

A WEIGHT FOR WATER: AN ECOLOGICAL FEMINIST CRITIQUE OF EMERGING NORMS AND TRENDS IN GLOBAL WATER GOVERNANCE

KATE DARLING*

The human population is placing an ever-greater demand on the Earth's freshwater supply. These water systems are interdependent components of a planetary hydrologic cycle. Reflecting this reality, a global water governance framework, based on multilateral agreements, international institutions and rights regimes, has begun to emerge. As this framework becomes entrenched, so too does a normalised view of water as a commodity valued principally on the basis of its usefulness to certain forms of human endeavour. In this view, androcentric values receive priority while elements of care for, and protection of, the flourishing of all human and non-human life are neglected. Looking at the issue from an ecological feminist perspective, this paper argues against treating water scarcity as a threat for which only a narrow spectrum of efficiency-based solutions are available. Instead, it suggests incorporating a diversity of cultural, spiritual and scientific views in our search for a fair and sustainable water governance framework.

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I INTRODUCTION

At a basic level, every living thing requires water in order to maintain the biological processes associated with life. But the patchwork of blues of the great lakes regions and browns of the desert regions across the globe demonstrates clearly that water does not accumulate or flow in the same abundance everywhere. The confluence of water's necessity, its asymmetrical availability and its potential for contributing to wealth and power, make water systems a site of fervent contestation for the entities that depend on them.¹

* BA(IR) (British Columbia); LLB (Dalhousie); LLM (Melbourne); Project Director, International Development Program, Canadian Bar Association. I am grateful to Dave Wright for his critical insights and limitless support. Any errors remain my own.

¹ Hilary Charlesworth, 'Feminist Methods in International Law' (1999) 93 *American Journal of International Law* 379, 383. Here, Charlesworth discusses the tendency of international law to assert generalities and universalities on the international community — in this case the international community of women.

In recent decades, scientific study has confirmed that the hydrologic cycle spans not only communities, states and basins, but also the planet as a whole.² In response, a complex global water governance regime has begun to emerge. Through the following sections, I will argue that certain developing norms and trends at the global level contribute to and reinforce an androcentric³ bias in water governance, which tends to result in a devaluation of the environment and non-human life. The normative companion to this assertion is that this is neither good nor necessary for the wellbeing of humans and the others with whom humans share the planet.

In support of my position, I will first provide an explanation and a brief defence of the particular form of ecological feminism that will frame my analysis of the global water governance regime. In doing so, I seek to lay bare the contingency of my own value structure and make plain how my valuing prompts me to arrive at certain conclusions. It is acknowledged that there exists a diversity of views based in culture and experience. The paradigm proposed here is only one — though hopefully a useful one — of many. Secondly, I will itemise the principal elements of the global water governance regime and suggest reasons why a focus on this level of organisation is important from an ecological feminist perspective. The intention in this section is to give a sense of the landscape and sketch the impetus for the remaining sections. Thirdly, I will scrutinise two central norms of the global regime: ‘equitable and reasonable use’ and ‘prevention of significant harm’. I aim to demonstrate that as these norms crystallise, so too does an inherent devaluation of the environment and certain living beings that constitute part of that environment. Fourthly, I will assess the trend towards a ‘right to water’. Drawing upon feminist critiques of human rights theory and practice I will try to show that a rights-based approach reinforces a detrimental anthropocentric and androcentric perspective. Fifthly, I will analyse the practice of framing water issues in terms of security and developing technocratic responses to those ‘insecure’ circumstances. In this section I will attempt to show how a depoliticisation of water through an emphasis on science can obscure the gendered valuing that persists. Finally, I will assess the touted response to gendered policies and agreements emanating from the global water governance system, namely, gender mainstreaming.

II A BRIEF PROPOSAL AND DEFENCE OF AN ECOLOGICAL FEMINISM

Feminism has been defined as ‘the range of committed inquiry and activity dedicated first, to describing women’s subordination ... dedicated second, to asking ... *how* ... women continue to occupy that position; and dedicated third to change’.⁴ Like other feminisms, ecofeminism presents particular phenomena as explanations of women’s disadvantage. Ecofeminism distinguishes itself,

² See, eg, Knut Bourquain, *Freshwater Access from a Human Rights Perspective: A Challenge to International Water and Human Rights Law* (Martinus Nijhoff, 2008); Douglas Fisher, *The Law and Governance of Water Resources: The Challenge of Sustainability* (Edward Elgar, 2009).

³ A perspective strictly centred around male human interests: see Val Plumwood, ‘Androcentrism and Anthropocentrism: Parallels and Politics’ in Karen J Warren (ed), *Ecofeminism: Women, Culture, Nature* (Indiana University Press, 1997) 327.

⁴ Claire Dalton, ‘Where We Stand: Observations on the Situation of Feminist Legal Thought’ (1988) 3 *Berkeley Women’s Law Journal* 1, 2 (emphasis in original).

however, through the inclusion of the concerns of non-human entities within its inquiry. This paradigm considers the structural gendered causes of the devaluation and degradation of all life.

There are perhaps as many incarnations of ecological feminism as there are people who think about the intersections of women and ecology. Since the term 'ecofeminism' first appeared in print in 1974,⁵ thinkers have congregated around several subsets of ecofeminism, creating a great diversity of debate. The framework through which I will analyse certain elements of the global water governance regime tends towards the socialist ecofeminism⁶ and ecological feminism subsets of ecofeminism.⁷ This framework aims to challenge some modernist assumptions of objectivity and rationality⁸ as these relate to nature and women. Four key understandings, borrowed from the work of thinkers in the area, provide structure to my framework and three questions help it operate analytically. I will first list the key understandings alongside the critiques of ecofeminism to which they try to respond. Next, I will outline the questions that the present version of ecological feminism must ask once it has become operational.

As an important caveat, it is acknowledged that the discussion relies to a large extent on a western framing of the issues and that there are diverse views about how we ought to assess and address the shortcomings of the global water governance system. The theoretical concepts upon which the present analysis proceeds are laid bare to allow interrogation, accountability for the ensuing analysis, and identification of the contingency for the conclusions.⁹

First, the ecological feminism presented here espouses the central principles of the philosophy of deep ecology.¹⁰ Like all philosophies, deep ecology provides a system of values that assists its adherents in organising their

⁵ See the seminal text: Françoise d'Eaubonne, *Le Féminisme ou la mort* (Pierre Horay, 1974).

⁶ Karen Warren and Ynestra King represent the thinking in this subset. For a fuller insight, see Karen J Warren, 'Feminism and Ecology: Making Connections' (1987) 9 *Environmental Ethics* 3; Ynestra King, 'The Ecology of Feminism and the Feminism of Ecology' in Ynestra King (ed), *Healing the Wounds: The Promise of Ecofeminism* (New Society, 1989) 18. Warren posits from a socialist paradigm that an 'ecofeminist perspective is ... structurally pluralistic, inclusivist and contextualist, emphasizing through concrete example the crucial role that context plays in understanding sexist naturist practice': Karen J Warren, 'Toward an Ecofeminist Ethic' [1988] (December) *Studies in the Humanities* 140, 151.

⁷ Chris J Cuomo, *Feminism and Ecological Communities: An Ethic of Flourishing* (Routledge, 1998) 6. Cuomo distinguishes ecological feminism from other forms of ecofeminism in its focus on the various forms and functions of oppressive systems rather than on the objects of oppression, which can result in the essentialisation of humans and environments.

⁸ Karin van Marle and Elsje Bonthuys, 'Feminist Theories and Concepts' in Elsje Bonthuys and Catherine Albertyn (eds), *Gender, Law and Justice* (Juta, 2007) 15, 17.

⁹ Brenda Cossman, 'Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies and the Postcolonial Project' [1997] *Utah Law Review* 525, 539.

