The Politics of Disciplining Water Rights

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ABSTRACT

This article examines how the legal systems of Andean countries have dealt with the region’s huge plurality of local water rights, and how official policies to ‘recognize’ local rights and identities harbour increasingly subtle politics of codification, confinement and disciplining. The autonomy and diversity of local water rights are a major hindrance for water companies, elites and formal rule-enforcers, since State and market institutions require a predictable, uniform playing field. Complex local rights orders are seen as irrational, ill-defined and disordered. Officialdom cannot simply ignore or oppress the ‘unruliness and disobedience’ of local rights systems: rather it ‘incorporates’ local normative orders that have the capacity to adequately respond to context-based needs. This article examines a number of evolving, overlapping legal domination strategies, such as the ‘marrying’ of local and official legal systems in ways that do not challenge the legal and power hierarchy; and reviews the ways in which official regulation and legal strategies deny or take into consideration local water rights repertoires, and the politics of recognition that these entail. Post-colonial recognition policies are not simply responses to demands by subjugated groups for greater autonomy. Rather, they facilitate the water bureaucracy’s political control and help neoliberal sectors to incorporate local water users’ rights and organizations into the market system — even though many communities refuse to accept these policies of recognition and politics of containment.

INTRODUCTION

‘The colonialist specialists do not recognize that the culture has changed and they hasten to support the traditions of the indigenous society. It is the colonialists who have become the defenders of the native lifestyle’ (Frantz Fanon, The Wretched of the Earth, 1961).

The huge diversity of existing water rights and the dynamic features of local water control systems constitute a fundamental problem for law and policy makers, water resource planners and commercial water industries. In general, State and market institutions require a well established, uniform playing field. Local water rights systems are not just incomprehensible and
inadequate in relation to conventional wisdom (labelled rationality) or standard concepts of justice; in the eyes of officialdom they are most of all unmanageable — expressing ‘unruly disorder’ and going beyond official control.

For this reason, in the Andean region, official legislation and water resource management policies commonly have aimed to curtail, contain and direct the local normative diversity that is found in water user communities. The debates and battles are ferocious since, simultaneously, the questions of resource (re)distribution and cultural and political recognition are at stake. At the heart of the matter, the struggle for access to water combines with the struggle to claim or defend the legitimacy of local authority and water rights systems. Here, the issue of recognition of local water rights is ambiguous but central to the region’s water conflicts. Attempts to formally recognize local rights systems have not guaranteed concrete protection in day-to-day realities and, as this article will demonstrate, the politics of recognition can be problematic.

The following sections concentrate on several gradually evolving, overlapping legal domination strategies. I will review the ways in which official (post-colonial) regulation and legal strategies deny or take into consideration local water rights repertoires, and the politics of recognition that these entail. Notwithstanding their divergent political orientations, how have Andean countries’ legal systems dealt with the complexity of water rights, and what politics (of definition, containment and disciplining of local rights, organizational forms and identities) are inherent in these legal strategies and policies of recognition?1

As the article argues, making ‘local unruliness’ tangible is a major preoccupation of modernist recognition policies. Peruvian economist and World Bank advisor Hernando De Soto — one of the world’s most influential policy advocates on ‘people’s capitalism’ — clearly illustrates this worry, and the way current policy makers explain ‘the mystery of legal failure’:

> As things stand, the creation of one integrated property system in non-Western nations is impossible. Extralegal property arrangements are dispersed among dozens, sometimes hundreds, of communities; rights and other information are known only to insiders or neighbours. All the separate, loose extralegal property arrangements characteristic of most Third World and former communist nations must be woven into a single system from which general principles of law can be drawn. (De Soto, 2000: 162)

1. To delimit the contents, this article deals with the tenets of legal strategies to discipline water rights. I refer to the academic series Agua y Sociedad – WALIR for the analysis of other domains of Andean water rights contestation (www.iep.org.pe). Neither does the paper deal with the contents and mechanisms of Andean water rights (see e.g., Boelens and Hoogendam, 2002; Roth et al., 2005); or resistance strategies by Andean communities (e.g., Bennett et al., 2005; Boelens and Gelles, 2005; Gelles, 2000).
These words, which provide the background against which I will formulate my analysis and critique, are not new and are embedded in a long history of liberal policy efforts in the region. These days, however, they form part of a new neoliberal policy wave of participatory, inclusive power strategies that ‘recognize the local and extralegal’. Recognition policies get increasingly subtle. As I will show, unlike their liberal forerunners, socialist opponents and most of their contemporary neoliberal colleagues, these new neoliberal policy makers do not see local law as irrational. In that sense, unlike most mainstream law and policy makers in water affairs who used to (and continue to) simply deny local property constructs, they — with their plea for profoundly understanding the manifestations of extralegal complexity — are analytically far more ‘advanced’ and politically far more subtle and problematic for collective rights systems in the Andes.

I say ‘problematic’, because the standpoint I take in this article is situated (Haraway, 1991). It looks at how the continuity of Andean collective water rights repertoires is threatened, thereby endangering the self-sustained reproduction of the water management collectives themselves. This ‘situat-edness’ is political in a sense that it concentrates on the position of those user groups in the Andean water world who find social and political-economic shelter and livelihood security within collective water rights systems. Such collectives are complex, multi-layered entities whose members, although differentiated by class, gender, status and often by ethnicity, try to construct and re-affirm social, territorial and water resource bonds because of mutual dependence: the continuation and improvement of their livelihoods requires shared institutions for collective action to defend and control their individual and common water resources.

The article is based on action-research with the WALIR Water Law and Indigenous Rights programme in the Andean countries, analysing local water rights, norms and practices and their discrimination or undermining by official water legislation and policies. Desk studies and field work were conducted in the period 2001–07, with water users’ organizations, peasant and indigenous federations2 and civil society water platforms in Peru, Bolivia, Ecuador and Chile (comparative country cases: Mexico and the USA).

