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The Politics of Andean Water Policy Reforms

Local and Indigenous Rights in the Context of Privatization Policies

1. Introduction

In many Andean countries, like elsewhere in the world, processes are in motion to transfer water management responsibilities to local government authorities, user groups, private enterprises, or combined public-private institutions. Terms such as decentralization, participation, privatization, or management transfer are used to refer to very diverse actions undertaken to turn over government tasks to lower level management bodies. There is, for instance, variation in which management tasks are decentralized, in who obtains ownership of the infrastructure and in how rights over water are arranged. Sometimes, water control is completely privatized whereby infrastructure and water property rights are turned over to private entities. More often only the operation and maintenance tasks of water control systems are left to the private sector.

In the Andes, most actors involved in water policy and management agree that there is a need to improve water control and rights tenure frameworks (CEPAL 1998, CONAIE 1996, Dourojeanni 2000, Pacari 1998, WALIR 2002). Most would even agree that such a change should take the form of decentralization. The reasons for wanting change, however, vary widely between different actors. Indigenous and peasant groups perceive decentralization as a means to redress their historical exclusion from decision-making about water allocation. They demand a fair and adequate representation in water policy making processes in the hope of securing their own water rights and the livelihoods of future generations. International lending institutions, often together with national governments, see decentralization and privatization of water management as a means to both reducing government water spending as well as increasing the efficiency of water use. Commercial water companies, in turn, hope to be allowed to exploit existing and new water infrastructures in ways that will bring them economic gains. Given this diversity of interests, it is hardly surprising that water reforms are the topic of much debate and political struggle (see Bauer 1997, Boelens et al. 2002, Bustamante 2002, Gentes 2002, Guevara et al. 2002, Palacios 2002). In the Andes, indigenous movements, peasant organizations, and popular alliances have engaged in a fierce battle to defend their water access rights and to claim more justice and collective control concerning water resources management.

Given the highly contested nature of water reforms, and the competition they engender over water, it is striking that the neo-liberal terminology used for arti-

culating water problems and solutions is one that prevents the recognition of power and politics as constitutive of water realities. Although the proposed measures differ, current water reforms share a problem analysis strongly influenced by privatization models, new institutionalism, and rational choice theory (Goldman 1998, Gleick 2002, Mollinga 2001, Moore 1989, Zwarteveen 1998). Water bureaucracies are understood through rent-seeking types of analyses and the debate about water markets and tradable water rights also mostly occurs in the language and tools of neo-liberal thinking. For understanding the organizational dynamics of local level farmer organizations, use is often made of new institutionalist concepts (Ostrom 1990, 1992, Baland/Platteau 1996). Indeed, neo-classical and new institutionalist formulae are very appealing for their clarity and the efficiency with which they simplify complex realities and behaviors. They also neatly suit neo-liberal political ideologies advocating less state and more market. Yet, we argue that the neo-liberal concepts and frameworks are not well suited for understanding water as a contested resource.

Before elaborating on this statement, let us briefly outline the advantages of neo-liberal approaches. As Moore claims for anti-poverty programs, the rational choice paradigm has a natural affinity to the policy discussions of international development organizations working in many countries. It is better suited to producing propositions that are partly true in relation to each [of] a diverse range of specific situations, rather than generating in-depth understanding of these situations (Moore 1990:16). Moore's observation holds true for the irrigation sector, with its strong preference for large scale standard policy initiatives and a strong predilection for »design principles« for building viable institutions: universally valid sets of factors, conditions, or principles that can be applied to design a particular institutional transformation (Ostrom 1992, Plusquellec et al. 1994, FAO 1995, 1996). The application of instrumental rationality to political problems of resource distribution likewise suits irrigation professionals. The beliefs that flows of money and water follow universal scientific laws, and that human beings roughly follow the same rational utility maximizing aspirations everywhere are important sources of consolation and relief for policymakers who see themselves confronted with complex and dynamic water situations.

That neoliberalism makes it possible to simplify the world for policymakers, however, does not mean that the neo-liberal tools are always well suited to represent and understand the world (Mayer 2002, Van der Ploeg 1998, 2003). While some aspects of reality (those that are deemed influenceable through policy interventions) and some causal mechanisms (prices and finances, formal laws and institutions) are highlighted, there are many elements of reality and many realities that escape their notice. As a consequence, these elements and realities risk not just

a discursive, but also (and more importantly) a political death. They can no longer be talked about or referred to in water negotiations and disappear from water policy agendas. In this article we want to focus on one such reality that risks discursive and political destruction: the existing indigenous and collective forms of irrigation management.

