.

This thoughtfully balanced opinion does not assuage lingering questions raised by the method used for determining the existence of international custom. Winkler’s examination of facts to establish state practice relies on an analysis of international declarations and statements that refer to the right to water, and mostly omits state behaviour apart from a discussion on right to water provisions in national constitutions. This is at odds with the author’s stated approach that should, in principle, encompass both actual behaviour and official statements. Winkler recognizes that an exclusive focus on official statements disregards some traditional elements of state practice, and results in non-binding declarations becoming binding as part

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3 For example, see Takele Soboka Bulto, "The Emergence of the Human Right to Water in International Law: Invention or Discovery?" (2011) 12:2 Melbourne Journal of International Law 1.
4 Winkler, supra note 1 at 65.
5 Ibid at 66-67, 69 and footnote 363 at 97.
6 Ibid at 97.
7 Ibid at 71-95.
8 Ibid at 70.
of customary law.\textsuperscript{9} A structurally more balanced review of state practice covering behaviour as well as statements would have taken the analysis beyond the well-trodden path of listing the various international documents in favour of a human right to water, including those that are acknowledged as irrelevant because they cannot be attributed directly to states.

The author’s reluctance to elaborate on state behaviour is understandable since states routinely fail to observe the requirements of the right to water. Yet, such an examination could have clarified what constitutes state behaviour relevant for the emergence of custom given the specificity of human rights in international law, where interactions between states are usually more salient than those between the state and the individual.\textsuperscript{10} Also, it may have clarified the links between state practice evidencing human rights in international custom and the normative content of obligations arising from the right to water detailed later in Chapter Four of the book. As it is, these links are only implied in the recognition that the emergence of a human right in international custom may be more difficult to demonstrate when violations of the right to water occur.\textsuperscript{11}

3. CHARACTERISTICS

Having established that the right to water has a legal foundation in international law, the book turns to its characteristics.\textsuperscript{12} Winkler examines the legal nature of the right to water to determine that it is legally binding and therefore gives rise to state obligations. In the course of this demonstration, three prominent arguments often put forth to dispute the binding nature of the right to water are dismissed:\textsuperscript{13}

1. The argument that economic, social and cultural rights such as the right to water may require positive, resource intensive interventions from the state does not diminish the rights’ binding nature. The creation of two sets of negative and positive rights only resulted from a particular historical context. Positive interventions are not always required with respect to economic, social and cultural rights, while civil and political rights often demand positive interventions;

2. The vague formulation of socio-economic rights should not be an obstacle to their binding nature. Their substance has been detailed over the last 20 years. Their alleged lack of precision relates to the issue of direct application rather than to the rights’ binding nature. Also, the formulation of civil and political rights is often vague but the binding nature of these rights is not in question;

3. The argument that socio-economic rights are not binding due to a lack of judicial enforceability ignores the fact that the judicial enforcement of the right to water does occur in some jurisdictions. Such an argument also fails to take into account

\textsuperscript{9} Ibid at 70.
\textsuperscript{10} Ibid in footnote 179 at 69 only provides a couple of references on the type of actions from states that evidence practice relevant for international custom.
\textsuperscript{11} Ibid at 68-71.
\textsuperscript{12} Ibid at 100-40.
\textsuperscript{13} Ibid at 102-107. Similar arguments are presented at 230-37 (ibid).
fundamental features of international law in which enforcement mechanisms are the exception rather than the norm.

Obligations to respect, protect and fulfil arise from the binding character of human rights. Regarding these general obligations in relation to the human right to water, Winkler specifies that a state remains responsible if it chooses to involve the private sector: “[o]nly the nature of its obligation shifts, from the obligation to respect to a stronger focus on the obligation to protect.” In addition, the obligation to fulfil requires the state to provide water in order to ensure that basic needs are met when people are unable to provide for themselves, notably in the case of natural disaster or when extreme poverty makes water services unaffordable. The impact of the principle of non-discrimination is also discussed. The twin issues of progressive realization and core obligations to be immediately fulfilled in respect of socio-economic rights are examined in detail to resolve the apparent contradictions which they generate.