The article concentrates on modern (that is, post-colonial) forms of rights’ disciplining, all of which, in different ways, are based on liberal inclusive, equality ideologies. It does not focus on the ancient (but continuing) forms of domination and disciplining based on inequality, segregation and exclusion, which in everyday practice complement the modern efforts (as strategic twins). The following section analyses the centralized, ‘equalizing’ policies and legal systems of Andean countries, which monopolize rule-making ‘for

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2. I use the concepts of ‘indigenous’, ‘peasant’ and ‘community’ as contextualized, dynamic constructs. In the Andean region, the relation between class-based definitions (campesino) and ethnicity-based identification (indígena) is complex and depends on who uses which labels in what period or context.
the benefit of all’. This is followed by an examination of how official legislation and local rights systems are necessarily inter-related, and how this relationship is institutionalized through ‘incorporating peasant or indigenous laws’. I argue that such codification policies simultaneously recognize and deny local rights, transforming the latters’ contents, force and functionality. The study then goes on to show how multiculturalism and legal pluralism are recognized as long as they obey the fundamental rules of play set by the State and/or the market. There is then a reflection on the subtle capillary politics of recognition and equalization, analysing how comprehending extralegal water rights may play a crucial role in modern, neoliberal policies to discipline ‘unruliness’ and include all water user communities in a uniform framework. A final section argues that local water users’ federations and peasant and indigenous communities are not, however, defenceless.

**RIGHTS DISCIPLINING BY LEGAL CENTRALISM**

Local water rights, organizational norms and operational rules in the Andean region are not only dynamic, extremely diverse, puzzlingly intertwined and even mutually contradictory; often they also stand in clear contradiction to national legislation (Cremers et al., 2005). From a legal point of view this adds to a lack of clarity and order. However, from local points of view, the rules of the game are commonly not perceived at all as unclear, unruly or intangible.³ Context-based socio-legal repertoires link water benefits and burdens in particular ways. Instead of reflecting general principles of ‘Rightness’ or positivist Justice, they correspond to diverse spheres and layers of social justice as negotiated and constructed over time in place-specific settings and power contexts: the local conceptions of fairness or equity. Unlike engineering principles that see equitable rights in terms of water allotment proportional to landholding and crop water requirements, and unlike the depoliticized notion of equity that is moulded by the mainstream development triangle of Equity–Democracy–Sustainability, I use the notion of equity to refer to location-, time-, and group-specific political constructs of fairness.⁴ According to the locality, (sub)culture, historical development and position in prevailing power structures, equity perceptions differ enormously. As such they cannot be reified or romanticized and constitute a power relation in themselves.

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³. Despite their higher degree of adaptation to agro-physical, historical knowledge and social community contexts (if compared to policy-driven rights frameworks), I do not argue that local water rights are intrinsically ‘better’ in terms of equity and democracy.

⁴. See also von Benda-Beckmann and von Benda-Beckmann (2001); Ingram (2008); Roth et al. (2005).
A Labyrinth of Systems and Rights

In most Andean communities, the conceptualization of a water use system is entirely different from those in conventional irrigation or water management manuals. Instead of referring fundamentally to a physical hydraulic system and a functional organization, local perceptions commonly refer to, as Hendriks observes, ‘a system of rights, of obligations, and of (cultural) management regarding one or more water sources, shared among a given pool of users’ (2006: 84). Besides the intertwining of the social and technical disciplines of water control, the systems themselves also mix together and become muddled, physically, organizationally and legally — deepening the notion of legal pluralism (von Benda-Beckmann et al., 1998; Roth et al., 2005). Commonly, systems have become inter-related, making the territory ever denser with multiple overlapping systems that vie with but also complement each other. Together they provide water in a given territory, and a family may belong to several systems at once. In this complex arrangement, irrigation systems are often distinguished by the kinds of water they conduct with regard to their source, the owners’ group, or the way the system was made. Hendriks (2006) illustrates the complex of co-existing systems with the case of Tiquipaya, Cochabamba, Bolivia. Of the eight overlapping irrigation systems (not counting other water use systems), each is managed through a different normative and organizational framework.

The Machu Mit’a System dates back to before the Incas, with some 830 users, distributing fifty-five collective rights allocations in thirteen communities. This comprises the natural flow of the Khora River (Hendriks, 2006: 85). The Lagum Mayu System provides rights to some 450 users through forty-eight allocations in nine communities. It uses the water dammed in a lake and was established by haciendas in the late nineteenth and early twentieth centuries. The Sayt’u Kocha System was built in the late nineteenth century and serves groups in southern Tiquipaya. The Chankas System consists of eleven lakes adapted in the 1960s by two sub-communities of Tiquipaya. The El Tajamar system takes water from the Khora River, and is managed by some eighty peasant families from one sector of Tiquipaya. The National Irrigation System No 1 was commissioned in 1946. Its water comes from a large dam and benefits some 530 users from eight communities around Cochabamba. The seventh group is a system of springs: some 850 families have rights to forty springs, fed by an aquifer that comes to the surface in central Tiquipaya. Each spring is tapped by an independent group with its own roster. Finally, as the eighth group, there are many private wells, drilled individually and managed autonomously (ibid.: 86).

In that same Tiquipaya area, even on a single farm, different water rights orders may be distinguished. As Hendriks explains, there are water rights originally based on the configuration of Inca villages and colonial resettlements, rights originating in the nineteenth and twentieth centuries from labour or capital invested by hacienda owners, localized rights to one or
more springs, rights originating in recent irrigation projects, rights based on
the drilling of private wells, and so forth. Alongside these irrigation water
rights frameworks, there are many other rights systems in the zone involving
other water uses. These same households also deal with government legis-
lation norms, which, rather than being above the tangle of local normative
repertoires (as positive law theories would maintain) are actually in ongoing
interaction, immersed in local systems.

As Hendriks argues, this overlapping of several irrigation systems, with
different rights and distribution frames, has generated a very complex water
territory. Also, a single user belongs to different irrigators’ organizations
at once, visible or less visible, structured or less structured. ‘The different
systems use (part of) a single network of canals, so it would be easy to
jump to the mistaken conclusion of seeing the local reality as “a single
system”, if one thought exclusively in terms of infrastructure, in order to
define an irrigation system’ (ibid.: 87). Just as these multiple rights systems
are different from each other, they also differ greatly from the norms of
water legislation. For any outside agency, this is an almost impenetrable,
almost ungovernable puzzle.

When, in 2003, the Bolivian ambassador to The Netherlands visited Wa-
geningen to inquire about possibilities for supporting water policies in her
country, she clearly expressed the government’s governance worry: how to
standardize and rule unruly diversity? ‘Our problem is that every munici-
pality wants to create its own rules for managing the water’.5 The reason for
wanting more control was also clear. Her explanation of the recent Water
Wars that had shaken Bolivia, and many parts of the world, was simple and
stripped of all complexities: ‘The locals don’t want to pay for the water’.

Commonly such complex local rights agreements and institutional ar-
rangements have been and still are obstructed, if not declared illegal, by
Andean water laws. We can distinguish various legal responses to water
rights complexity, which I will review below.