¹⁰ See the seminal text by Arne Naess in which he coined the term 'deep ecology': Arne Naess, 'The Shallow and the Deep, Long-Range Ecology Movement: A Summary' (1973) 16 *Inquiry* 95.

worldview.¹¹ The worldview of deep ecology recognises the non-instrumental or intrinsic value of all humans and of the non-human world.¹² This stands in contrast to the conservationist view that natural entities are only valuable insofar as they are useful to humans. As will be seen, this latter view frequently appears in the description of non-human systems — such as watercourses — as ‘resources’. The present version of ecological feminism, like deep ecology, views humans as an inextricable part of nature and therefore promotes an egalitarian (as between human and non-human entities), non-anthropocentric bias.¹³

Secondly, the framework relies on a diverse understanding of both women and nature. A critique of ‘nature’ and ‘spiritual’ ecological feminisms is that they have a tendency to essentialise all ‘women’ and ‘nature’ in an effort to celebrate the metaphysical interconnectedness between the two.¹⁴ In contrast, the present framework aligns with Deane Curtin’s view that women are no closer to nature than are men and that nature is no more feminine than it is masculine.¹⁵ The association of women’s practices with lesser-valued nature is the result of a patriarchal value system rather than anything innate to women or nature or the inherent capacity of either.¹⁶ Such a view risks neglecting men as ‘natural beings’ and women as dominators and oppressors. Further, by ascribing attributes and ahistorical functions in this way, gender essentialism limits the potential for change and necessary social reorganisation.¹⁷ Rather than focusing on the *object* of oppression — the woman, who stands for all women and the natural world, which is immutable — the present version of ecological feminism focuses upon the ‘patterns among the treatment of oppressed, exploited or undervalued beings and entities ... and [the] common ethical and ontological bases for maltreatment’.¹⁸

¹¹ See Bill Devall and George Sessions, *Deep Ecology* (Gibbs Smith, 1985). This social/political movement commenced in 1984 with the adoption of the Deep Ecology Platform. For the purpose of constructing an ecological feminist framework, the philosophy of deep ecology must be distinguished from the deep ecology movement. The tenets of this movement promote a non-anthropocentric bias. However, they go on to prescribe decreases in the human population and a relinquishing of the pursuit of higher standards of living. Warren argues that such proclamations are presented neutrally, failing to confront the ‘important connections [that] exist between the treatment of women, people of color and the underclass on one hand and the treatment of non-human nature on the other’, thus making the ethic ‘grossly inadequate’ in this form: Karen J Warren, ‘Taking Empirical Data Seriously: An Ecofeminist Philosophical Perspective’ in Karen J Warren (ed), *Ecofeminism: Women, Culture, Nature* (Indiana University Press, 1997) 3, 3.

¹² See d’Eaubonne, above n 5.

¹³ Ecce de Jonge, *Spinoza and Deep Ecology: Challenging Traditional Approaches to Environmentalism* (Ashgate, 2004) 1.

¹⁴ See generally Carolyn Merchant, *The Death of Nature: Women, Ecology and the Scientific Revolution* (Harper & Row, 1980).

¹⁵ Deane Curtin, ‘Women’s Knowledge as Expert Knowledge: Indian Women and Ecodevelopment’ in Karen J Warren (ed), *Ecofeminism: Women, Culture, Nature* (Indiana University Press, 1997) 82, 87.

¹⁶ *Ibid* 87.

¹⁷ Ratna Kapur, ‘The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics’ (2002) 15 *Harvard Human Rights Journal* 1, 7.

¹⁸ Cuomo, above n 7, 7.

Thirdly, the framework houses the belief that ‘woman’ does not constitute a unified category.¹⁹ Rather, as a term denoting a particular gender, it is socially constructed in an infinitely complex context. It seeks to explain the differences between women, men and others residing along the gender spectrum as well as ideas about ‘femininity’ and ‘masculinity’.²⁰ Any focus on gender or concepts relating to femininity or masculinity requires an acknowledgement, as far as possible, of the social, cultural and historical context in which those terms are used. This framework remains alive to Chandra Mohanty’s observation that ‘women are constituted as women through the complex interaction between class, culture, religion and other ideological institutions and frameworks’.²¹ The fear is that generalisations concerning the concept of women ‘efface the problems, perspectives, and political concerns of women marginalized because of their class, race, religion, ethnicity, and/or sexual orientation’.²² On the other hand, an understanding that recognises social complexities and contingencies helps sensitise the analysis, particularly in a discussion about *global* governance.

Fourthly, the present variation of ecological feminism presumes that dualistic thinking reinforces interacting oppressions, which serve to devalue the environment and ideas associated with femininity. Anthropocentric biases result in the prioritisation of human needs over those of non-human entities. Further, the androcentrism that pervades the laws, institutions, organisations and principles governing the composition of society tend to value notions associated with masculinity over others. As Hilary Charlesworth notes, ‘[o]ne technique for identifying and decoding the silences in international law is [through] paying attention to the way that various [gendered] dichotomies are used in its structure’.²³ This technique shall be employed here.

The sections below identify and assess these dualisms. The following questions will assist in this process and in activating the ecological feminist framework espoused here:

- What entity is being assigned a value?
- How (or in relation to what) is that value defined?
- What are the foreseeable consequences of this valuation?

Through these questions, and with the understandings listed above, I will examine key emerging normative and institutional aspects of global water governance in which epistemic and value claims are being generated.

III AN ARGUMENT FOR THE GLOBAL PERSPECTIVE ON WATER GOVERNANCE

This Part will first outline recent theories on the governance of water at the global level. Next, this part will provide a rationale for focusing the analysis at this level. The aim here is to provide a few bearings in a rather amorphous field

¹⁹ Priya A Kurian, *Engendering the Environment? Gender in the World Bank’s Environmental Policies* (Ashgate, 2000) 19.

²⁰ Charlesworth, above n 1, 379.

²¹ Chandra Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ (1988) 30 *Feminist Review* 61, 72.

²² Kapur, above n 17, 6.

²³ Charlesworth, above n 1, 382.

and to convey the importance of questioning the validity of underlying values before they crystallise as statements of fact and become difficult to change.

While water governance structures have been thoroughly investigated at the local,²⁴ civilisation,²⁵ and later, nation-state²⁶ and basin levels, the dialogue on a system of global governance is somewhat novel. Theories on the subject cluster around three views. The first remarks that the management of water involves the interaction of demographics, trade, social and cultural practices, technological innovation and climate at local, national and international levels.²⁷ This view suggests that '[g]lobal governance adds an extra layer to a matrix that is already quite complex' and cautions that we must clarify which water issues are truly global lest the concept lose its resonance.²⁸

The second view holds that there *ought* to be a global system in order to organise activities around the global hydrologic cycle²⁹ because 'water scarcity, which may solely occur in a national context, can nevertheless have international causes'.³⁰ Despite the need for coherence, the '[c]urrent governance arrangements remain a crazy quilt of overlapping activities'.³¹

The third view, on which the present analysis is based, takes a less cautious stance regarding the existence of at least a nascent governance system. Supporters of this view articulate global water governance as 'the development and implementation of norms, principles, rules, incentives, informative tools, and infrastructure to promote a change in the behavior of actors at the global level in the area of water governance'.³² While perhaps more theoretical than practical, this definition acknowledges governance as a powerful *process* that can have impacts on a wide range of human and non-human entities at all levels.

Proponents of this third view accept several institutions and organisations as the active participants of what James Rosenau has termed 'mobius web-type' global water governance.³³ These include international legal documents, UN-Water and its membership, the World Water Forum, global professional organisations, organisations dedicated to water management in specific regions

²⁴ See, eg, Karl W Butzer, *Early Hydraulic Civilization in Egypt: A Study of Cultural Ecology* (University of Chicago Press, 1976). For studies of early water management systems see, eg, Vernon L Scarborough, *Flow of Power: Ancient Water Systems and Landscapes* (SAR Press, 2003).

²⁵ See, eg, Dante A Caponera, *Principles of Water Law and Administration: National and International* (A A Balkema, 1992).

²⁶ See, eg, Jeremy Allouche, 'The Multi-level Governance of Water and State Building Processes: A *longue durée* Perspective' in Kai Wegerich and Jeroen Warner (eds), *The Politics of Water: A Survey* (Routledge, 2010) 45.

²⁷ Olcay Ünver, 'Global Governance of Water: A Practitioner's Perspective' (2008) 14 *Global Governance* 409, 409–11.

²⁸ *Ibid* 410 (emphasis in original).

²⁹ See, eg, Fisher, above n 2, 1; Bourquain, above n 2, 34–5.

³⁰ Bourquain, above n 2, 34.

³¹ Peter M Haas, Norichika Kanie and Craig N Murphy, 'Conclusion: Institutional Design and Institutional Reform for Sustainable Development' in Norichika Kanie and Peter M Haas (eds), *Emerging Forces in Environmental Governance* (United Nations University Press, 2004) 263, 279.

³² Claudia Pahl-Wostl, Joyeeta Gupta and Daniel Petry, 'Governance and the Global Water System: A Theoretical Exploration' (2008) 14 *Global Governance* 419, 422.

³³ *Ibid* 427. See generally James N Rosenau, *Distant Proximities: Dynamics Beyond Globalization* (Princeton University Press, 2003) ch 18.

and private water companies.³⁴ As the first three of these elements are particularly salient for the global-level analysis below, I will briefly elaborate on them here.

First, the multilateral agreements resulting from negotiations among states serve to reflect and further organise existing state practice.³⁵ Included here is the 1997 *Convention on the Law of the Non-Navigational Uses of International Watercourses* ('*Watercourses Convention*').³⁶ While not yet in force, this document is considered to house the central norms of the international legal system in regards to waterways that cross state boundaries. These agreements, and the policies created for their implementation, serve to protect the interests of those deemed eligible to participate in the negotiations, namely states. While a discussion of the sources of state legitimacy extends beyond the scope of this article, it can be said that the state is generally interested in retaining control over things that support its stability and longevity. Secured control of life-sustaining water constitutes one of those things. As will be argued in the next section, the norms articulated in such international agreements promote a prioritisation of an anthropocentric and androcentric worldview, which tends to reinforce the pre-eminent position of the state through nuanced systems of oppression.