Winkler particularizes these general obligations by spelling out the normative content of the right to water. First, the right guaranties the availability of water for specific water uses. Water volumes can be claimed in quantities sufficient for drinking, personal hygiene and other basic needs such as anal and genital cleansing as well as hand-washing. This guarantee extends to other domestic uses but excludes water for sanitation, which should be considered

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14 Ibid at 109-10.
15 Ibid at 111.
16 Ibid at 112-25.
17 Ibid at 126-27.
as the subject of a human right distinct from the right to water. Similarly, water for irrigation is excluded from the right to water because its inclusion would result in the human right to water guaranteeing claims to large quantities of water. The right to water also guarantees water availability in relation to specific volumes, which may vary depending on the context but roughly amounts to 100 litres per person, per day; this is considered as an acceptable minimum to maximize health gains by the World Health Organization ("WHO"). In addition to availability, the human right to water guarantees levels of safety and acceptability in terms of water quality, accessibility with regard to water source proximity and reliability, as well as affordability for tariffs and charges.

18 The author’s proposition to separate sanitation from water is commendable and more robust than having a single human right to water and sanitation from a theoretical point of view. Nevertheless, the arguments to justify sanitation’s autonomy from water can be questioned. For example, the urban infrastructures required for adequate and effective water supply and sanitation are more often similar than implied in the book. It remains to be seen whether sanitation in a dense urban setting can rely on effective solutions other than water-borne sewage: see Wu Shan, “World’s Biggest Eco-Toilet Scheme Fails” The Guardian (30 July 2012), online: The Guardian <http://www.guardian.co.uk>. The author lists anal and genital cleansing, hand-washing, and menstrual hygiene as water uses covered by the right to water. Instinctively, these types of cleansing, washing and hygiene seem more closely related to sanitation. Overall, the distinction between water and sanitation is difficult to delineate since soap and products for menstrual hygiene are also mentioned as part of the right to sanitation (Winkler, supra note 1 at 127-28). Contamination of drinking water due to the inadequate treatment of human excrement is also acknowledged as a major problem (ibid at 171-72). With respect to the principled distinction between water and sanitation, one issue pertains to the fact that international human rights are designed on the basis of a binary right-duty relationship between right-holders and duty bearers: see Margot Salomon, Global Responsibility for Human Rights: World Poverty and the Development of International Law (Oxford: Oxford University Press, 2007) at 132; Frédéric Mégret, “Nature of Obligations” in Daniel Moeckli et al, eds, International Human Rights Law (Oxford: Oxford University Press, 2010) 124 at 130. However, it might be argued that right-holders also bear duties. Urban Jonsson, “A Human Rights-Based Approach to Programming” in Paul Greedy & Jonathan Ensor, eds, Reinventing Development: Translating Rights-Based Approaches from Theory into Practice (London: Zed Books, 2005) 47 at 50, writes that “[m]ost scholars in the area of international human rights recognize obligations only on the part of the state. There is a need to extend the claim-duty relationships to include all relevant subjects and objects at subnational, community and household levels.” This argument is not alien to international human rights law. The preamble of the ICESCR, supra note 2 states that “[t]he individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.” Andrew Clapham (Human Rights Obligations of Non-State Actors (Oxford: Oxford University Press, 2006)) is of the opinion that States and individuals have duties with respect to human rights. In this context, it has been argued that uniting water and sanitation under a single human right may create problems by transforming some duties of the human right to water holders with respect to their excreta into claims based on the human right to sanitation, and vice versa: see Hugo Tremblay, “A Clash of Paradigms in the Water Sector: Tensions and Synergies between Integrated Water Resources Management and the Human Rights-Based Approach to Development” (2011) 51:1 Natl Resources J 307 at 327-30. Winkler does not tackle these issues; her book explicitly focuses on the state as the primary duty-bearer and does not deal with the responsibilities of other actors (Winkler, supra note 1 at 12-13, 217-18). Yet, it cannot avoid acknowledging the limits of the obligation to fulfil and recognizes that individuals must ensure the satisfaction of basic needs through their own efforts and resources, thus implying duties on the part of right-holders (ibid at 111).