During the epoch of colonialism — which falls outside the scope of this
article — local water rights were either replaced to facilitate control and
extraction by elites, or were ‘respected’ under pluralist (dualist) regimes
that aimed to divide and rule. Spanish colonial law was both exclusive and
paternalistic but, unlike its early liberal successors, it was not based on a
mono-juridical model.6

The latter was introduced by post-colonial, Republic period governments.
They tended to utterly abolish local rights repertoires and import Western law
in order to promote ‘progress, modernity and development’. Since then, mod-
ern water legislation and policies have been an expression of liberal equality

6. A parallel legal system of ‘guardianship of the miserable’ was established: the Republic of
Indians, complementary to the Republic of Spaniards. The indigenous had to operate under
both systems (see Boelens et al., 2005; Guevara, 2006).
discourses. It is the State’s exclusive prerogative to make and enforce law, and define and allocate water rights. In some aspects this effectively opposed abusive water rights systems such as those enacted by feudal landlords, and in theory this could bring a more equal sharing of (water) rights and burdens in society, and provide common claim-making mechanisms for the less powerful. In Andean countries’ reality, however, monolegality and forced normative equality were fiercely imposed by a liberal upper class, white-mestizo minority. They did not just oppose feudalism but also dominated nation-building and State institutions and portrayed modern society as a homogeneous reality into which no diversity of rights conceptions could fit. State monopoly on violence and law production with so-called ‘universal rationality’ — but in the Andes, developed and enacted by this ruling ethnic group and class — was to suppress and replace the Hobbesian ‘natural State’ of uncontrolled war and contestation among humans with its diverse ‘disobedient forms of justice’. This ideology of equality was also formulated in terms of a major political undertaking of racial mixing (mestizaje). Fundamentally it was an ideology of whiteness, standardizing all nations’ inhabitants under the model of white-mestizo hegemonic groups, with regard to cultural codes, norms and even physical aspects.

Gradually, the racist assimilation project was combined with an integration model that attempted to grant indigenous communities more rights and integrate them into a market system, to share in the benefits of modern society. The building of a national identity and unitary consciousness was quintessential for the dominant groups’ effort to enhance and control nation/State building. Although certain indigenous cultural norms were taken more seriously, this did not affect the ideology and sovereignty of the State political administration, which was and still is particularly strong in water resources management. Thus, the approach of normalizing the ‘inferiors’ to fit them into the white-mestizo model was combined with a paternalistic, civilizing approach geared to ‘supporting the backward’ to help them become equal. Indeed, throughout the post-colonial period, from liberal and ‘revolutionary’ reforms to the wave of neoliberal water privatization, policies of recognition neatly combined recognition with denial of the ‘other’ in an attempt to ‘normalize the abnormals’.

One of the enduring assumptions of post-colonial law making for water management was that Western property institutions, and standardization of agreements among all, would be for the benefit of all and produce efficient rights and rational organization. Cultural differences would vanish as soon as local communities experienced its effectiveness. This universal ethical system remains key to the current legal-modernization thrust. Rather than looking at the reasons why Andean water users’ organizations and federations actively challenge this uniform system of (commoditized) water values

and property relations that, in their experience, facilitates transfer of water rights to the few, it is portrayed as ‘civilized interaction and exchange’. And rather than acknowledging the capacity of collective water rights systems to enable — in the adverse political and agro-ecological Andean environment — livelihood security of the economically less powerful, the liberal discourse argues that only through State law and market institutions can local people be released from the mystery and uncertainty of local ‘arbitrary arrangements’.

In Andean countries, the liberal equality myth, the assumption that a modern water society could be legally engineered, and the unitary legalistic notion, have always been very strong. For instance, national legislation in Peru ignores the existence of the tremendous diversity of rural and indigenous water rights repertoires. Although the 1969 General Water Law contained certain major improvements over previous laws to further distributive justice, it rigidly enforced ‘equalization of all’ but was completely based on the reality of Peru’s coastal region, with contexts and cultures that are totally different from those of the Andean and Amazon regions. Moreover, the blueprint Water Law regime incorporated institutions, water rights values and norms that neatly resemble those found in large-scale State-managed irrigation systems anywhere in the world. The ideology of nation building, together with the effort to counteract colonial racialization of ethnic differences, introduced a new type of cultural politics, whereby cultural differences were denied and the right to culturally define and organize were oppressed (see Guevara, 2006). In Ecuador, the very similar 1972 Water Law and its regulations are not compatible with any existing local management processes in the Andean highlands (see Boelens and Doornbos, 2001).

Aside from legal structures and contents, it is useful to distinguish among liberal legal ideology and legal practice. On the one hand, in practice, under extremely unequal power relations, the liberal argument of equality under the law results in a myth. This is manifested, for instance, in the capacity of hegemonic sectors to legally manipulate conflicts over water and acquire water rights.8 On the other hand, it does not mean that the equality ideology is without effect. In Andean water policies, the equality argument is not applied to achieve more equal access, but to deny difference and contain diversity. It de-legitimizes the demands of various ethnic and societal groups to manage water affairs according to their own rights repertoires. Problems are commonly diagnosed as not being caused by racism or class oppression, but by the indigenous and peasant communities’ backwardness and lack of access to official legislation, since these population groups are attached to their traditional water management systems. Official discourse suggests that

they will be included though training and enhancing legal and institutional access. There is an assumed need to educate the ‘uneducated’, and raise consciousness for the ‘unconscious’, in order to include the ‘excluded’.

**RIGHTS DISCIPLINING BY SHOTGUN MARRIAGE**

‘Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; humanity installs each of its violences in a system of rules and thus proceeds from domination to domination’ (Michel Foucault, 1977: 1351).

Hobbesian hope or liberal faith in State law is clearly problematic, certainly when analysing most Andean countries’ agrarian and water laws. The politics of recognition often materialize in policies of recognition, in which domination is institutionalized either in legal scripts and/or in actual legal procedures. During the last decade, the laws of most Andean countries underwent major multicultural changes. The constitutions of Colombia, Peru, Bolivia and Ecuador now formally recognize cultural diversity and legal pluralism. Yet, such general changes regarding recognition of diversity are not reflected in most of the powerful water laws or agrarian laws, even less in water legal practice.