Secondly, UN-Water was established in 2003 as an inter-agency mechanism to focus the efforts of the many actors in water governance.³⁷ It has a membership of 28 UN agencies and several non-UN affiliates.³⁸ Its principal objectives are to provide information to policy makers, managers and decision-makers; to build a knowledge base through monitoring and reporting; and to provide a locale for system-wide discussions and problem-solving with respect to global water policy challenges. The agreements and policies articulated through the UN-Water mechanism claim to serve a spectrum of users with certain groups, including women and girls, receiving concerted attention. As will be put forth, however, this mechanism's bifurcation of issues and responses neglects the more complex interactions of key hegemonic forms.

Thirdly, multi-stakeholder arrangements — the most pivotal of which is the World Water Council ('*Council*') — involve complex interactions among state and non-state actors. Established in 1996, the Council has a mandate to promote awareness, enhance political commitment and catalyse action on what it deems to be critical water issues at local, national, basin and global levels.³⁹ Importantly, through its main output, the triennial World Water Forum, the Council strives to 'reach a common strategic vision on water resources and water services management amongst all stakeholders in the water community'.⁴⁰ While such arrangements are intended to benefit all stakeholders, the process of policy

³⁴ Pahl-Wostl, Gupta and Petry, above n 32, 425–7.

³⁵ Fisher, above n 2, 89.

³⁶ *Convention on the Law of the Non-Navigational Uses of International Watercourses*, opened for signature 21 May 1997, UN Doc A/51/869 (not yet in force) ('*Watercourses Convention*').

³⁷ Pahl-Wostl, Gupta and Petry, above n 32, 425.

³⁸ For the full list, see UN-Water, *Member & Partners* <<http://www.unwater.org/members.html>>.

³⁹ *Constitution of the World Water Council* (2010) art 2 <http://www.worldwatercouncil.org/fileadmin/wwc/About_us/official_documents/Constitution-EN_-2010.pdf>.

⁴⁰ World Water Council, *About Us* <<http://www.worldwatercouncil.org>>.

setting and agreement-making between and among these entities is not necessarily a democratic one. As will be seen, it is in some ways deeply gendered, inherently promoting an androcentric value set. The work of the Council and the outcomes of the World Water Forum will be critically analysed to demonstrate the analysis of the trend towards technocratisation and securitisation in global water governance.

There are several reasons for focusing an ecological feminist analysis at the global level. First, among the functions that a water governance system performs is the unambiguous identification of ‘who controls water and who is responsible for the way water resources are used and developed’.⁴¹ Further, ‘[n]ational water resources are ... governed by the norms and rules of international law’.⁴² *Global water governance*, therefore, has the potential to affect the lives of human and non-human beings everywhere in a powerful, though subtle, way. Secondly, as the youth of the global water governance elements and the nascency of the debates suggest, norms and practices based on the perceived value of water systems and their dependants are still in development. Indeed, for the time being they remain open to contestation. This presents an important juncture for ensuring that traditionally marginalised human and non-human entities gain purchase in the global calculation.

It should be noted that this rationale is devoid of many commonly appearing statements about global crisis, water scarcity, climatic failures, etc. This constitutes a deliberate move to locate discussions around water issues within their valuing systems. In taking this approach, this essay seeks to participate in the slow process of social transformation through reconceptualisation. As Joanna Kerr implores her readers, we must move away from doomsday narratives and from ‘opposing’ the crisis to ‘proposing’ the promotion of the flourishing of human and non-human entities.⁴³ What follows is the first application of the ecological feminist framework developed above. Targeted here are selected central norms in global water governance.

IV EMERGING NORMS

A ‘Equitable and Reasonable Use’ and ‘Prevention of Significant Harm’

The aim in this section is to address intersecting oppressions that are fostered by the norms of equitable and reasonable use as well as prevention of significant harm. Employing an ecofeminist lens throughout, this section will analyse these oppressions through a deconstruction of the patriarchal hierarchies⁴⁴ for which these norms stand.

Theories on the use of water that crosses national boundaries have evolved over time. Early theories such as absolute sovereignty and absolute territorial

⁴¹ Fisher, above n 2, 1.

⁴² Ibid 114.

⁴³ Joanna Kerr, ‘From “Opposing” to “Proposing”: Finding Proactive Global Strategies for Feminist Futures’ in Joanna Kerr, Ellen Sprenger and Alison Symington (eds), *The Future of Women’s Rights: Global Visions and Strategies* (Zed Books, 2004) 14, 23–4, 33.

⁴⁴ Cuomo, above n 7, 6. ‘Patriarchal hierarchies’ refers to the systems of oppression that work to prioritise the needs of the state and those in power to the detriment other beings and entities.

integrity were bound with the nation-state's strong claims to ownership and control over natural resources. This seems to have emanated from a belief that 'the economy has always been a promise for the future: more outputs, more jobs, [and a] better life for all'.⁴⁵ The control of state governments is contingent not on the flourishing of living things, but rather on the robustness of the economy as the way to achieve a better life for the voting public.⁴⁶ Through capturing the different perspectives of upper and lower riparian states respectively, both territorial integrity and absolute sovereignty models presumed the perfect inviolability of the state. Later theories, such as community of interest and equitable utilisation, are founded on the understanding that sovereignty and the advantages of water ownership are dependent on a certain degree of cooperation and mutual respect.⁴⁷ This, in turn, is based on an acknowledgement that sustainability, or the 'basic rule of human existence ... to sustain conditions that life depends on',⁴⁸ does not obey state lines. This latter theory, termed 'equitable use', appears as one of the two central norms of both the *Watercourses Convention* and the *Berlin Rules on Water Resources* ('*Berlin Rules*').⁴⁹

To provide some context, the *Watercourses Convention* is seen as a framework convention that articulates 'basic principles governing the utilisation of international watercourses between the watercourses States'.⁵⁰ While the document is not yet in force, it is considered to express the norms of the international legal system with respect to water bodies that states have in common.⁵¹ The first normative pillar can be found in art 5. As this provision constitutes the site of our analysis and deconstruction, it is provided here in full:

- (1) Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States *with a view to attaining optimal and sustainable utilization thereof and benefits therefrom*, taking into account the interests

⁴⁵ Klaus Bosselmann 'Earth Democracy: Institutionalizing Sustainability and Ecological Integrity' in J Ronald Engel, Laura Westra and Klaus Bosselmann (eds), *Democracy, Ecological Integrity and International Law* (Cambridge Scholars, 2010) 92–3.

⁴⁶ *Ibid* 98.

⁴⁷ Malgosia Fitzmaurice and Gerhard Loibl, 'Current State of Development in the Law of International Watercourses' in Surya P Subedi (ed), *International Watercourses Law for the 21st Century: The Case of the River Ganges Basin* (Ashgate, 2005) 19, 21–3.

⁴⁸ Klaus Bosselmann, *The Principle of Sustainability* (Ashgate, 2008) 9.

⁴⁹ International Law Association, 'Water Resources Law: Fourth Report' (Paper presented at the Berlin Conference, Berlin, Germany, 2004) ('*Berlin Rules*'). The *Berlin Rules* are modified from the original *Helsinki Rules*: International Law Association, *Helsinki Rules on the Uses of the Waters of International Rivers and Comments* (Paper presented at the 52nd Conference, Helsinki, Finland 1966). They 'express the international law applicable to the management of the waters of international drainage basins': at art 1(1). Together, the *Watercourses Convention* and the *Berlin Rules* represent the most comprehensive statements on the international legal aspect of global water governance.

⁵⁰ Surya P Subedi, 'Regulation of Shared Water Resources in International Law: The Challenge of Balancing Competing Demands' in Surya P Subedi (ed), *International Watercourses Law for the 21st Century: The Case of the River Ganges Basin* (Ashgate, 2005) 7, 12.

⁵¹ Fisher, above n 2, 121. See *Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Judgment)* [1997] ICJ Rep 7, 80. In *Gabčíkovo-Nagymaros Project*, the International Court of Justice refers to art 5 of the *Watercourses Convention* as supporting — though not establishing a legal right to — an equitable and reasonable use of a watercourse in international law.

of the watercourse States concerned, consistent with adequate protection of the watercourse.

- (2) Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the *right to utilize the watercourse and the duty to cooperate in the protection and development thereof*, as provided in the present *Convention*.⁵²

In addition, art 6 itemises the factors that are relevant in making decisions or justifications regarding the equitable and reasonable utilisation of a watercourse. These include, inter alia, factors of a natural character; the social and economic needs of concerned watercourse states; watercourse dependants in each state; usage impacts on other watercourse states; effects of the usage of the watercourse on other watercourse states; existing and potential uses; conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect.⁵³ states are further instructed that they are to consider holistically the weight to be given to each factor by comparing the value of each factor against all others.⁵⁴ While water to satisfy vital human needs does receive an inherent preference under art 10 of the *Watercourses Convention*, all other factors remain equal. Decisions about what is reasonable and equitable are to be reached cooperatively between states.⁵⁵

A second central emerging norm of the global governance regime is found in art 7 of the *Watercourses Convention* and in art 16 of the *Berlin Rules*. The obligation to refrain from causing significant harm requires states to, ‘in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States’.⁵⁶ Further, where significant harm is caused to another watercourse state, the responsible state must mitigate that harm, and where appropriate, compensate the injured state for that harm.⁵⁷ In short, states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of *other states*.