19 Winkler, ibid at 129-31.

4. IMPLICATIONS FOR WATER ALLOCATION

At this stage, the examination of the legal aspects of the human right to water is complete and the book turns to the implications of human rights for water allocation. This point marks a shift from the study of the right to water to all human rights that relate to water. The aim is to establish a priority between water uses on the basis of human rights: “The idea is not to accord priority to any single sector of water use, but to determine priorities through ... different levels of realisation of human rights.”\(^{21}\) This is a quintessential contribution of crucial importance to address questions left unanswered by the UN Committee on Economic, Social and Cultural Rights or the Human Rights Council, and more generally by the legal doctrine on the right to water.\(^{22}\) Such an undertaking is necessary given the acknowledgements throughout the book that water is a finite resource, that demand exceeds availability, and that competition for water arises between users, thus requiring priority setting in water allocation to ensure that basic human needs are met.

The author starts from the orthodox position that “no single human right enjoys preference over other [human] rights in the allocation of resources.”\(^{23}\) However, this difficulty in prioritization is overcome by building upon the minimum core approach, which recognizes that certain minimum needs are more urgent than others.\(^{24}\) This leads to a hierarchy, whereby rights that aim at ensuring mere survival requirements have priority over other rights with respect to water (survival level). This is followed by rights that guarantee the amount of water absolutely necessary for personal hygiene, washing and cleaning (core level) and finally, by rights justifying claims to water that allow for the full realization of human rights (full realization level).\(^{25}\)

To refine this framework and clarify priorities in allocating water on the basis of competing human rights, the author also weighs three factors: whether substitutes or alternatives exist to water as a resource for the realization of a right (substitutability); whether direct access to water is required to realize a right, such as for the right to food that may be fulfilled in water-scarce regions by trade with water-rich regions (indirectness); and the quantity of water required to realize a right once best practice in water efficiency is implemented, which includes whether the water use is consumptive (quantity).

In light of this framework, an order of priority is set for various types of water uses on the basis of human rights. The right to water takes precedence over all other rights, thus guaranteeing the leading claim to water for personal and domestic uses. Water for food production is linked to the right to food. This aspect of water use relates to the entire spectrum from the survival level to the level of full realization, but the right to food receives a lesser priority order since food can be produced or provided through a variety of means other than subsistence agriculture, and water saving technologies can be implemented in food production. Likewise,

\(^{21}\) Winkler, supra note 1 at 141.

\(^{22}\) This contribution is recognized as such in the book’s foreword by the UN Special Rapporteur on the human right to safe drinking water and sanitation.

\(^{23}\) Winkler, supra note 1 at 151-52.

\(^{24}\) Ibid at 153.

\(^{25}\) Ibid at 153. Winkler also identifies a fourth level where the water requirements of all human rights are fully realized, but where human rights principles still guide the allocation of water resources (Ibid at 154, 207). The relevance of this fourth level is doubtful.
water for sanitation is relevant to all three framework levels but is subordinated to water for the right to water on the basis that alternatives exist—dry toilets, for example—and that higher water efficiency in sanitation is feasible. Water as an essential factor in the production of clothing is tied to the right to an adequate standard of living and linked to the core level. Water for energy appears somewhat related to all three framework levels, but the refining factors of substitutability, indirectness and quantity lead to the conclusion that “[o]verall reliance on water for the realisation of human rights obligations related to access to energy is therefore rather low.” Water uses that are considered mostly irrelevant to the fulfilment of human rights include water for transportation and recreation, as well as water for productive uses related to the right to work.