Nevertheless, in their own interest, the State institutions and national elites could not always remain silent and often have had to respond to demands and uprisings by indigenous and peasant groups, in terms of legal changes. Therefore, next to the uniform equal-for-all State law, dealt with above, another (or rather, complementary) strategy does appear to create local rule-making space. In the Andean countries’ legal systems, commonly, Agrarian and Community Laws create particular rights especially applicable to the peasant and indigenous populations, thereby expanding their concept of unique, omnipresent and overall national law. Such special laws may also be ‘added’ to an existing legal structure, for example, by adding an Indigenous Law or Peasant Community Law to the existing Water Law and Mining Code.

Most often, ‘legalized customary law’ is a product of a forced engagement between official and local law systems — a ‘shotgun marriage’. Official law is too general to be able to resolve particular local problems and often cannot do ‘perceived justice’ in local cases and water cultures. Therefore the State and its legal system face the need to incorporate local fairness constructs and solve normative conflicts in order not to lose legitimacy and discursive power in the eyes of its citizens. Local law systems, in turn, are intrinsically hybrids, and cannot operate without relating to formal law systems. But the marriage is unhappy and extremely complicated. This is partly because most of the time it is the aim of the State and dominant groups in the Andean countries to resolve only ad hoc, secondary conflicts, without changing the
primary, fundamental conflicts based on class contradictions and power structures that reproduce gender and ethnic positions. Various ‘marriage conflicts’ cast doubts on the effectiveness of such official recognition policies in safeguarding local water rights. Even the latest Bolivian legislative efforts to marry the two are full of complexities and contradictions.

Commonly, the official recognition policies make use of simplified, stereotyped constructs that misrepresent peasant and indigenous organizational forms, identities and natural resource management dynamics. Thereby, they institutionalize local Andean water users’ rights and management norms in ways that may reinforce their subordination to other bodies of law, and strengthen (intentionally or not) the interests of influential players. Thus, the outcome of this recognition may be the oppression or obliteration of local law, codifying it in isolation from its cultural context and slotting it into larger-scale power structures and strategies.

Tellingly, in order to match Ecuadorian Water Law, the large variety of peasant and indigenous irrigation collectives are labelled and recognized as *private systems*, as any other enterprise or hacienda system. Although the new 2008 Constitution aims to somehow correct various errors of the past, legal recognition of rural communities so far has largely misunderstood people’s own organization forms, by imposing a single form of organization, with characteristics reflecting the structures and values of liberal democracy rather than the existing ones.

Similarly, in Peru, the General Law on Peasant Communities codifies a simplified notion of ‘the community’. Peruvian law subtly links this essentialist legal framework for community recognition to the above-mentioned top-down water administrative framework: the Irrigators’ Commission is established as a specialized committee within the codified community. To obtain title to their territory communities need to present ‘official evidence’ that sustains their claim. ‘In day-to-day legal practice communities can operate with any chance of success only when they have accredited their official registration and recognition’ (Guevara, 2006: 141). Thus, many rural groups, self-defined for decades as peasant or indigenous communities, are involved in lengthy procedures, but have not yet received their official classification notice — often with serious consequences for the defence of their rights to water and other natural resources, and access to loans and public resources. Recent legal changes were not made to adapt to the complex rural reality, but mainly to thrust peasant communities into the market, to make it easier to break them up and sell their land (Guevara, 2006).

In this respect, Chilean law is even more ‘advanced’. In 1993, Chile enacted the Indigenous Law to counteract the negative consequences of the neoliberal 1981 Water Code (see also below). It was meant to support indigenous populations in protecting what was left of their territorial rights. But although the law has managed to fill some gaps in the Water Code, it continues to be difficult to substantively defend indigenous rights against
third parties. The fact that it is a special law only applicable to (and within) a special group of the national population (in Chile strongly essentialized) has left most indigenous claims unanswered (Gentes, 2006). Moreover, the Indigenous Law has proven to be extremely weak, whenever indigenous communities had to face the powerful Water and Mining Codes, which are called upon by the water-owning elites. The Law stresses special protection of water for indigenous groups but at the same time it establishes that, in any event, this must not interfere with water rights that have already been registered pursuant to the Water Code. As Gentes observes, a fundamental problem involves the difficulty of protecting collective community laws in an overall neoliberal framework that destroys collective organization and favours individual and private rights. Government agencies and international trade law assume that indigenous groups must either fit into the market or count themselves out of the process of globalization (Gentes, 2006).

The flip-side of the recognition question is the well-known danger of curtailing local autonomy, chaining local rights groups to new strict rules and boxing them into a generalizing State law system. The dynamics and multiple manifestations of local water rights systems cannot be codified into blanket legal terms without jeopardizing their foundations. They refer to a broad range of diverse ‘living’ rights systems and cultures that constantly reorganize their rules precisely to maintain their identity, and their capacity to negotiate and solve problems.

In the Andean region, law makers, policy makers and scholars have long used different approaches to analyse the issue of peasant communities and regulate ‘the indigenous question’. As Guevara (2006: 131) observes, ‘at one extreme are the modernizers, liberals, or progressives, who strive to change the agrarian reality at any cost, including cultural costs. At the other, radical indianists, indigenists, and proponents of recovering Andean culture and technology postulate a romantic environmentalism that places Andean peoples beyond history and near an autarkic utopia’. These essentialist and naturalized constructs have often served in official identity politics — to validate segregationist policies, to justify ethno-nationalism or to legitimize bio-political mestizaje.9 This is quite similar to the way colonial law, in many countries, constructed customary rights, invented and officialized traditions and created a usable past. Simplified institutional models, abstracted from complexity, have not just denied existing diversity but also transformed the way to interpret reality.

Essentialization is not just an error but often has a political purpose: the re-presentation and re-cognition of local water rights and identities refers to re-interpreting and thus transforming them. ‘Recognize’ literally means

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9. They were also (re)appropriated as political tools by the marginalized groups themselves (see, for example, Baud, 2003; Boelens and Gelles, 2005; Gelles, 2000; van der Ploeg, 2006).
to know and understand reality again’ — here, to reshape the image and contents according to the needs of the formal ‘recognizers’. In this process of recognizing, essentialization and objectification fundamentally occur when complex realities and indefinite categories need to be contained in order to control them. State or externally endorsed ethnicity, identity and nature of people’s water rights provide the illusion of the continuity of existing rights, institutions and practices, which are, however, subject to new contexts in which power relations are being reinforced or strategically rearranged. Commonly, Andean countries’ cultural politics thus define water culture and rights as fixed, reified and aligned to prevailing institutional and power relations: a crystallization of the presumed physical, political-economic and psychological boundaries and repertoires of a group, which predetermines and makes tangible their behaviour. Abandoning uncontrolled dynamics, diversity, human agency, contingency and local resistance to the domains of illusion is the implicit political effort.