In the Andes, local irrigation management institutions have existed for decades, and have emerged out of very specific conjunctures of historical, socio-political, climatological, and environmental forces. Their functioning cannot be made visible, let alone understood, in neo-liberal terms. Their behaving differently than neo-liberalism would have it, is turned against them as proof of their backwardness and lack of rationality: they deserve to wither and fall prey to market forces. In contrast, those irrigators' communities who accept the new policies and rules receive the »good governance« stamp of approval. They represent the undeserving impoverished water user communities requiring support to become modern institutions that use and manage water according to sound new institutional logics. So the strategy is either to resist or to comply with the neo-liberal approaches. Hence, while the main stake in these struggles is security of water tenure, the struggles are not just about water. They are also about power and identity, about the right to self-define and exist as collectives and individuals, about sameness or otherness, about ethnicity and gender (Gelles/Boelens 2003). In a similar way, neoliberal institutional reforms in the water sector tend to ignore existing gender relations, generally provoking a weaker position of female water users (see for example, Zwartveen 1994, 1997, 1998).

Neo-liberalism is not just an innocent policy, based on neutral choices. Through powerful laws and rules, the neo-liberal model of the water world is forcefully turned into reality. It is no coincidence that this has happened most successfully in Chile where, under the Pinochet regime, popular protests and voices of dissent were violently suppressed and silenced. As Bourdieu has stated it: "What is presented as an economic system governed by the iron laws of a kind of social nature is in reality a political system which can only be set up with the active or passive complicity of the official political powers" (Bourdieu 1998: 86). Peru, Bolivia, and Ecuador were forced by the World Bank, IMF, and InterAmerican Development Bank to adopt neo-liberal water legislation, copying the Chilean model. An important and very explicit goal was not just increasing water use efficiencies, but also the achievement of a change in government spending priorities – a clear political goal. However these respective proposals face strong opposition from peasant and indigenous movements (Bustamante 2002, Gentes 2002, Hazleger/Boelens 2003, Pacari 1998).

With many others, we fear that realizing the neo-liberal water dream comes at a high price: that of violation or even obliteration of existing water tenure arran-

gements and collective forms of water management. This fear is not so much based on a conservative desire to protect traditions, but rather stems from the recognition that existing indígena and community based organizations merit a more cautious and respectful representation and recognition than the neo-liberal model can offer. In addition, as many studies show, mis-recognition risks leading to the (more or less implicit) undermining of their security of water tenure, and thus of an important basis for survival. To prevent this from happening, a much more explicit recognition and analysis of politics and power in the discussion of water reforms is needed. Concerted efforts to show the politics of choices that are presented as scientific or purely economic is an important first step in decreasing the legitimacy of current water reforms. In this article we further suggest that a focus on water rights and laws, on the norms and rules surrounding the distribution of water, provides one possibly promising entry-point to start thinking about water problems in ways that allow recognition of politics and culture as explanations for human behavior (Benda-Beckmann et al. 1998, Bruns/Meinzen-Dick 2000, Getches 2002, Zwarteveen/Meinzen-Dick 1998). Rights, and struggles about rights and authority, not only exemplify the inherently political nature of water, but in the Andes are also closely associated with cultural meanings and identities.

The structure of this paper is as follows: we start with a brief introduction to the theme of water rights. We propose a conceptualization of water rights that, in many ways, provides an important improvement to the overly legalistic and instrumental treatment they receive in current water policy documents. Making use of this conceptualization, we then provide a number of illustrations showing the political nature of water control in the Andes. Water is highly contested: struggles not only occur over the resource, but also over rules, authorities, and discourses. Moreover, various of these struggles are being provoked by the neo-liberal policies themselves, since they alter or reinforce existing power structures. In the last and concluding section, we briefly discuss the major flaws in the neo-liberal approach to water management.

2. Water Rights

2.1 Water Rights in Privatization Debates

Current thinking about water rights is intimately tied up with the privatization discussion. Water needs to be transferable and marketable so that it can be used in an economically efficient way, producing the highest possible marginal returns. For privatization efforts to succeed, clearly defined and enforceable water rights need to be in place. Water rights are thus a crucial condition for water markets to emerge (Rosegrant/Binswanger, 1994, Rosegrant/Gazmuri, 1994). In neo-liberal

thinking, water rights, by defining rules for the allocation and use of water resources, are seen to provide the means for describing and accounting for committed water uses. Water rights provide a good basis for allocating maintenance responsibilities among beneficiaries. They also, still according to neo-liberal models, provide security of tenure to users, thus establishing incentives for investments in infrastructure. Indeed, most of the anticipated benefits of water markets will not be achieved unless substantial efforts are made to establish and protect security of tenure in water. But then, one might argue that most will be achieved through the provision of security of tenure alone, irrespective of whether water rights are traded or otherwise transferred. In fact, the treatment of water rights by advocates of water markets and privatization of water is rather misleading. The suggestion is created that the lack of (incentives for) transferring or marketing of water is the root cause of current water problems (Seckler 1993: 6), while water management is such a complicated matter precisely because of the difficulties inherent in establishing an effective and enforceable system of water allocation. In sum, the question of how to create the infrastructure, laws, and institutions that allow security of water tenure lies at the heart of many water reforms. To address this question, a more complex and layered understanding of water rights is required than the current prescriptive instrumentalist and legalistic notion of water rights so popular among neo-liberal water economists (Boelens, Roth/Zwartheven 2002).

