Water reforms and the analytical dimensions of water rights conflicts

Andean countries’ cultural politics and water struggles

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Some points of departure

- Water and water rights as politically contested resources

- Water development: re-distribution of resources, authority and power, of all parties involved

Blood flows along with water
– Andean saying
Water control and rights systems as complex sociotechnical, political systems

… *interdisciplinarity*: beyond ‘adding on’, cut across the boundaries of natural and social sciences

… water control intertwines diverse domains, to be analyzed simultaneously as different dimensions of the same:

* technical / biophysical water control
* organizational water control
* socio-legal water control
* political-economic water control
* cultural / metaphysical water control

• Deconstruct veils of neutrality and positivist ‘god-views’; knowledge is situated
“With or without law, we will *make* Agrarian Reform”

Rules and rights cannot act on their own: enforced and shaped by social forces.

Beyond just the formal: practice and process; materialization of water policies, rights and meaning ‘in action’
Water rights: authorized demands to water and water decision-making

- a sociotechnical relationship of political inclusion and exclusion
- embody, shape, and shaped by power relations
• Who will have rights to use water (and infrastructure)? And: who will not?

• What is the local definition and what are the specific contents of ‘water rights’? (how, when, where, and of what quality?)

• What mechanisms are collectively recognized as legitimate to obtain and maintain water rights?

• How will water benefits, contributions and disadvantages be divided?

• Who can participate in decisions about management, acceptance of new members and changes in system ownership?

• How, and with what results, can different users activate and materialize their water rights in practice?
‘ERA’ - Echelons of Rights Analysis

battle over the formulation and materialization of water rights,

at different levels of abstraction (‘4 Rs’):

- **RESOURCES** - access to *water, infrastructure, material means*
- **RULES** - *contents of rights, obligations, operational rules* regarding management of the resource
- **REGULATORY CONTROL** - *authority and legitimacy* to establish and enforce rules and rights
- **REGIMES OF REPRESENTATION** - *discourses* and ontologies that inform or challenge water policies and water-political orders
Andean Background

- Growing water demand and scarcity, combined with rapidly changing context regarding water rights and management rules

- Powerful stakeholders enforce new laws and policies and monopolize water access rights

- Constitutional recognition of pluralism, but water law and policies undermine concrete indigenous water management and control rights
Negative impacts of many top-down water infrastructure projects, legal reforms, and rights formalization programs, that fail to understand the dynamic and plural nature of local and indigenous rights

Last decade: especially *indigenous* struggle for both water access and water control rights

conflicts intensify at all 4 ERA levels
Majes project, Peru:

- $1,300,000,000 US Dollars
- 15,000 hectares under irrigation
- 3,000 right-holder families
- $80,000 USD / ha
- $400,000 USD per family
- to “recover” costs: $25,000 USD/family
- only 0.2% of budget spent on indigenous upper basin communities

Ecuador, national level

- 99% of farmers own 36% of irrigation water rights.
- 1% of the irrigator population holds rights to 64% of the available water
Most local norms act against bureaucratic control and water market rules, e.g. hydraulic property creation, e.g. collective rights, e.g. territorial linkage, e.g. non-transferability etc., etc.,

Water control communities: internally differentiated, but collective control as a process, a struggle and a capacity.
make them normal
make them formal
make them rational water users
(according to outside standards and models)
conquest of their minds and hearts

caging and aligning of diversity of local water rights, norms and identities

racism and folklorization of otherness:

“*Incas yes, Indians no!*”

Recognition? rather: essentialization

not an *error* but a *political strategy*:

- freezing and subordinating
- identify with ruling politics of classification
- illegalization of ‘non-recognized norms’
Science, expert-models and their appeals to ‘Truth’ have become important carriers and legitimizers of ‘water modernization’

Most far-reaching neo-liberal water rights model—assuming everyone’s freedom—could only be installed under Pinochet

- creation of “water rights laboratory”: coercive control of conditions for success
- violent oppression of dissent voices
- massive expropriation of local and indigenous collective water rights
- extreme monopolization of water rights
- legitimization: modernization, civilization, and scientific objectivity: throughout the Andean Region
“As things stand, the creation of one integrated property system in non-Western nations is impossible. Extralegal property arrangements are dispersed among hundreds of communities; rights are known only to insiders. All the separate, loose extralegal property arrangements in the Third World nations must be woven into a single system from which general principles of law can be drawn”

(Hernando De Soto, *The Mystery of Legal Failure*, 2000)

The civilizing mission of “advanced nations” and the academic community:

“to help governments in developing countries build formal property systems that embrace all their people”.

“Private property is arguably the single most important institution of social and political integration …. the principle vehicle for inculcating in the mass of the population respect for law and order and interest in the preservation of the status quo”
De Soto: “The truth is that lawyers in these countries are generally too busy studying Western law and adapting it. They have been taught that local practices are not genuine law but a romantic area of study best left to folklorists”.

Thus, the modern De Soto policy- and law-maker ‘recognizes’ rights diversity: to invade it from below, to ‘incorporate’ local rights and rationalities [and to subtly squeeze them to death].

Once the poor understand it, “they will support the reform enthusiastically… The poor will become the most effective public relation machine for reform”. Not by force: by disciplining, by participatory power, by ‘educating the uneducated’.