More delicate balancing is required with respect to other types of water use. The priority ranking of water for cultural and religious practices is set at the level of full realization in relation to freedom of religion and the right to take part in cultural life. However, its specific place in the hierarchy may rise or drop depending on the context; on one hand, access to water must be direct to maintain some particular ways of life, but on the other hand, the overall quantities required are either minute or demand water conservation in situ rather than positive allocation as understood from the example of the Ganges River in Hinduism. Indigenous water uses linked to indigenous human rights or the rights of minorities also generate uncertainty in the order of priority given that they can be relevant to both the core and the full realization levels. Water for preserving and protecting ecosystems is even more problematic: the right to environment is clearly recognized in regional treaties and national law, and serves as a basis for judicial sanction. However, Winkler deems it too vague, ambiguous and anthropocentric in conception to have a bearing on human rights-based water allocation. Finally, the right to development is simply excluded from her analysis.

5. DISCUSSION

The prioritization of water allocation on the basis of human rights is a major contribution of the book. The principles of equality and interdependence between human rights have often stifled discussions on the necessity of prioritization for water allocation in accepted international human rights advocacy scholarship. In Winkler's The Human Right to Water, these principles are not cast aside but the analysis moves on to address issues borne from the characteristics of water as a finite and scarce resource. Tackling these issues directly allows the author to make inroads on the restriction of human rights-based claims to limited quantities of water and a few selected types of uses. This is notably apparent in the rejection of the common argument which asserts that water for food production should be included under the right to water. Winkler writes:

[i]f water for producing food for basic consumption were taken to be guaranteed by the right to water, from a normative perspective there would be no reason not to include water for food production more broadly. It would be difficult to draw a line between subsistence farming and agriculture on a larger scale. The same relates to water used in a range of livelihood activities, water used for cultural and religious practices, water for energy production or other water uses that aim at fulfilling basic human requirements. All water uses necessary to realise any human right would be

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26 Ibid at 184.
conflicted under a single, all-embracing human right to water. As such, the concept of the human right to water would risk being undermined by broadening its scope and letting it become less tangible and focused.\textsuperscript{27}

Despite the importance of this contribution to further define and address outstanding issues surrounding the human right to water, the prioritization framework proposed by the book does not solve all water allocation challenges and trade-offs. As recognized by the author, the framework is not detailed enough to provide solutions in specific cases on a prospective basis. Rather, the framework must be contextualized and adapted to the existing situation once the prioritization challenge occurs.\textsuperscript{28} This relates to the fact that the framework only serves to establish personal and domestic uses as the ultimate priority based on the human right to water, while other water uses linked to other human rights remain mostly unranked in relation to each other.\textsuperscript{29}

The three refining factors of substitutability, indirectness and quantity used to further define the hierarchy among water uses on the basis of human rights may be one culprit for this shortcoming. The factors are so closely intertwined that it is doubtful whether they can be distinguished qualitatively, and therefore whether they add analytical precision to the prioritization framework independently from each other.\textsuperscript{30} For example, indirectness inevitably implies a degree of substitutability, and vice versa. One may also wonder whether the three refining factors are chosen from a neutral starting point without preordained conclusions rather than chosen \textit{a priori} because they will grant highest priority to the water uses covered by the human right to water.\textsuperscript{31}

Another important element might generate uncertainties in the priority ranking suggested by the book, namely the confusion between, on one side, survival, core and full realisation levels in human needs, and on the other side, core and full realisation of human rights. At the stage of identifying human rights implications for water allocation, personal and domestic water uses up to 100 litres per person, per day are all tied to the human right to water without distinctions between the related human rights: the right to life, the right to be free from hunger, the right to health and the right to adequate standard of living.\textsuperscript{32} To a certain

\textsuperscript{27} \textit{Ibid} at 130. See also \textit{ibid} at 31, 47.

\textsuperscript{28} \textit{Ibid} at 210-11.

\textsuperscript{29} Winkler writes that “[a]part from the priority for personal and domestic uses, it is difficult to prioritise water uses further” (\textit{ibid} at 209).

\textsuperscript{30} In a sense, interdependence between the refining factors would run contrary to the methodological principle of parsimony. According to this principle, the causal hypotheses in a deductive reasoning (water uses $\rightarrow$ ranking factors $\rightarrow$ priority order) should be as scarce as possible and should not be deductible from each other: see Adrienne Héritier, “Causal Explanation” in Donatella della Porta and Michael Keating, eds., \textit{Approaches and Methodologies in the Social Sciences: A Pluralist Perspective} (Cambridge: Cambridge University Press, 2008) 61.