Thus, clearly, not all uses and customs are denied: some essentialized local rules and rights are allowed and institutionalized, at the expense of most others and at the cost of intensifying the repression of more fractious, defiant and disloyal norms. Legal recognition and the subsequent freezing of a naturalized socio-legal repertoire impacts both peoples and management systems that are ‘recognized’ and those that do not have this new legal backing. The legalization of some is accompanied by the illegalization of others. This relates to both cultural rights (including water management rules and norms) and distributive justice (such as water access and use rights). The example below illustrates how incorporation of some local water rights (naturalized as traditional rights) has direct implications for the non-protection of others.

The Quest for Redefining Water Rights and Essentializing Identity

Andean community irrigation rights, in all their complexity and diversity, have some common features. These include: they typically constitute collective property; they are territory-bound; their authority is vested in rotating community leadership posts; they can hardly ever be transferred to users outside the system; they express diverse use values (also non-economic); in times of scarcity they obey prioritization reflecting social needs (to enable livelihood reproduction); their acquisition and consolidation is based on water use system construction and consolidation; decision-making procedures are based on one vote per right-holder. Each community provides its own individual context and history version of such a rights repertoire. Therefore, it is not surprising that communities’ resistance to changing their fundamental rights framework is enormous; significantly, all Andean countries’ water laws (which fundamentally neglect these local rights) were established
during military dictatorships, commonly oppressing dissenting voices (as in Bolivia, Peru, Ecuador and Chile).10

Reviewing the above properties, it is immediately clear not only that the diversity of rights limits the control of outside bureaucratic or market players, but also that the very contents and mechanisms of Andean water rights make free market operation very difficult. In Chile, the fundamental attack on Andean community rights by the neoliberal model, claiming freedom for all, was made possible only after the Pinochet regime violently oppressed resistance. The neoliberal Water Code promoted precisely the opposite of what Andean community rights entail — private water rights. Separated from the land and community; their authority is vested in the State that protects the functioning of the free market; their transfer is promoted and new rights are awarded to the economically most powerful bidder. These private water rights fundamentally express market exchange value; they do not obey any legally protected social prioritization; their acquisition and consolidation is cut loose from system sustainability and reproduction; and, suffocating democratic decision making, the voting weight of the individual is proportional to his or her water shares and buying power.

Similar to the historical analysis of Getches (2005) regarding the white settlers’ interest in defining Indian water rights and identity in US reservations,11 the paradox in Chile’s neoliberal model of local rights recognition is that it is, as one of the interested parties, precisely the business sectors (such as mining, hydropower and forest companies) that are pushing for

10. The water law in Bolivia is old, dating from 1906, and since then a large number of proposals have been formulated but without approval. Decrees have changed legal water matters on an ad hoc or sectoral basis. Five years ago a new Irrigation Law was enacted (see Perreault, 2006). Since 2006 the Evo Morales government has been working on a new framework for water law and policies. In Peru and Ecuador, the current water laws were installed in 1969 and 1972 respectively, during reformist military governments. Since then they have incorporated a number of (mostly neoliberal and ad hoc decentralization) decrees (de Vos et al., 2006). The Chilean Water Code was enacted under the military dictatorship of Pinochet and installed a private property regime with dreadful consequences, especially for many indígena and campesino communities. Since the return to democracy only slight changes have been made to the legal framework to reverse its problematic impact for poor user groups and the environment (see, e.g., Boelens et al., 2006; Boelens and Zwarteveen, 2005; Bustamante, 2005; Gentes, 2006; Hendriks, 2006; WALIR, 2007).

11. In the USA, after two centuries of limiting Indian rights geographically and politically in ever-smaller reservations, white settlers and investors often are the prime advocates of clear Indian water rights in order to know how far their encroachment practices can go without overstepping their legal backing: ‘Because investments and property values are undermined by uncertainty, non-Indians and the western states that tend to support non-Indian interests have also urged that Indian water rights should be legally determined’ (Getches, 2005: 48). A secondary effect was the government’s attempt to civilize and contain unruly Indians by turning them into individual farmers. After dividing up the reservation and individually allocating the land, the rest of land and water rights could be given to white settlers (cf. Getches, 2006).
clear rights for indigenous communities. Their objective is not to defend indigenous autonomy but to provide a broad catalogue of legal certainties for outside investors in these territories (Gentes, 2006). The water rights market and investment plans, according to them, cannot operate if there are customary rights that are not registered but do entail a certain legal protection. Thus, they seek ways to motivate all water users to register their rights and they drive public policy geared to making users participate in water rights trading (Boelens et al., 2005; Gentes, 2006). They therefore plead for strict codification of indigenous rights, grounded in an essentialist concept of indigenousness, disregarding its dynamic nature. This enlarges the security of outside investors as to ‘how far they can go’, reduces the universe of users who can claim ‘indigenous rights’, and establishes local rules for behaving as ‘Noble Indians’ accredited by the free market game.

**RIGHTS DISCIPLINING BY ‘MANAGED MULTICULTURALISM’**

The experiences in Chile, Peru and Ecuador show that the issue of how to codify, contain and dominate the diversity of local water rights through recognition policies is a fundamental question. The answers become increasingly subtle and participatory. Interestingly, the decade in which the greatest wave of official recognition of indigenous and customary rights emerged in Latin America was the same one in which the neoliberal model was implemented. Strong support was and still is provided by multilateral institutions and financial lending agencies to the cause of multiculturalism and recognition of diversity. In fact, there is a convergence of interests between the neoliberal model and certain multicultural currents.

As Assies argues, recognition policies during the past decade in Latin America have been greatly influenced by a new strategy of ‘managed multiculturalism’, which celebrates cultural pluralism but fails to materialize resource redistribution (Assies, 2006). By contrast with transformative approaches to multiculturalism — which do aim to redistribute power and resources — this multiculturalism endorsed by State and multilateral agencies reinforces essentialist expressions of group entities. Also in the field of water control, this policy seeks to standardize cultures and their rights and procedures. Self-regulation, as Hale observes, comes with clearly articulated limits: it ‘attempts to distinguish those rights that are acceptable from those that are not . . . defining the language of contention; stating which rights are legitimate; and what forms of political action are appropriate for achieving them’ (Hale, 2002: 490). For example, as a typical feature of modern Andean water policies, decentralization of water administration forms part of the recipe, and ‘participatory’ rights and organizational forms are rigidly detailed. At the same time, paradoxically, in the neoliberal age of State downsizing, decentralization is seized upon by central governments to
lighten their responsibilities and strengthen their legitimacy and control at the local level. For example, the previous (neoliberal) Bolivian government explicitly stated that the core purpose of decentralization was to re-establish State authority over society. Legislation regarding watershed management in Peru is another illustrative example of how the State uses the new ‘participatory, decentralizing’ discourse to strengthen its control (Boelens et al., 2005).