To turn the gaze onto a multilateral agreement over a foundational element of sovereignty and to impose the ecological feminist understandings outlined above may be a naïve attempt to converge two dialogues that were never intended to meet. Indeed, the assumptions and concepts running through these norms seem so inevitable as to be unquestionable. Heeding Petra Kelly’s call, however, ‘[w]e

⁵² *Watercourses Convention* art 5 (emphasis added).

⁵³ *Ibid* art 6(1).

⁵⁴ *Ibid* art 6(3).

⁵⁵ Notably, the *Berlin Rules*, which constitute an articulation by the International Law Association of the international law applicable to the management of the waters of international drainage basins lists the ‘minimization of environmental harm’ as one of the factors that must be considered: see *Berlin Rules*, above n 49, art 13(2)(i). The *Berlin Rules*, at art 3(8), also define environmental harm as:

- (a) injury to the environment and any other loss or damage caused by such harm; and
- (b) the costs of reasonable measures to restore the environment actually undertaken or to be undertaken.

⁵⁶ *Watercourses Convention* art 7(1).

⁵⁷ *Ibid* art 7(2).

cannot just analyze structures of domination and oppression',⁵⁸ regardless of the ubiquity and seeming inviolability of these concepts. Rather, we must ask several questions. What entities are being assigned a value? How (or in relation to what) is that value defined? What are the foreseeable consequences of this valuation?

Within these norms, the state maintains for itself total primacy with respect to decision-making and the valuation of water. As Douglas Fisher observes, 'arrangements [to protect or manage water] are currently based upon concepts of sovereignty and property [and] [e]ach is associated with a power to control'.⁵⁹ While art 6 of the *Watercourses Convention* suggests that the reasonable use requires consideration of 'ecological' factors, the value of these are to be decided by and among states. Further, the ecological wellbeing of a water system possesses the same weight as do considerations about economic needs and developmental convenience. Structurally, the law seems to prioritise the utilisation or exploitation of water over the flourishing of ecosystems.⁶⁰ Insofar as this norm implies that a state will access and manage a watercourse in the interest of its human population, this is a strictly anthropocentric paradigm with sovereignty and ownership interests being accorded the highest value.

In contrast, the norm considers water valuable only insofar as it contributes to a state's power. Jeremy Allouche has remarked upon this paradigm in the following way:

Technological advances have enabled states to 'master' nature, and most modern states have engaged in ... the 'hydraulic mission', an attempt to control and manipulate water resources of a country so that its constituents may meet their domestic, industrial and agricultural needs.⁶¹

Allouche goes further to explain that, '[s]uccessful implementation of a hydraulic mission may bring considerable legitimacy to governments that are in short supply of it, as well as political symbolism and prestige'.⁶² Freshwater in all of its forms — groundwater, running surface water, bounded still water — is regarded as a resource, or potential fuel for sovereignty and is not recognised as possessing an inherent value. This conceptualisation extends to the systems of life that depend on these forms of freshwater.

While the values attributed to the state and to water under these norms seem rather clear, it is essential to note that water is a particularly 'important site for the construction of gendered power and hegemonic masculinities'.⁶³ To anticipate the potential consequences of the valuation that these norms present, we must therefore look beyond the subject-state and the object-water to the norm's silences. While seeming to have no gendered content, assumptions and conceptions underpinning these norms are indeed complicit in systematising a hierarchy of gendered and naturist roles and values.

⁵⁸ Petra Kelly, 'Women and Power' in Karen J Warren (ed), *Ecofeminism: Women, Culture, Nature* (Indiana University Press, 1997) 112, 113.

⁵⁹ Fisher, above n 2, 61.

⁶⁰ Subedi, above n 50, 17.

⁶¹ Allouche, above n 26, 58 (citations omitted).

⁶² *Ibid* 59.

⁶³ Margreet Z Zwarteveen, 'The Politics of Gender in Water and the Gender of Water Politics' in Kai Wegerich and Jeroen Warner (eds), *Politics of Water: A Survey* (Routledge, 2010) 184, 186.

The norms of equitable and reasonable use and prevention of significant harm prefer a relationship not only of control but of mastery to the point of being able to *optimise* a water resource. This concept of optimisation, which, as will be seen below, influences responses to water issues, requires power and expertise. As Margreet Zwartveen has observed, these tend to have strong masculine connotations,⁶⁴ emanating as they do from the Enlightenment period and a Baconian, androcentric vision of science. Further, the attributes deemed necessary to carry out the tasks associated with optimisation, such as physical strength, technical competence and positions of command, are associated with masculine behaviour.

Another silent but insidious element of this 'oppressive conceptual framework' rests on the notion of 'vital human needs'.⁶⁵ The basic natural human need for fresh drinking water and adequate sanitation is isolated from the other factors of consideration under the norm. This concept performs the role of fragile alter ego or referent against which development, economy and politics are placed. Viewed through dualist frames, vital human needs are vulnerable as opposed to powerful; biological as opposed to economic; feminine as opposed to masculine; special as opposed to central. Whether or not the isolation of vital human needs from the principal sources of state power is for the purpose of according special priority, the effect is that these needs are dislocated from considerations of the ecological environs in which the relevant humans find themselves.

The consequences of these conceptualisations may be profound. According notions of dominance and control a higher value ultimately influences the organisation of social activity. Those who are accepted as exhibiting a capacity and desire to control and dominate will be invited into positions empowered with that authority. Similarly, those occupying positions empowered with dominance and control — such as men of a certain age, race and class — continue to benefit from certain advantages accorded to that status.⁶⁶ Persons occupying such positions maintain control not only over water management, but also command power over the production of knowledge and construction of truths about how the appropriate relationship between water systems and their human and non-human dependants are formed.

As Warren has argued, 'conceptual significance of mainstream assumptions, eg, about rationality and the environment ... may ... unintentionally sanction or perpetuate environmental activities, with disproportionately adverse effects on women, children, people of color, and the poor'.⁶⁷ This consolidation of control further prevents such groups 'from learning and using satisfying and expansive skills in socially recognized settings'.⁶⁸ In this way, 'the domination of sex, race,

⁶⁴ Ibid 191. For an extended discussion regarding the underlying masculine connotations in water irrigation, see Margreet Zwartveen, 'Men, Masculinities and Water Powers in Irrigation' (2008) 1 *Water Alternatives* 111

⁶⁵ Karen J Warren, 'The Power and the Promise of Ecological Feminism' (1990) 12 *Environmental Ethics* 125, 127–8, modifying her original account of the concept in Karen J Warren, 'Feminism and Ecology: Making Connections' (1987) 9 *Environmental Ethics* 3, 6.

⁶⁶ Marle and Bonthuys, above n 8, 19.

⁶⁷ Warren, 'Taking Empirical Data Seriously', above n 11, 14.

⁶⁸ Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 1990) 38.

and class and the domination of nature are mutually reinforcing'.⁶⁹ Although perhaps unsatisfying, the conclusion of this Part is that what would be required is a sheer transformation of fundamental concepts and the ensuing social relationships. As Betty Wells and Danielle Wirth have stated, '[b]oth women and the environment have been treated with ambivalence and disrespect by the dominant culture'.⁷⁰ For this reason, mere reform of the law is insufficient.

B *Access to Water as a Human Right*

Charlotte Bunch has commented that 'the concept of human rights is one of the few moral visions ascribed to internationally'.⁷¹ Recognising that its scope is not universally agreed upon, Bunch explains that the promotion of human rights is a widely accepted goal and resonates among many.⁷² At least at the level of the UN, access to water as a human right now constitutes an emerging norm of global water governance. Access to water for consumption is supported by specific references in key human rights conventions, and further, has been considered to emanate by implication from existing international laws.⁷³ Significantly, this conceptualisation of the human relationship with freshwater has influenced the activities of the international agencies that participate in global water governance. The principal sources of law from which this right emerges are outlined and explained here with an evaluation of the human right to water based on the above framework to follow. An additional source of women's right to access water is outlined and analysed at the end of the section in order to highlight a particularly intricate relationship.

The first, and perhaps most abstract, source of a human right to water exists in art 6 of the *International Covenant on Civil and Political Rights*.⁷⁴ This provision enshrines in law the inherent right to life, a right to which no one can be arbitrarily deprived. Because water is essential to all human life (international human rights laws are not generally concerned with other living entities) it follows that human beings have a right not to be barred from or discriminated against in accessing an adequate supply of safe and clean water to survive.

A second source of the right, the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'),⁷⁵ contains two provisions that concern water by implication. ICESCR art 11 recognises the right of everyone to an adequate standard of living. This includes adequate food, clothing and housing, and the opportunity to experience the continuous improvement of living conditions.

⁶⁹ King, above n 6, 20.

⁷⁰ Betty Wells and Danielle Wirth, 'Remediating Development through an Ecofeminist Lens' in Karen J Warren (ed), *Ecofeminism: Women, Culture, Nature* (Indiana University Press, 1997) 300, 303.

⁷¹ Charlotte Bunch, 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights' (1990) 12 *Human Rights Quarterly* 486, 486.