\textsuperscript{32} Winkler, \textit{supra} note 1 at 157.
extent, this ambiguity can elude clarification because the three refining factors were implicitly used at a prior stage in the book with respect to these related rights.\textsuperscript{33} By including water uses linked to these related rights to health, life, etc., under the umbrella of a monolithic right to water at a later stage in the book, the issue of prioritization between rights is avoided under the 100 litre per person, per day threshold.\textsuperscript{34} This stepwise analysis also blurs the typological distinction between the right to life, a civil and political right whose requirements must be immediately and entirely met, and the right to adequate standard of living, which is a socio-economic right that may be realized progressively.\textsuperscript{35} The different levels in the realization of the human right to water, from core to full realization, are all granted priority over water uses guaranteed in principle by core obligations related to other human rights, such as the right to food. An underlying shift is thus revealed: the different levels of survival, core, and full realization in Winkler’s prioritization framework represent levels of fulfilment in human needs for water more than they represent levels of realization in human rights.\textsuperscript{36} It is that slight but significant shift in perspective that solves the problems stemming from the principles of equality, indivisibility and interdependence among human rights in the prioritization of various water uses justified by different rights.

This issue of human needs lies at the heart of the conception of human rights conveyed by the book, and at the root of one of the most pressing questions left unanswered. The foundational justification for human rights is not discussed in detail but only referred to sparsely.

\textsuperscript{33} See e.g. \textit{ibid} at 46-47 for the use of the substitutability factor in respect of the right to food; see \textit{ibid} at 47-49 for the use of the indirectness factor in respect of the right to health; see \textit{ibid} at 54-55 for the use of the quantity factor with respect of the right to life.

\textsuperscript{34} Aligning on a position prominent in international water management circles, Winkler argues that lack of access to water is not due to water scarcity but rather to a management failure rooted in power and poverty: see \textit{ibid} at 7, 20, 27, 35-36. Similarly, the hard trade-offs between human rights related to specific water uses at the survival level are portrayed as mostly theoretical: for example, see \textit{ibid} at 205, 210. While certainly valid in most cases, these arguments fail to offer a principled solution to what some authors consider concrete problems. Belinda U Calaguas (\textit{The Right to Water, Sanitation and Hygiene and the Human Rights-Based approach to development}, Briefing Paper, Water Aid, 1999, online: <http://www.righttowater.info/wp-content/uploads/humanrights.pdf>) writes at 10-11 that “[e]stimates of the [Basic Water Requirement (BWR)] range from 20-50 litres per day, independent of climate, technology and culture. (Gleick 1998) Some argue on the other hand, that there could be no universal standard in regard to the BWR. Basic domestic water requirements are dependent on a variety of factors including the state of freshwater resources in any given location. In water stress and water scarce regions where competition for use of water is intense between domestic and agricultural sectors, a BWR of 20-50 lpd is an empty concept. Using 1990 data, Gleick (1998) lists 55 countries where domestic per capita water withdrawals failed to provide 50 lpd. In eight of these countries, the aggregate of all sectoral uses of water failed to achieve the BWR.”

\textsuperscript{35} This distinction is not overlooked but discussed at earlier stages: see e.g. Winkler, supra note 1 at 54.

\textsuperscript{36} In \textit{ibid} at 151-52, the author states: “[t]he starting point is the fact that no single human right enjoys preference over other rights in the allocation of resources. … Accordingly, when considering the allocation of water resources from a human right perspective, it is impossible to grant priority to any single kind of water use. Rather, the aim must be first to meet the most basic requirements relating to different human rights.”
Among possible justifications, dignity is mentioned a number of times.\textsuperscript{37} The author alludes to the idea of a raison d’être for a right: a right’s nucleus that cannot be breached without loss of the right’s meaning.\textsuperscript{38} Yet, human needs remain the foundation on which the analysis relies throughout the entire work. Their implicit use as a justification allows for the usual critiques: reliance on human needs leads to materialistic reductionism bereft of moral substance, liberal individualism adverse to collective rights, and relativistic functionalism devoid of universal forms.\textsuperscript{39} These sweeping critiques can easily be neglected given the attention granted in the book to concrete water challenges and to group rights as well as cultural and religious rights.