That is why these local water rights recognition policies are not in opposition to, but rather combine quite well with, current modernizing policies. As once foreseen by Marx and Engels, capitalism ‘equalizes’ and creates a world after its own image. Similarly, in modern times, as Assies (2006) observes, the neoliberal State does not simply recognize the community, civil society or the indigenous culture, but rather reconstructs them, as a reproduction of its own relationships. This policy differentiates between good Indians and bad Indians. The former present cultural demands that are compatible with the neoliberal project, whereas the latter are the ‘radical Indians’ who call for redistribution of power and resources. Indeed, as Hale argues, powerful political and economic actors use this kind of multiculturalism ‘to affirm cultural difference, while retaining the prerogative to discern between cultural rights consistent with the ideal of liberal, democratic pluralism, and cultural rights inimical to that ideal. In doing so they advance a universalistic ethic which constitutes a defence of the neoliberal capitalist order itself’ (Hale, 2002: 491). Therefore, although this neoliberal, neo-indigenous project speaks of decentralization, tolerance and respect for multiculturalism, these values must not impinge on the model’s foundations and market rationality. Communities’ own natural resource management institutions are attacked, because they are seen to jeopardize free market operation (Assies, 2006). As Hale accurately observes, this neoliberal multiculturalism and its recognition project opens up political space for acknowledgement of packages of rights and the same time ‘disciplines those who occupy them’ (Hale, 2002: 490).

**Participatory Non-Governmental Intervention to Install Government Rule and Order**

Manyaccla (Huancavelica) is a community located in one of Peru’s most remote Andean areas, where governmental agencies and State law are notoriously absent. The participatory GESORI12 NGO project aims to support these communities in improving their irrigation systems. In the zone, there are already age-old organizations for natural resource management: although often not legally recognized, the communities and their general assemblies direct water management and community life. In his analysis of the project,

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Paniagua cites the project plan, which states: ‘There is no pre-defined model and each irrigators’ organization will design their own operation’ (2005: 49). That said, the Overall Operating Plan argues that, for improving irrigation, Irrigators Committees must be created and formalized by the Technical Administration of the Irrigation District (ATDR) — the government authority responsible for setting irrigation management norms.

The NGO views it as part of its mission to rationalize irrigation organization by including user communities in the formal hierarchy and governmental structure. Interestingly, the project’s Operating Plan creates the Irrigators Committee (parallel to the community) before beginning the ‘participatory assessment’. Moreover, states Paniagua (2005: 49):

The irrigation management model is pre-defined by the project, standardized by sources and means of verifying the activities’ achievements. The Operating Plan calls for a report indicating the number of community members trained in preparing the water fee, legal documents proving institutional recognition and formalization of the irrigators’ organizations. Social promoters are hired, and their pay and the evaluation of their performance depend on making these project goals a reality.

Although the participatory assessment guide mentions that irrigators’ organizations will prepare their own regulations, to be recognized they must follow the rigid model imposed by the ATDR.

It is a generalized pattern: NGOs often penetrate the zones most inaccessible for governmental legislators, taking responsibility for enforcing laws modelled on the context of the coast and entirely unsuited to the Andean situation — creating a world that corresponds with officialdom’s rationality. Also in Manyaccla, the Committee model is an almost verbatim copy of the User Organizations Regulations. The pyramid structure views the Irrigators Committee simply as a body to support the governmental administration. The latter does not have the institutional capacity to formalize the official hierarchy of Users’ Junta, Commissions and Committees (all subordinated to the ATDR), so non-governmental projects have often used their participatory tools to bridge between local water control reality and governmental norms. Paniagua (2005: 53) concludes that:

The regulations that must be ‘signed participatorily’ by community members to obtain their ‘legal recognition’ oblige them to set up a specialized organization: this Irrigators Committee is to support a non-existent Irrigators’ Commission and non-functional Users’ Junta, and to ignore the traditional irrigation authority — in the case of Manyaccla their community authority, wielded by the president, who does exist, lives in the community and is respected.

This mixes government law and ‘project law’, subtly imposing the latter upon local norms. In the words of one of the social promoters who was given the Kafkaesque job of implementing these irrational plans to ‘rationalize local regulations’: ‘Committees are important, but it is like preparing a medicine for a disease that you don’t have’ (ibid.: 54).
RIGHTS DISCIPLINING BY CAPILLARY INVASION

‘Once governments know where to look for extralegal representations and get their hands on them, they have found the Ariadne’s thread leading to the social contract’ (De Soto, 2000: 186)

In the water rights’ normalization process, the State and its hierarchical–legal apparatus is not the sole, or even most important source of power. Capillary, bottom-up power mechanisms, particularly, have a much broader range of action, and many day-to-day normalizing mechanisms not involving the State or its official institutions may be even more important for sustaining and reinforcing the State system and class relations than the State institutions themselves. Nevertheless, it would be a serious miscalculation to omit the force and functionality of formal structures from any analysis of the water rights game. The ‘game of the rules’ relates to official rules and rights as much as to informal ones, and the two are intrinsically connected.

In this sense, structure versus agency debates are often highly misleading. While legal structures cannot operate by themselves but need the forces in society that make law work, both legal pluralism and human agency (or ‘actor-oriented’) schools sometimes underestimate the strategic force of official structures and formal laws. Others (even Foucault in some texts) have argued that the ancient, sovereign power of Law has been replaced by the modern, disciplinary power of the Norm. But, at least in the Andean region (and probably everywhere), normalizing mechanisms have not replaced formal modalities; rather, they have infiltrated them from below, sometimes undermining them but also serving as an intermediary between them, and above all, making it possible to bring the effects to the most distant parts of the Andean region.13 To a large extent the legal system and other official power structures have become part of the inclusive power game, particularly since it adopted an equalizing, liberal ideology. In a Foucauldian sense, wherever ‘the law’ is invaded and colonized by ‘the norm’ (normalizing techniques and discourses), its effectiveness multiplies. Law, rather than depending just on authoritarian power or the power of one group over another, depends on the way people interact with and constitute each other as agents and subjects of law. The more the rules are (seemingly or actually) co-constructed by non-rulers, the greater their normalizing and subjugating power. In cases such as that of Manyaccla, NGOs and Juntas de Usuarios actively participate in advancing the uniform rule of state law even more intensively in those remote places of the Andean highlands where the State agencies lack access.