⁷² *Ibid* 486–7.

⁷³ See generally Rutgerd Boelens, 'Water Rights Politics' in Kai Wegeric and Jeroen Warner (eds), *Politics of Water: A Survey* (Routledge, 2010) 161.

⁷⁴ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁷⁵ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

Further, *ICESCR* art 12 recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. states are obliged to take the steps necessary for the progressive realisation of both of these rights.

Elucidating these sources, the UN Committee on Economic and Social Rights' *General Comment No 15* ('*General Comment 15*') addresses the normative content of the right to water in para 10.⁷⁶ While *General Comment 15* may not yet represent a statement of law on the right to water, it does contribute influentially to the emerging body of norms around this right:

The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.⁷⁷

In para 16, *General Comment 15* refers specifically to women. Therein, states are encouraged to give special attention to those who have traditionally had difficulty accessing the right to water. To this end, states are to ensure that 'women are not excluded from decision-making processes concerning water resources and entitlements' and that the 'disproportionate burden women bear in the collection of water should be alleviated'.⁷⁸

The Millennium Development Goals ('MDGs') also lend voice to the existence of a human right to access water. Target 7.C of the MDGs relating to 'Environmental Sustainability' seeks to halve the number of people without sustained access to safe drinking water and sanitation by 2015.⁷⁹ At least, this target suggests a concomitant moral responsibility of the 189 member states who voted to adopt the Millennium Declaration in September 2000 to ensure that people have the water necessary for their basic needs.⁸⁰ The MDGs' human rights approach to development, while not asserting a right to water per se, certainly recognises the necessity of access to water for the realisation of an adequate standard of living. Bolstering this significantly, in July 2010, the UN General Assembly declared 'the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights'.⁸¹

To summarise the foregoing, the human right to access water is limited to that which is necessary to support a continued amelioration of living conditions. According to this right, individuals are not entitled to ownership per se, and state agencies or authorised companies may indeed charge households for water

⁷⁶ *General Comment No 15 (2002): The Right to Water (Arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th sess, Agenda Item 3, UN Doc E/C.12/2002/11 (20 January 2003) [10].

⁷⁷ *Ibid.*

⁷⁸ *Ibid* [16a].

⁷⁹ United Nations, *Goal 7: Ensure Environmental Sustainability, End Poverty 2015: Millennium Development Goals* (20 May 2008) <[http://www.un.org/millenniumgoals/ environ.shtml](http://www.un.org/millenniumgoals/environ.shtml)>.

⁸⁰ *United Nations Millennium Declaration*, GA Res, 55/2, UN GAOR, 55th sess, 2nd mtg, Agenda Item 60(b), UN Doc A/RES/55/2 (18 September 2000) para 19.

⁸¹ *The Human Right to Water and Sanitation*, GA Res 64/292, UN GAOR, 64th sess, 108th plen mtg, Agenda Item 48, UN Doc A/RES/64/292 (3 August 2010) para 1.

insofar as this does not fundamentally obstruct access. Further, states are obliged to consider those people, including women, who have difficulty accessing clean, safe water and endeavour to reduce those barriers. As the 2006 United Nations Development Programme *Human Development Report* explains, a human right to access water represents a ‘powerful moral claim ... a source of empowerment and mobilization, creating expectations and enabling poor people to expand their entitlements through legal and political channels’.⁸²

As with the norms of ‘equitable and reasonable use’ and ‘prevention of significant harm’, this emerging norm of a ‘human right to access water’ involves a valuing system, which has consequences for human and non-human entities. The interrogations advanced in the previous section will be applied here in order to reveal how the human right to water actually reinforces the domination of women, feminine knowledge and the environment.

Turning to the first interrogation: as a norm, the human right to access water plainly assigns value to a certain degree of human flourishing. The water system that is implicitly acknowledged to be necessary for that flourishing is valued insofar as it helps to achieve that minimum standard. It is a strictly anthropocentric frame premised on the presumption that human survival, and more, human wellbeing, is the primary consideration for humans everywhere. Humans, and iconically poor women of colour, are pictured as mechanically removing water from the environment for use in the human world. Reciprocity and rich understanding are not present in this relationship.

The second interrogation, which asks how and in relation to what these weights are derived, illuminates salient relationships from the ecological feminist perspective adopted in this paper. While most societies seem to accord significance to human life, different societies and societal subgroups have developed different ways to achieve human flourishing. As Andrea Cornwall and Maxine Molyneux explain, a tension exists ‘between a universalising rights regime founded in liberalism and alternative legal and normative frameworks’ that have evolved through different theoretical mechanisms.⁸³ As such, in a universalising rights regime, human rights can serve to reinforce western economic imperialisms and the enduring legacies of colonisation.⁸⁴ Drawing upon the work of Elsje Bonthuys and Wesahl Domingo, ‘the contents of most rights are largely defined by the experience of men and, they will not necessarily address or protect the interests of women’.⁸⁵

⁸² United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity — Power, Poverty and the Global Water Crisis* (Palgrave MacMillan, 2006) 61.

⁸³ Andrea Cornwall and Maxine Molyneux, ‘The Politics of Rights: Dilemmas for Feminist Praxis: An Introduction’ (2006) 27 *Third World Quarterly* 1175, 1181.

⁸⁴ Elsje Bonthuys and Wesahl Domingo, ‘Constitutional and International Law Context’ in Elsje Bonthuys and Catherine Albertyn (eds), *Gender, Law and Justice* (Juta, 2007) 51, 54–5.

⁸⁵ *Ibid* 53.

Importantly, the existence of a regime of universal human rights does not wholly determine how all cultures among signatory states will give effect to the significance of human life and its flourishing. Explaining Sally Engle Merry's vernacularisation of human rights, Celestine Nyamu-Musembi opines:

even though the discourse of human rights is based on 'Western liberal-legalist ideas', when non-Western societies ... utilize the discourse in framing their demands, the concept of human rights is reinterpreted and transformed in a two-way process of incorporation of local understandings and the addition of global discourses.⁸⁶

As such, societies remain agents in determining the meaning of the good life for their members. What is important to note here, however, is that where the dominance structures of western notions of progress (recall the 'continuous improvement of living standards' required by *ICESCR* art 11) resonate with local interpretations of who gets to flourish and how, those dominance structures will be reinforced. As a consequence, the structures that oppress women, people of colour and the financially poor continue, possibly strengthened under the human right to access water.

The human right of access to water is based, as rights commonly are, in liberal notions of individuality. This promotes a particular relationship between women and water that reinforces detrimental systems of oppression. In this context of ecological feminist critique, the implications of these liberal underpinnings of rights invite some investigation.

Under the universal human rights framework, the state is granted the position of 'provider and guarantor of rights'.⁸⁷ This reinforces the identification of 'useful' elements of the environment as resources, as well as the historical association of the state with ownership and control over them. Further, the human right to access water positions those for whom the right is intended as mere *users* rather than managers, planners or decision-makers with respect to water systems. This characterisation has two important consequences. First, it denies the necessary reciprocity that naturally exists between humans and the hydrosphere with which we are bound to interact. The state owns and controls the water system within certain limits agreed to internationally, and therefore, owes neither the water source, nor the associated ecosystems a particular responsibility.⁸⁸ Also, the users are entitled to access water sources with no commensurate responsibility to do minimal harm to other human and non-human entities depending upon it.⁸⁹ While the right to access water is certainly directed toward achieving a minimum standard, this leaves unchallenged the habits of over-consumption displayed by those with better access to any given freshwater system. In short, those whose job it is to access water (often women) and whose

⁸⁶ Celestine Nyamu-Musembi, 'Are Local Norms and Practices Fences or Pathways? The Example of Women's Property Rights' in Abdullahi A An-Na'im (ed), *Cultural Transformation and Human Rights in Africa* (Zed Books, 2002) 126, 127.

⁸⁷ Cornwall and Molyneux, above n 83, 1185.

⁸⁸ The dualisms of power–vulnerability, human–world–natural-world and male–female persist here as they did with respect to the discussion of the norms of equitable use and prevention of harm.

⁸⁹ See generally Cuomo, above n 7, 16.

access to water is most threatened (often poor) do not possess the agency to consider the needs, for example, of future generations or surrounding flora.

Secondly, this characterisation has the effect of assigning women a strictly limited set of powers regarding essential aspects of our environment. The 2010 report entitled *The World's Women* explains:

When water is not available on the premises, women are more often responsible for water collection than men are. In 38 of the 48 countries with available data, the percentage of households where an adult woman (15 years or over) is the person responsible for water collection is much larger than the percentage of households where an adult man is the person responsible.⁹⁰

As these statistics suggest, the person responsible for giving effect to the human right to access water on behalf of the family is very often a woman. However, by positioning right-accessing poor women as mere users, both these women and the non-human entities that rely on the same water systems remain vulnerable to the way that others manifest their more powerful, and often more detached, control over that water system. This helps to reinforce the presumption that a woman's role and potential source of vulnerability is one of mediation between the private human and natural world and that control over decision-making and planning with respect to water remains within the domain of powerful men.⁹¹

Related to this discussion, a third source of authority for a right to water appears in art 14 of the *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW'). Notably, this provision specifically identifies 'the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy'.⁹² Section 2(h) requires that state parties:

ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.⁹³

Knut Bourquain explains that 'this provision can be seen as an attempt to redress the burden of women in developing countries because they are traditionally in charge of the provision of water'.⁹⁴

Perhaps in an effort to target lived experiences that are particularly difficult, *CEDAW* extends an iteration of 'cultural essentialism',⁹⁵ which reinforces colonial and hierarchical assumptions about the needs of people living inside cities and outside cities. It reinforces the notion that development towards the

⁹⁰ Department of Economic and Social Affairs, *The World's Women 2010: Trends and Statistics*, ST/ESA/STAT/SER.K/19 (20 October 2010) 143.