However, a more specific question about the justification for recognizing the right to water as an independent human right must be addressed: if the human right to water is entirely pegged to human needs for water, the complete fulfilment of these needs on the basis of another human right saps divests the justification for a human right to water. This is particularly relevant given that needs in water quantity and quality that substantiate the normative content of the right to water are repeatedly defined on the basis of human health requirements in the book.\textsuperscript{40} In other words, it is difficult to identify what essential water need could remain unmet when individual needs are fulfilled to the point where a person’s health is maximised.

Despite the emphasis on human needs, the absence of a discussion on the foundational justification for the human right to water generates enough ambiguity to allow for a strong positivist bias. This is most apparent in the last section of the book, which focuses on judicial enforcement and contains an engaging discussion on the right’s sanction before national courts or through complaint mechanisms at the international level.\textsuperscript{41} The book’s positivist approach implies that human rights must be recognized in international law to be considered valid. This is the primary justification for the exclusion of the right to environment from the discussion on water allocation despite the fact that the right to the environment is part of regional international law and often more clearly justiciable than the right to water.\textsuperscript{42} The exclusion is understandable given the intention to restrict human rights-based allocation to specific uses and limited volumes. Nevertheless, it is odd given the efforts made to dismiss attacks against the right to water on the basis of its lack of enforceability, its vagueness, and its anthropocen-

\textsuperscript{37} See e.g. ibid at 121. For a recent inquiry on dignity as a foundational value, see Jeremy Waldron, “Is Dignity the Foundation of Human Rights?” (Working Paper, to be published at the New York University School of Law, Public Law Research Paper No 12-73, 3 January 2013, online [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2196074###].


\textsuperscript{39} See Philip Alston, “Human Rights and Basic Needs: A Critical Assessment” (1979) 12:1 Revue des droits de l’homme 19, which is referred to in the book. One of the most surprising effects of the relativistic functionalism that stems from reliance on human needs is visible in the book through the insistence on water used for the production of clothing. A less apparent effect of this bias is expressed in the complete segregation of water for energy production from water for food production: food is simply energy for humans, and in some societies, it is (or was) the only energy source where water is directly required.

\textsuperscript{40} Howard & Bartram, supra note 20; World Health Organization, Guidelines for drinking-water quality, 4th ed (Geneva: World Health Organization, 2011).

\textsuperscript{41} Winkler, supra note 1 at 229-72.

\textsuperscript{42} Ibid at 198-99.
trism: all of these attacks are turned by Winkler against the right to environment after she refutes them in relation to the right to water.

This is the book’s most significant omission since the right to environment could occupy, with respect to needs-based human rights, a position similar to that of the right to life regarding all human rights. Contrary to what Winkler suggests, putting the emphasis on a human right to the environment is less anthropocentric than conjuring new needs-based human rights every time the dominant economic paradigm reaches new thresholds in social and environmental destruction, beyond which the fulfilment of basic needs become problematic for a vast minority, if not a majority of people. A human right to the environment acknowledges that human survival is contingent on natural ecosystems, as biological evolution demonstrates. It remedies in part the dissociation of needs from contextual constraints that occurs through the affirmation of standardized claims to resources stemming from the majority of needs-based human rights, such as the rights to food, clothing, housing and water. Also, a human right to the environment may buttress all needs-based human rights on a reactive or prospective basis, and offer solutions to challenges in resources allocation that are caused by the multiplication of equal and interdependent needs-based human rights—such as the prospective human right to air.43

43 On the human right to air, see e.g. Wang Xiangwei, “Clean Air to Breathe is a Human Right, Too” South China Morning Post (4 February 2013), online: South China Morning Post <http://www.scmp.com>.