13. In his later works Foucault admitted this: ‘the power of the Norm appears through the disciplines. Is this the new law of modern society? Let us say rather that... it has joined other powers — the Law, the Word and the Text, Tradition — imposing new delimitations upon them’ (1995: 184).
In short, State law has continued to exert its dominating power, but unlike colonial times, no longer as a top-down power modality: its ideology exercises capillary power and invites all Andeans — white, red, black, yellow or green — to participate ‘under equal terms’. As such it disguises the new ways of normalizing water control, claiming to improve its effectiveness by applying presumably objective and non-discriminatory legal codes. Indeed, similar to Foucault’s argument, the system of law is superimposed upon the mechanisms of discipline in such a way as to conceal its all-inclusive but hierarchical procedures.

Despite their strategic interaction, ‘top-down/coercive power’ and ‘capillary/inclusive power’ (or State law and norms-as-a-societal-force) are not the same, and cannot be reduced to each other. It makes law into a complex instrument of power, especially since marginalized water user groups and indígena and campesino federations in Andean countries actively strive to join in this power, and to have their customary rights ‘included’. Hybrid and even shotgun marriages are the result in the Andean region, commonly resulting in poor fertility and doubtful offspring in terms of effectiveness for the subjugated population.

Back to De Soto’s Utopia: Comprehending and Including Extralegal Rights

In 2005, even before the country could provide any example of its actual functionality, Peruvian law enacted the new international fashion of ‘Payment for Environmental Services’, the latest strategy for water rights commoditization, which entirely neglects existing water rights relationships in Andean communities (see Isch and Gentes, 2006). It is a characteristic phenomenon: legislators, universities and NGOs working in the field with farmer organizations all supported this because they felt ‘they should not remain behind and needed to be included’. Once the discursive power of such modernist models has become effective, the ideological function of law is to naturalize (and make obvious and morally ‘right’) these new water rights and relations, and to bridge the gap between official norms and local practices. More than through coercive law making, or rule imposition by the (many) transnational institutes which actively push for this new policy, the mechanism is to invade the consciousness of water users and redefine their normative frames of reference and day-to-day water rules.

As I have argued, the fact that this process requires misunderstanding and essentialization of local water arrangements should not be disregarded as simple slip-ups or ‘off-notes’ due to misinformation. It is part of the water power game in which Andean families, communities and their water rights are ‘identified’ and reduced to labels. Through institutional and political alignment, their complexes of unruliness become comprehensible. Water rights are to be ‘equalized’, and become included and embraced through capillary power — not necessarily as political effects that are specifically
constructed. The re-constitution of local rights and organizations in the State’s image forms the crux of the policy effort. In this effort of subject-formation the role of the water users themselves is quintessential. NGOs, just like water user leaders and communities, also often play a crucial role in this process of self-examination and self-disciplining; of denying and reconstructing the Self by comparing and equalizing it with the Other (which by no means implies that there is ‘no escape’ or ‘no resistance’ — quite the contrary).14

In this sense, these legal models in the Andean countries not only preach equality among subjects but also strive, as ‘civilized nations’, to become equal: equal to the Western standards of modernity and progress. If we return to De Soto’s influential policy mission, it becomes directly clear that following the Western model has profound consequences for local rights recognition and formalization: ‘that was basically how Western law was built: by gradually discarding what was not useful and enforceable and absorbing what worked’ (De Soto, 2000: 187). For De Soto, it is not the formalization of law as such, but its importance as a means to ‘create an orderly market’ and ‘encourage law and order’ (ibid.: 98) and therefore, most of all, its ability to define and defend private rights. State law must defend private rights as the way to equalization, integration and rational order. De Soto sees private property as ‘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’ (ibid.: 196). In order to produce this stability, local hearts and minds need to be seduced to abandon their own water rights repertoires and common laws, and instead see the need for formal law and its defence of private, transferable rights.

According to De Soto, this process of inclusion of local rights and institutions, whenever possible, is to be arranged through participatory strategies, not by coercive State power or private agents’ violence. He closes his eyes to the broad day-to-day resistance: ‘The most striking feature of these institutions, throughout the world, is their desire to be integrated into the formal sector... The extralegals want to come in from the cold’ (2000: 178, emphasis added). No obligation, no force, everybody joins — the long hoped for utopian synthesis of governors’ laws and citizens’ moral wishes, plights and responsibilities. Or, in dystopian terms, the nightmare in which the ultimate supremacy of obedience and disciplinary power is established: ‘the laws of the State and the laws of the heart, at last identical’ (Foucault, 2001: 57).

The results of this neoliberal utopian dream of forging Law and Norm in the neoliberal melting pot, according to De Soto, will be just fine: ‘Everyone will benefit from globalizing capitalism within a country, but the most obvious and largest beneficiary will be the poor’ (2000: 190). That is,

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14. As indicated at the start, this article concentrates on the (overlapping) mechanisms of water rights’ disciplining, and will only give slight attention (see below) to the multiple resistance strategies.
If the incapable poor and uneducated masses can be convinced: they need to provide the information on their extralegal arrangements, and on how to transform and integrate their properties into the formal system. This way, the State will have ‘the information required to integrate the poor and their possessions into a legal framework, so that they can finally begin to have a stake in the capitalist system’ (ibid.: 188). Indeed, it is not just ‘the poor’ who need to be included, but most of all their possessions, their minds and their hearts.

But how to overcome potential resistance to formalization? This is certainly important, since ‘in Peru, for instance, the government has tried to formalize property at least twenty-two times in the four hundred years since Spanish conquest. Their success rate: zero’ (ibid.: 170). Therefore, the aforementioned inclusive power mechanisms are put to work, that seem to acknowledge local institutions but fundamentally recreate them by reifying some presumed essences, rearranging the political–administrative framework, and transforming the lines of accountability. As a result, the very heart of local rights is invaded from below, to be absorbed by and codified in an all-embracing framework. The quest is for an all-encompassing social contract grounded in a formal property system and built into a political structure that appears to be anchored in people’s own legal arrangements but which fundamentally represents the interests of international or Andean nation-state elites.