⁹¹ Ruth Meinzen-Dick and Margreet Zwarteveen, 'Gendered Participation in Water Management: Issues and Illustrations From Water Users' Associations in South Asia' (1998) 15 *Agriculture and Human Values* 337, 339.

⁹² *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 14(1) ('CEDAW').

⁹³ *Ibid* art 14(2)(h).

⁹⁴ Bourquain, above n 2, 123 (citations omitted).

⁹⁵ Kapur, above n 17, 12. Here, Kapur explains the concept of cultural essentialism generally. She does not specifically reference *CEDAW*.

coveted aspects of western-ness is a process of separating people from their interactions with the environment. This is associated in the end with underdevelopment, which is viewed as an undesirable state. It is an infantilisation of certain types of relationships that humans have with nature, which translates into an infantilisation of the women that embody those relationships with identified tasks, such as collecting water and being concerned about water sources.

To conclude this part, the human right to access water benefits from a simple elegance behind which it is difficult not to rally. However, ‘intertwined mechanisms of normalization, naturalization and neglect’⁹⁶ have been quietly at work helping to obfuscate significant reinforcing oppressions. Unless these dominance structures are acknowledged and carefully transformed, women, men and non-human entities will continue to be hindered in their process of flourishing.

V EMERGING TRENDS

A *Securitisation and Technocratisation of the Water Problem*

Freshwater, whether too meagre or too much, too stagnant or too quick, too frequented by lions or too cursed, has always pressed upon the human mind. It has only been in the last several decades, however, that the availability of clean and secure freshwater has summoned panic at the global level. The particular way in which the alarm bells have been sounded — securitisation — and the associated response — technocratisation — exhibit another site where the domination of women and the environment are linked. Heeding Cuomo’s call to ‘locate and debunk false characterizations, and to map out their often hidden influences and implications’,⁹⁷ this section will attempt to tease out the valuing system embedded in these processes of securitisation and technocratisation of water issues. It should be noted that the sources identified here are examples only of a far-reaching trend, particularly within the corpus of sustainable development.

The 1992 *Dublin Statement on Water and Sustainable Development* (‘*Dublin Statement*’) stands as an early example of linking threats to water availability with human security. The *Dublin Statement* announces the situation thus:

Scarcity and misuse of fresh water pose a serious and growing threat to sustainable development and protection of the environment. ... The problems highlighted are not speculative in nature; nor are they likely to affect our planet only in the future. They are here and they affect humanity now.⁹⁸

The *Dublin Statement* continues characterising freshwaters as a ‘finite and vulnerable resource’, which requires effective management in order to achieve

⁹⁶ Zwarteveen, ‘The Politics of Gender in Water and the Gender of Water Politics’, above n 63, 184.

⁹⁷ Cuomo, above n 7, 3.

⁹⁸ ‘Dublin Statement on Water and Sustainable Development’ (Statement adopted at the International Conference on Water and the Environment, Dublin, Ireland, 31 January 1992) 4.

efficient and equitable use.⁹⁹ Actors at the global level have echoed this message periodically over the last few decades.¹⁰⁰

Jeroen Warner and Kai Wegerich explain the intricate operation and effects of securitisation as follows:

Securitization positions a particular issue as an existential threat to security, which in turn (with the consent of the relevant constituency) enables emergency measures or the broader suspension of ‘normal politics’ in dealing with that issue ... Securitization presents an issue as technical, non-value laden ...¹⁰¹

An issue thus presented as primordial and as a proper project for human mastery evinces certain kinds of responses from the actors in the global water governance regime. Rather than focusing on value-laden questions of domination, paradigms and political power such as those brought by issues of distribution, the response is technocratic — focused on how to retrieve more water and how to optimise its use.¹⁰²

Working in the background on responses to the securitisation message is what Warner and Wegerich have identified as a ‘hegemonic elite’ — a transnational coalition of international organisations.¹⁰³ This elite group is composed of experts and is organised largely under the rubric of the World Water Assessment Program of the UN’s inter-agency mechanism, UN-Water. These experts study the water *problem*, as it has been characterised at the global level, and work to provide the solutions necessary to *solve*, or master, the problem of the environment’s limitations. This group of scientists, engineers, climatologists and water management experts speak through the comprehensive triennial World Water Development Report. The purpose of this report is to ‘help policy makers to apply the most advanced approaches and technologies to water management’.¹⁰⁴ By targeting the non-democratic, quasi-bureaucratic world of ‘policy-makers’, the report reinforces the legitimacy of existing knowledge–power structures. This is deemed acceptable given the need to disseminate (in its full essence) information efficiently.

Surely, the objective proper water management, regardless of the anthropocentrism that must be implied, seems a benevolent goal. However, reliance on work emanating from a paradigm that prizes rationality and tends towards scientific reductionism carries some risks from an ecological feminist

⁹⁹ See *ibid* principles 1, 4 (emphasis added).

¹⁰⁰ See, eg, ‘Ministerial Declaration’ (Declaration adopted at the International Conference on Freshwater, Bonn, Germany, 4 December 2001); ‘Istanbul Ministerial Statement’ (Statement adopted at the 5th World Water Forum: Bridging Divides for Water, Istanbul, Turkey, 22 March 2009).

¹⁰¹ Jeroen Warner and Kai Wegerich, ‘Is Water Politics? Towards International Water Relations’ in Kai Wegerich and Jeroen Warner (eds), *Politics of Water: A Survey* (Routledge, 2010) 3, 6–7 (citations omitted).

¹⁰² As Bourquain explains, ‘the total amount of global freshwater resources by far exceeds the quantity of water necessary to meet the basic needs of all human beings. The distribution of freshwater resources, however, differs greatly’: Bourquain, above n 2, 3–5 (citations omitted).

¹⁰³ Warner and Wegerich, above n 101, 125.

¹⁰⁴ International Institute for Sustainable Development, ‘A Summary Report of the 5th World Water Forum’, *World Water Forum Bulletin* (online), 26 March 2009, 4 <<http://www.iisd.ca/download/pdf/sd/ymbvol82num23e.pdf>>.

perspective. As Robyn Eckersley reminds us, the role of deliberative democracy, even at the global level, is to prompt

reflexivity, self-correction and the continual public testing of claims against experience. Such critical testing and questioning from the perspective of differently situated others is crucial to arresting and reversing the process whereby the lay public cedes ever greater areas of system decision-making to technocratic elites.¹⁰⁵

Indeed, at the global level it is evident that the political — and its messy lack of closure — is becoming more and more circumscribed.¹⁰⁶ While the present ecological feminist framework welcomes ‘appropriate science’, it recognises that the descriptions of scientific phenomena ‘emerge from and into social, discursive, and political spaces’.¹⁰⁷ Further, the ecofeminist framework developed above ‘insists that data about the historical and interconnected exploitations of nature and women and other oppressed people (including their perspectives) be recognized and brought to bear in solutions’.¹⁰⁸

A principal outcome of the 5th World Water Forum in 2009 provides a high-level example of the securitisation–technocratisation dynamic. Incorporating one of the six main themes of the conference, the *Istanbul Water Consensus* (‘*Consensus*’), emphasises the association between water scarcity and climate change and seeks to catalyse action on that basis.¹⁰⁹ The *Consensus* declares with justified foreboding that:

Climate change will impact every aspect of the water cycle affecting our citizens: water scarcity will become more exacerbated, extreme events, such as floods and droughts, will increase, the sea level will rise, temperatures will increase, groundwater recharge, rainfall patterns and stream flow regimes will change.¹¹⁰

This document then provides two key responses to the threat of climate change on water resources. First, it calls on local authorities to pressure their states to ‘shift water security higher in national and international policy priorities’ based on the principles of ‘equitable and reasonable’ allocation.¹¹¹ The intended shift would be in support of, inter alia, ‘social and health objectives, employment, economic activity, cultural and leisure development and healthy and pleasant environments’.¹¹² Secondly, the *Consensus* outlines an extensive list of technical responses necessary for protecting against water scarcity. While one paragraph called for the involvement of women and children in the ‘supply,

¹⁰⁵ Robyn Eckersley, ‘Ecofeminism and Environmental Democracy: Exploring the Connections’ [2001] (Fall) *Women & Environments* 23, 25.

¹⁰⁶ Warner and Wegerich, above n 101, 11.