“Listen to the barking dogs”

Foucault: ultimate supremacy of obedience and disciplinary power: “… the laws of the State and the laws of the heart, at last identical”.

Example field level, Ecuador

**Inclusion in uniform State law and design:**

- blueprint infrastructure: not adapted to local needs, male-biased
- uniform law: individualized rights, not adapted to local normative frameworks
- blueprint organizational model: artificial structures and leaders, and disintegration of communities

**Motor indigenous water management and collective action:**

**Creation water rights:**
- creation infrastructure
- creation water rights
- creation organization

**Re-creation water rights:**
- maintenance infrastructure
- maintenance water rights
- maintenance organization

**Individual rights embedded in collective ownership**
Collective discussion concerning design, construction and implementation
Interactive design: capacity-building and debate in all communities …
... making use of “living” scale models and role plays
“We, female water users, can also become irrigation leaders”

Literacy training for women, main theme: water management
We women are training ourselves to be able to develop and claim the enforcement of our rights.

Farmer to farmer capacity-building by local female indigenous trainers.
Both “indigenous” and “occidental” irrigation techniques and rationality
Collective action for construction and maintenance of infrastructure and rights
Once finished by indigenous communities, with clear rules and rights and strong collective management:

State administration:

“illegal regulations!”

“The national policy is Decentralization and Management Turnover, therefore the provincial State agency has to take back management”
Communities defend their technological, normative and organizational water use system, despite positivist, uniform law and inclusion-oriented water policies

“The principle of equality before the law is valid for the identical and profoundly unjust for the diverse” (De la Cruz)
inequality
formal law
top-down hierarchies
visible rulers
brutal violence
apartheid and exclusion

Classic power
Equality

But:
... equal to what?
... equal to whom?

‘white’, occidental norms
technocratic water design
male-biased water rules,
roles and rights
identities aligned to
State and market
private property
moralism
class-biased water models
‘Inclusion’
... but inclusion in *whose* interests?

‘Integrated Water Resource Management’
... but integration in *what*?

And most of all: *who* does the integration?

‘If the only tool you have is a hammer, you will treat every problem as if it were a nail.’ *Maslow*
Oppressive and participatory power strategies

- to normalize the intangible, anomalous water rights
- to equalize the diverse water users, their rationalities and institutions
- to destroy or discipline collective rights systems

... and bring them under State and market control

‘Moral Regime Change’ - the moral mission to replace local water rights systems by modern ones.
• pre-modern
• modern
• anti-modern
• post-modern

The Water Policy Models of Indifference

Andean water rights reality
legal and illegal resistance, at all levels of water users’ society …

Copyright 4 photos: Coordinadora del Agua, Cochabamba

… though most often: no open, violent conflicts, but ‘undertow’ resistance
top-down imposition of rules

bottom-up, inclusive equalization
top-down imposition of rules

formal masks, shields, and protocols

mimicry organizations, rules and rights

bottom-up, inclusive equalization
Equality

formal masks, shields, and protocols

top-down imposition of rules

undertows and con-fusion strategies

mimicry organizations, rules and rights

bottom-up, inclusive equalization
Conflicts: cornerstone of water governance politics

- Class, gender and ethnic contradictions underlie, and lead to, water conflicts
- Ruling groups are interested in solving acute conflicts ...
  but in maintaining the hierarchy’s structural contradictions

  ... participatory veils and ad-hoc conflict resolution

  ... soon trigger new water conflicts

Sharing water decision-making power is not a gift from policy-makers, state agencies or NGOs, nor is it based on transparent dialogues or 'win-win situations'.

Water democracy and social justice: result from collective pressure from below...

rather than a neutral input for policy-making: the political outcome of grassroots struggles – requiring also ‘monitoring from below'.
Opposing forces, shifting balances:

- To stabilize the dominant system, ruling groups need to undermine, ‘normalize’, and dominate ‘unruly’ local water societies.

- To defend their very existence, water user groups struggle for, simultaneously,
  - the right to equality
  - and the right to be different

  thus challenging the dominant water order

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<th>Program</th>
<th>Focus Area</th>
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<td>Searching for Equity (till 1998)</td>
<td>Water management and social justice</td>
<td>Andean countries, Lat. Am. + global</td>
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<td>Water Rights and Empowerment (till 2002)</td>
<td>W. rights, user organization, Collective, management</td>
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<td>Andean Centre for Water Mngt and Use (till today)</td>
<td>Set-up /coordination Centre of Excellence on IWRM</td>
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<td>National and provincial IWRM debate and training platforms</td>
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<td>Water Law and Indigenous Rights (till 2007)</td>
<td>Water Laws v.s. community and indigenous management</td>
<td>Peru, Bolivia, Chile, Ecuador, Mexico, USA</td>
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<td>PhD research projects (recent)</td>
<td>* Gender and water rights * Large coastal irrigation * Micro irrigation sierra * Water rights struggles * Water user federations * Water and Mining * Watershed management * Water legislation * Participatory strategies * Interactive water design * Highland water networks * Water user platforms, etc.</td>
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<td>* InterAndean Course</td>
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<td>* Integr. Program ‘Struggling for Water Security’ (till 2011)</td>
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