2.2 Dimensions and Contents of Water Rights

What, then, is a water right? When referring to irrigation, it is useful to think about a water right as the right that provides the right holder authorization to subtract water from a particular source, including the particular social privileges and obligations that are associated with this right (Beccar et al. 2002). A water right can be seen to encompass three dimensions: a socio-legal dimension, a technical, and an organizational dimension. The socio-legal dimension refers to the fact that a water right is an expression of agreement about the legitimacy of the right holders' claim to water. Such an agreement must exist within the group of claimants, but it is equally essential that rights over a resource be recognized by those who are excluded from its use. Agreement about the legitimacy of right holders' claim to water is intimately linked to social relations of authority and power, and can be based on various of grounds: on state legislation, water laws and regulations, but also on local rules established and authorized by traditions and community organizations.

Having the legal possibility (and social power) to take water is, in itself, meaningless without the two other dimensions of water control. First – this is the technical dimension – the adequate means (infrastructure, technology, technical

skills) to actually take water from a source and convey it to fields must be present. Secondly – this is the organizational dimension – it is necessary to organize and manage not just water turns and the operation of infrastructure, but also the mobilization of resources and decision-making processes around these issues. Responsibility for these management tasks may lie either with government agencies, with NGOs or private companies, with community organizations, or with a combination of those. Many water users' organizations in the Andes are community-type organizations, although some are set up or supported by government or non-government agencies. Having a right to water – which in the Andes usually means being a recognized member of the water users' community – is on one hand frequently accompanied by the right-holders' opportunity to participate in system operation and management, and on the other with a number of duties and obligations. Right-holders most often have to contribute cash or labor to the operation, maintenance, and management of an irrigation system if they want to get water to their fields, and if they want to be able to exercise their rights and keep them over time. When someone fails to comply with those duties, they risk sanctions such as the exclusion from one or more water turns or the payment of fines (Boelens/Zwarteveen 2003, cf. Gerbrandy/Hoogendam 1998).

2.3 Reference Rights, Rights in Action and Materialized Rights

Because of the variable availability and fluid characteristics of the resource water, and because of the difficulties in rigorously monitoring and controlling water flows, there is a lot of leeway for users to act in ways that diverge from distribution agreements as stipulated in laws and regulations. This is why the distribution of water, perhaps more than any other resource, is typically subject to continuous bargaining and negotiation. Such bargaining and negotiation may occur around the technical characteristics of the irrigation infrastructure, around the operation of the infrastructure, or about the very contents of the water right. For understanding water distribution and control, it is not enough to look just at the legal status of right-holders and make a simple categorization between the haves and the have-nots. An understanding of actual water use and distribution practices, including the different norms and discourses groups of users refer to when claiming, or simply taking water, is required.

To allow for such differentiation, and thus to capture the difference between »rights on paper« and actual water control and distribution, we distinguish the following categories of rights: reference rights, activated rights, and materialized rights. In the Andes, reference rights can be derived from broader principles, rules, and ideologies that embody notions of fairness and justice (Boelens/Dávila 1998), but they may also be based on national water regulations. Reference rights

specify the kind of powers a right holder is entitled to – in terms of operational, collective choice, and constitutional choice elements. They also define the characteristics of right holders, for instance, by specifying that water right holders should be landowners, community members, men, or heads of households (cf. Benda-Beckmann/Benda-Beckmann 2000). Activated rights (or »rights in action«) refer to the process of transforming reference rights into operational rules and procedures for water distribution. This includes operational rules about participation and the right to vote in meetings of water users' organizations. Materialized rights refer to actual water use and distribution practices, and to the actual decision making processes about these practices. Materialized rights are often not written down, nor even made very explicit, but are »authorized by routine« and/or »unspoken or informal agreements«. Both the definition of the contents of each of these rights and the links of transformation from one right to the other are subject to power structures and power games. They establish not just who can access water but also who participates in decision making.