¹⁰⁷ Cuomo, above n 7, 28.

¹⁰⁸ Wells and Wirth, above n 70, 304–5.

¹⁰⁹ ‘Istanbul Water Consensus: For Local and Regional Authorities’ (Paper presented at 5th World Water Forum: Bridging Divides for Water, Istanbul, Turkey, 19 March 2009) <http://www.iclei.org/fileadmin/user_upload/documents/Global/water/documents/Istanbul_Water_Consensus_Eng_Final.pdf>.

¹¹⁰ *Ibid* 2.

¹¹¹ *Ibid* 3.

¹¹² *Ibid*.

management and maintenance' of water resources, the focus rests primarily on developing technologies to retrieve more water and to avoid water wastage.¹¹³

With the picture of the securitisation–technocratisation–domination dynamic hopefully in mind, the remainder of this section turns to the ecological feminist understandings and analytical framework offered above. As in other sections, the aim here is to discover the valuing system that has been cultivated through this global water governance trend. Again, there are a number of questions to be asked. What is being valued? In relation to what is that thing being valued? What are the consequences of this valuation? The section will first look at the *United Nations Third World Water Development Report: Water in a Changing World* ('*Report*') for this purpose.¹¹⁴

The *Report* depends in part on the work of a 'Technical Advisory Committee' composed of members from academia, research institutions, non-governmental organisations, public and professional organisations representing scientists, as well as policy and decision-makers and representatives from states. It also relies on the work of seven expert groups in the following areas: indicators, monitoring and databases; business, trade, finance and involvement of private sector; climate change and water; legal issues; policy relevance; scenarios; and storage. Their collective role is to improve the *Report*'s 'scientific basis'.¹¹⁵ The *Report* has characterised the water *problem* and has prioritised certain kinds of *solutions*. These will provide the bases for the value analysis.

To begin, the *Report* situates its characterisation of selected key water issues and responses within an overall security paradigm. The *Report* explains that climate change, without intervention, will further negatively impact water resources that are already under stress. This, in turn, will lead to the intensification of major national and international security threats, which will require 'new and rapid adaptive security strategies'.¹¹⁶ All of this, the *Report* claims, can place food, social, health, economic, political and military security at risk.¹¹⁷

Within this overarching threat to human security, the document characterises the water issue as a gap between increasing demands on water resources and adequate supply of those resources. Beyond the ultimate impacts of climate change, there are three current causes, or 'drivers', of the problem: demographic, economic, social. The demographic driver encompasses population growth, age distribution, urbanisation and migration, all of which place demand and quality pressures on local water sources.¹¹⁸ Under the economic driver, the *Report* explains that '[t]he expansion and growth of the global economy, and the resulting increases in human consumption, drive human demands to use more natural resources, including freshwater'.¹¹⁹ Contrasted with this indomitable march of global trade and its associated thirst for energy, are the 'finite and

¹¹³ Ibid 7.

¹¹⁴ World Water Assessment Programme, *The United Nations Third World Water Development Report: Water in a Changing World* (United Nations Educational, Scientific and Cultural Organization and Earthscan, 2009).

¹¹⁵ Ibid xiii.

¹¹⁶ Ibid 19.

¹¹⁷ Ibid.

¹¹⁸ Ibid 29–32.

¹¹⁹ Ibid 36.

vulnerable' ecosystems on which it depends.¹²⁰ Finally, the *Report* describes the social driver as those human perceptions and attitudes about the environment that cause people to place certain demands on water systems.¹²¹ These perceptions are affected by cultural views, belief systems, education, etc.¹²²

The experts behind the *Report* emphasise that humans must overcome the water problem if peace and security are to be maintained. Further, humans can solve the associated issues if the expert advice of the document is followed. The *Report* highlights several solutions, which includes, inter alia, institutional reform, integration of the laws and regulations of intersecting fields, stakeholder consultation, improving supply efficiency, investment in technology and innovation, development of institutional and human capacity through education and training. Here, the lack of engagement with the wider social dimension in the *Report* working groups signifies that the key issues and the science-based approach are divorced from their real-world context beyond the 'problem' paradigm.

While the foregoing provides only a sample of the epistemologies and priorities that course through the Water Assessment Programme, it does demonstrate the particular valuing system that seems to dominate their work. The overarching project of securitisation places priority not on the flourishing of individual human lives, but rather on efficient operation of the various levels of government and water governance. As Priya Kurian has observed, 'masculinity has become institutionalized ... in the practices of a bureaucratic administrative and economic system that assume[s] the necessity of hierarchical, technically rational organization for society'.¹²³ By likening the gap between demand for, and availability of, water to a security threat, proponents of this view also assume the necessity of the current hierarchies for the fundamental wellbeing of humankind. Because of the higher-order issue of peace, proponents are able to bypass criticisms of the existing order and delve directly into the technical exercise of problem-solving.

Further, while the *Report* references the dependence of non-human entities on water systems, they are positioned quite separately from human lives and aspirations, and subordinately to the demographic, economic and social drivers. Throughout, the *Report* positions water next to the qualifier 'resource' indicating its instrumental value and natural tendency toward commodification. In a document that seeks redress for decades of neglect of the incorporation of water into global decision-making, this approach is frustrating in the true sense. Evident in the valuing system presented here is a fundamental belief in the domination of one (human) over the other (water systems). As Judith Plant explains, this understanding 'comes from a philosophical belief that has rationalized exploitation on such a massive scale that we now not only have extinguished other species but have also placed our own species on a trajectory

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid 36–7.

¹²³ Kurian, above n 19, 24.

toward self-destruction'.¹²⁴ This conflicts, in essence, with the deep ecology understanding of the present framework that anthropocentric responses are myopic and will only ever be reformative rather than necessarily transformative. The anthropocentric design of both the issues and the solutions as reinforced by the ubiquitous human–nature dualisms perpetuate the oppressive frameworks that deny the membership of women and men *within* ecosystems. This approach leaves as unchallenged fact that the environment exists to serve global trade. The only limit is the finite amount of given resources and/or human innovation.

In a similar vein, women as a uniform group, are celebrated for their usefulness rather than their own inherent value. Women are earmarked for their particular adeptness at quelling the effects of the three drivers — like a mother with an ornery child — and achieving the solutions that the expert groups advance. For example, the *Report* explains that:

Women with education have fewer children, which has beneficial consequences for the health of mothers and children and results in lower demand per family for food and water ... Removing or reducing school fees could free household income to pay for other services — including food and water or agricultural inputs that could increase water productivity.¹²⁵

Women in this view are not using their education or training to design water conservation units or lead communities to a more sustainable approach to the improvement of their wellbeing. Their role, rather, is to discontinue contributing to the burdens of overpopulation. Further, it should be noted that the work of the World Water Assessment Programme and the *Report* is dedicated to supporting water managers, policy and decision-makers.¹²⁶ As Zwarteveen has noted, however, the presumption remains that men currently occupy these positions and women remain mere *users* of water.¹²⁷

The consequences of this valuation go beyond Vandana Shiva's argument that the ways of knowing the environment differ between men and women¹²⁸ and beyond Curtin's position that '[r]eal ecodevelopment cannot be sustained ... unless distinctively women's practices and ways of knowing are granted the conceptually central places they deserve'.¹²⁹

Rather, it sees as pivotal that '[t]he control exerted by scientists in testing involves an exercise of power (for example, what variables are considered relevant; what form of testing happens; what interpretations ensue of resulting information; and so on)'.¹³⁰ Further, the knowledge, or epistemologies, derived

¹²⁴ Judith Plant, 'Learning to Live with Differences: The Challenge of the Ecofeminist Community' in Karen J Warren (ed), *Ecofeminism: Women, Nature, Culture* (Indiana University Press, 1997) 120, 121.

¹²⁵ *World Water Development Report*, above n 114, 272.

¹²⁶ World Water Assessment Programme, *About WWAP*, United Nations Educational, Scientific and Cultural Organization <<http://www.unesco.org/water/wwap/description/>>.

¹²⁷ Zwarteveen, 'The Politics of Gender in Water and the Gender of Water Politics', above n 63, 190. Zwarteveen makes this observation specifically in relation to irrigated agriculture. It is suggested that this demonstrates how an instrumental approach to water management can pervade the implementation of development projects on the ground.

¹²⁸ See Vandana Shiva, *Staying Alive: Women, Ecology and Survival in India* (Kali for Women, 1988).

¹²⁹ Curtin, above n 15, 82.

¹³⁰ Kurian, above n 19, 26.

from such testing becomes an instrument of power and control over how societies are organised in response to this knowledge.¹³¹ The particularly western tradition from which this scientific and technical knowledge come¹³² reduces both women (users) and the environment (resource) to an economic calculus that the rational economic actor (masculine hegemonic form) can arrange according to what it values.

B Gender Mainstreaming in Global Water Programming

An analysis of the approach to gender mainstreaming, primarily in the structure and work of UN-Water, lends insight into how presumptions about the role of women and the environment maintain the subordination of these through water programming. This section will provide a sketch of the gender mainstreaming approach used in the UN-Water system, one of the arms of the ‘mobius web’ of global water governance.¹³³ Further, it will be tested for the valuing it tends to support and the consequences that this is having for oppressed groups.