Therefore, unlike their mono-legalist liberal or socialist predecessors who ignored local property systems outright, a modern De Soto policy and law maker, by contrast, recognizes legal pluralism in line with the above philosophy of managed multiculturalism. He or she studies and embraces local water rights and people’s living law in order, with this information, to incorporate these particular rules and rights and subtly squeeze them to death. Or put euphemistically: ‘Once government obtains this information, it will be able to explain its intent in a way the poor can understand and relate to. As a result, they will support the agenda of reform enthusiastically. The poor will become the most effective public relation machine for reform’ (ibid.: 199). Indeed, not by force but by ‘educating the uneducated masses’.

What is more, if the ‘unquestionable benefits’ of formal law and the leaders of property reform manage to seduce these common peoples, the latter

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15. In De Soto’s analysis resistance is not seen as a broad societal protest against elite-based control, but as a communication problem caused by: a) the ‘extralegals’ failing to understand the benefits of uniform rights and popular capitalism; and b) local elites’ stubbornness, since they benefit from current extralegal arrangements. The first is to be solved by education; the second by the market itself that ‘encourages law and order, and puts money in the pockets of the elite’ (2000: 198).

16. De Soto goes further and criticizes lawyers, particularly in the South, for not studying legal pluralism: ‘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’ (2000: 187).
themselves would become the intelligence-gatherers needed for State control and market expansion, critically screening their own properties: they will organize in line with bureaucratic boundaries and criteria to enable consultation and water development, and provide water control records according to the standardized needs of State administration. They will relieve and extend State functions in water governance. At least, that is the hope of current legal modernization missionaries such as De Soto: 'The leaders of property reform need to describe how popular capitalism will affect many different interest groups, show them the benefits they will derive from it, and persuade them that it is a win-win exercise for all segments of society' (ibid.: 204–6).

FINAL REFLECTIONS

Andean water control history has made it very clear that this claim of ‘win–win for all’ does not materialize. Since, according to (neo)liberal ideology, everybody is fundamentally equal, policies not only tend to disregard economic differences (while some cultural differences may be recognized as encapsulated, harmless and folkloric otherness) but the neoliberal State simultaneously refuses to actively balance societal injustice. Laws of supply and demand, sanctioned by State law, become the driving force for water management. As equals, peasant and indigenous families are supposed to compete with large-scale farms and transnational companies in this ‘win–win exercise’.

But Andean water user collectives and peasant-indigenous federations have learned from the historical power game of intermittent exclusive and inclusive discourses and, although beyond the scope of this paper, they have formulated their multiple reactions — from local to international struggles. At first, they demanded together with socialist-inspired labour unions the right to equality. However, having unmasked the assimilation thinking based on whitening and normalizing the anomalous, at a later stage they demanded the right to be different: to rebuild their identity, not as folklore, but as a proactive, dynamic construct. In fact, the past two decades have been characterized by self-reorganization of Andean and indigenous identity. As a result, they claim both the right to more equal access to resources and the right to maintain self-sustained differences regarding the contents of their water normative frameworks.

In their contemporary struggles, claims for recognition and redistribution necessarily combine (Assies and Gundermann, 2007; Boelens and Gelles, 2005; Dávila and Olazával, 2006; Zwarteveen et al., 2005). Local water

17. Recent attempts by the Bolivian and Ecuadorian government to abolish neoliberal water policies constitute important test cases. They already face tremendous resistance from economic power groups.
users’ organizations simultaneously contest the regimes that aim to re-represent their cultural norms, values and organizational practices and the unequal distribution of water and other resources. The struggle combines diverse levels. First, in order to concretize water claims, there is a struggle over the access to water and related material resources. Second, they contest the formal definition of the rules: the contents of water rights and management rules and the mechanisms to acquire rights. A third level of contestation relates to the authority to make decisions and enforce rights. Since each higher level of abstraction tends to provide legitimacy to claims at the lower levels, the fourth and most abstract level refers to the discourses that establish, impose or defend particular water rights policies and regimes. The power to formulate and enforce water rights necessarily blends the four levels (Boelens and Zwarteveen, 2005).

This multilevel battle — the struggle to defend, define and enforce local rights systems — may be positioned within the law, outside the law or head-to-head with the law. Within the law are the struggles: to achieve greater justice in water access and to change current water property structures; to obtain greater autonomy and control for internal water management; and to recognize water rights as collective rights. Outside (or on the margins of) the law are most rules, norms and practices that water user collectives apply when building their own organizations and practise their own water rights. These norms and normative structures are neither accepted nor denied by the law. The less detailed and codified they are in legal terms, the better they elude bureaucratic control. At the same time, this is a struggle against those recognition policies that seek to tame this variety of rules and rights. Struggles against the law are also often grounded in protests against assimilation or integration processes, or when illegal rules are applied as outside parties ignore or try to usurp local water rights. Often viewed and labelled ‘illegal’ by official law are the manifold mobilizations and expressions of resistance to the imposition of outside technological, political and cultural models.

Whereas official recognition policies and ideologies commonly serve to simplify local complexity, align ‘unreliable’ and ‘unruly’ rights frameworks, and subtly include and domesticate the water use communities according to bureaucratic or market needs and images, the responses may be equally subtle and complex. Adopting formal, uniform institutions of water control does not necessarily mean obeying (just) these rules and conforming to them. There is a large range between ‘mimesis’ (the force and result of imitating and aligning to the dominant models, based on either top-down imposition or self-correcting, capillary modes of normalization) and what I refer to as ‘mimicry’, a conscious strategy of counter-identification. Under the surface of homogeneous rules and organizational structures that count with official legitimacy, adopted by most communities mainly for external representation and formal protection, user collectives harbour a tremendous organizational and normative diversity. Often, the most powerful, durable
and effective elements — like networks of contacts, informal norms, social positions and water-rights-in-action — can hardly be reached by official legislation and policies. They form part of a strategic, political struggle for counter-identification and legitimization of own authorities, which also includes the construction, by local user collectives and campesino and indígena federations, of their own discourses about the meaning of ‘community’, ‘Andean’ and ‘indigenous’, and the construction of policies to regulate water accordingly. In other words, openly or under the guise of sheltering and apparent adoption of outside rules and organizational constructs, a great diversity of local rights and hybrid norms are developed, exerted and reconstructed, which act precisely against essentialistic containment, universalistic takeover and normative colonization.

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