The *Beijing Platform for Action* (*Platform for Action*) iterates three strategic objectives for gender mainstreaming as it pertains to the environment: 1) involve women actively in environmental decision-making at all levels; 2) integrate gender concerns and perspectives in policies and programmes for sustainable development; and 3) strengthen or establish mechanisms at the national, regional and international levels to assess the impact of development and environmental policies on women.¹³⁴ Further, the *Platform for Action* states at para 34:

The continuing environmental degradation that affects all human lives has often a *more direct impact on women*. Women’s health and their livelihood are threatened by pollution and toxic wastes, large-scale deforestation, desertification, drought and depletion of the soil and of coastal and marine resources, with a rising incidence of environmentally related health problems and even death reported among women and girls. *Those most affected are rural and indigenous women, whose livelihood and daily subsistence depends directly on sustainable ecosystems.*¹³⁵

Since the *Platform for Action*, the main tenets of the gender mainstreaming project have been periodically reiterated and the nexus with the environment has not been negated.¹³⁶ The early intentions of this approach were twofold: first, to

¹³¹ Ibid (citations omitted).

¹³² Wells and Wirth, above n 70, 301.

¹³³ See generally Pahl-Wostl Gupta and Petry, above n 32.

¹³⁴ *Report on the Fourth World Conference on Women, Beijing 4–15 September 1995*, UN Doc A/CONF.177/20/Rev.1 (1 January 1996, adopted 15 September 1995) annex II (*Platform for Action*) [253]–[258].

¹³⁵ Ibid [34] (emphasis added).

¹³⁶ See, eg, Commission on the Status of Women, *Report on the Forty-First Session*, CSW Res 41/6, UN ESCOR, 44th sess, Supp No 7, UN Doc E/CN.6/1997/9 (1 January 1997) ch 1 pt C [1]–[2]; *Resolutions and Decisions of the Economic and Social Council*, ESC Res 1997/17, UN ESCOR 1997, Supp No 1, UN Doc E/1997/97 (16 December 1999) 40; *Mainstreaming a Gender Perspective into All Policies and Programmes in the United Nations System*, ESC Res 2006/36, 41st plen mtg, Agenda Item 7(e), UN Doc E/RES/2006/36 (27 July 2006); CSW Dec 54/101 in Commission on the Status of Women, *Report on the Fifty-Fourth Session (13 March and 14 October 2009 and 1–12 March 2010)*, UN ESCOR, 54th sess, Supp No 7, UN Docs E/2010/27 and E/CN.6/2010/1.1 (6 May 2010) [37]–[42].

solidify an awareness of gender biases within the systems, structures and institutions that hold sway in decision-making and, secondly, to produce transformative processes for the benefit of both men and women through integration in all aspects of an organisation's work.¹³⁷ This is based on the experience that 'when the focus is not on women, their needs, interests and perspectives do tend to be severely neglected'.¹³⁸ It is based on the further recognition that the 'invisibility of women is a familiar pattern of male dominance',¹³⁹ even within otherwise progressive movements.

Because UN-Water influences the large amount of work and associated expenditures of 26 UN agencies as well as that of a multitude of non-governmental organisations, the way that this mechanism has chosen to address issues affecting women and the environment is poignant here. Briefly, the Task Force on Gender and Water ('Task Force') has assumed responsibility for the gender component of the *International Water for Life Decade, 2005–2015* and provides the primary locale for concerted discussions about those issues that are perceived to cross the water–women divide.¹⁴⁰ The Task Force seeks to promote gender mainstreaming and activity coordination in relation to water at the local, national and global levels.

In its 2006 policy brief, *Gender, Water and Sanitation*, the Task Force lays plain its approach to the characterisation of and responses to the gender–water nexus.¹⁴¹ Through descriptions of the role of women as mediators between the natural environment and the community (as fetchers of water, as cultivators, as caregivers) women are positioned as particularly vulnerable to shortage, disaster and conflict.¹⁴² The reason for this situation is the absence of a gender perspective in the water management and decision-making process at the local, national and global levels. The solution, the brief continues, is to 'advocate for the direct involvement of both women and men at all levels'.¹⁴³ This involves capacity building, promoting equal opportunities and the engagement of women who already occupy positions of leadership.¹⁴⁴ These ideas and techniques are the ones proposed to achieve the early goals of gender mainstreaming, namely, a greater awareness of gender biases in the system and that ultimately lead to a process of transformation.

From both wider feminist works and from the ecological feminist understandings presented above, there are several observations that this approach necessitates. First, the integration being achieved in UN-Water only meagrely reaches the level of what Karen van Marle and Elsje Bonthuys would call

¹³⁷ Prudence Woodford-Berger, 'Gender Mainstreaming: What Is It (About) and Should We Continue Doing It?' in Andrea Cornwall, Elizabeth Harrison and Ann Whitehead (eds), *Feminisms in Development: Contradictions, Contestations and Challenges* (Zed Books, 2007) 122, 122.

¹³⁸ Cuomo, above n 7, 40.

¹³⁹ Kelly, above n 58, 3.

¹⁴⁰ UN-Water, *UN-Water Activities: Task Force on Gender and Water* (23 December 2010) <<http://www.unwater.org/TFgender.html>>.

¹⁴¹ Inter-Agency Task Force on Gender and Water, *Gender Water and Sanitation: A Policy Brief* (Policy Brief, UN-Water, June 2006) <<http://www.unwater.org/downloads/unwpolbrief230606.pdf>>.

¹⁴² *Ibid* 3–10.

¹⁴³ *Ibid* 11.

¹⁴⁴ *Ibid* 12.

'pseudo inclusion'.¹⁴⁵ Institutionally, the Task Force responsible for 'mainstreaming' is decidedly marginalised within the UN-Water structure with its influence limited to recommendations to the main decision-making body.

Secondly, the characterisation and simplification of gender–water issues as a series of 'tasks' has 'fuelled unreal expectations of the ways in which social change takes place'.¹⁴⁶ As the previous sections have sought to demonstrate, the structures of dominance over women, the environment, people of colour and the subaltern are embedded in the persistent ontologies and epistemologies that underlie the very institutions into which 'gender' is to be mainstreamed. As Ramya Subrahmanian has keenly noted:

this implicit model of social change ... has taken steam out of the inherently political nature of feminist transformative visions, and has thus meant that 'gender' is not seen as explicitly political ... but more as giving visibility to women and their capacities and needs.¹⁴⁷

This approach avoids the transformation that a move away from anthropocentrism and androcentrism would require.

Thirdly, and returning one last time to our valuing analysis, the system from which 'poor' or 'rural women' (as a generalised group) draw water is juxtaposed against the community life that the water supports. The water system is a resource, and as such, has instrumental value. Women are positioned next to this resource as mediators between two worlds and are vulnerable to the disasters that befall both. There is no inherent power here and no opportunity for women to establish a relationship of sustainable reciprocity with their varied environments. As a consequence, from the perspective of UN-Water, women must rely on existing institutions to assess and satisfy what we require of our environments without the acknowledgement that these needs themselves are socially and culturally constructed.¹⁴⁸

VI CONCLUSION

Water obeys the rules of its own hydrologic cycle — being unconstrained by principles of sovereign control, human rights and principles of equality. Chafing against this reality, the seven billion humans and all living entities across our blue planet need certain and regular access to a minimum amount water. Our survival therefore necessitates its management at the global level. The form that this global governance ultimately takes will affect the very essence of human and non-human life.

Today we are faced with an enormous opportunity and perhaps an even greater challenge. As global water governance evolves beyond its nascency, we have the opportunity to create a system that respects the value and seeks the

¹⁴⁵ van Marle and Bonthuys, above n 8, 44.

¹⁴⁶ Ramya Subrahmanian, 'Making Sense of Gender in Shifting Institutional Contexts: Some Reflections on Gender Mainstreaming' in Andrea Cornwall, Elizabeth Harrison and Ann Whitehead (eds), *Feminisms in Development: Contradictions, Contestations and Challenges* (Zed Books, 2007) 112, 114.

¹⁴⁷ *Ibid* (emphasis altered).

¹⁴⁸ Margreet Zwartveen, 'Effective Gender Mainstreaming in Water Management for Sustainable Livelihoods: From Guidelines to Practice' (Working Paper, Both ENDS, December 2006) 9.

flourishing of life in all of its forms. At this early stage, we have the challenge of revealing and delimiting the anthropocentric and androcentric priority structures, which have colonised multilateral treaties, human rights laws, multi-stakeholder arrangements and international programming to date. Instead of reducing women to mere users and water to a simple resource, we must acknowledge the complexity of our relationship to each other and to our environment. In lieu of treating water scarcity as a threat to which only a narrow spectrum of efficiency-based solutions are available, we must prepare to afford the diversity of cultural, spiritual and scientific views a seat at the table.

While humble, this essay is perhaps a first step to grasping this opportunity and answering this challenge. Having identified some of the hegemonic forms weaving their way into the body of norms and trends at the global level, we can now start to dismantle the systems of dominance.