2.4 Legal Pluralism and Embeddedness

In most Andean irrigation systems water rights exist in conditions of legal pluralism where rules and principles of different origin and legitimization co-exist in the same locality. The question of which rules and principles are to be considered (most) legitimate is therefore often an intrinsic part of struggles over water in the Andes, including the current ones surrounding the privatization of water (Assies 2000, Bustamante 2002, Van Kessel 1992, Laurie et al. 2002). New laws or new mechanisms of water distribution are often challenged by representatives of local communities by referring to »their own« traditional socio-legal systems. The very existence of detailed local water rights and laws is often only brought to the attention of legislators at the national level through resistance of local communities against proposals for water reforms and new water laws. Water legislation as formulated at national levels in countries like Ecuador, Peru, and Chile do not substantially recognize existing diverse and dynamic water rights and distribution practices. Nevertheless, they often include very specific and precise rules and prescriptions about how water users should behave and organize, how water should be distributed, etc. – mostly derived from international and foreign water laws.

There may also be a diversity of mechanisms for *acquiring* water rights, and the mechanisms considered legitimate by water users' communities are not necessarily those adhered to by legislative authorities at national levels. In addition to rights claims based on prior appropriation or socio-territorial claims, there are quite a number of incidences in Andean history of water rights appropriation through the use of armed violence by large landlords. Their claims were formally recog-

nized and institutionalized by national laws. In more recent times, such claims have been heavily and sometimes effectively contested. Yet, the ways in which waters are currently divided continues to remain highly unequal.

The way in which most local communities have obtained their rights to water is through the investment of often tremendous amounts of labor and other resources in the construction of irrigation infrastructure. In the Andean region, the construction of intakes and canal networks to convey water from rivers and lakes was, and continues to be, a powerful strategy to lay claims to such water, and to secure it from claims by others. It has also functioned as a way to decide who within the community could use water and has decision-making rights. For example through investments in collective property construction, not just the infrastructure but also individual or household rights to access water and co-decide on its management are »constructed«. There is thus a difference between the *collective* rights that refer to the claim of the group of users of one irrigation system (or sometimes a series of water use systems) vis-à-vis third parties, and *individual* (or household level) rights that refer to the rights of individuals (or households) within one irrigation system and specify their claims vis-à-vis each other. In the current context of privatization discussions, it is important to emphasize that such *individual* rights exist within (and because of) collective agreements and are enforced by and through local, collectively legitimated authorities. As such, they are radically different from »private water rights« that convey all rights of use and control to one right-holder - as framed in neoliberal water policies (Beccar et al. 2002, Boelens/Doornbos 2001).

The rules, rights, and duties attached to water are, in many Andean communities, closely linked to all kinds of non-water related rights and duties. Water allocation and distribution are closely enmeshed in economic and non-economic institutions and networks of social and political relations. In other words, definitions of rights, of relative claims, of appropriate uses and users are closely *embedded*, not only in specific historical sets of political and economic structures but also in cultural systems of meanings, symbols, and values (Gelles 2003, McCay/Jentoft 1998). The transfer of water rights happens in a social context in which gifts and donations function as important mechanisms to maintain networks of friends and relatives. In some communities, people's sense of community identity is strongly linked to having a shared history of struggling against landlords for water and land rights. Similarly, through years of collective investments in the construction and up-keep of infrastructure, communities have not only consolidated their water rights but also their sense of togetherness and collectivity. In some ways, current resistance to new water reforms is thus not just about securing continued access to water, but also about continued existence as local communities, distinct from to-

wnspeople and other »outsiders«. It is a way to express and reinforce community values. In that sense, communities also actively construct 'local' counter-discourses to the hegemonic water policy models. Until now dominant water policy models in the Andes completely denied local and indigenous identities and rule-making processes (Gelles 1998, 2000, 2003, Gelles/Boelens 2003, Guevara et al. 2002, 2003, Guillet 1992, Palacios 2002, 2003, WALIR 2002). Nevertheless, the neoliberal paradigm has increasingly incorporated an 'indigenous discourse' and promotes particularly the cultural and liberal-political rights of indigenous people (Hale 2002). They often relate to static constructs and essentialized conceptions of 'indigenous identity' and mostly focus on individual or individualizing rights (Stavenhagen 1994). In this setting, Andean water communities often practice a kind of discourse-shopping in order to strategically select those discursive materials that are most suited to their water rights and policy objectives (Boelens/Zwartheveen 2003, Laurie et al. 2002). In this discursive struggle they tend to operate dynamically, select strategically, and adopt those elements and definitions of water rights which can strengthen their communities' control.

3. Privatization and Conflict: the Political Nature of Water Rights

Expectations about the benefits of neo-liberal water reforms are high. Proponents claim that such reforms will result in water savings, in higher water use efficiencies, in more private investments in water infrastructure and maintenance, in less government spending on water management, and in higher economic returns to such investments. In addition, water reforms aim at bringing about democratization of water decision making. A growing number of case studies have produced a body of evidence that raises important doubts about whether these claims are indeed realized or even realistic. For example, Hendriks (1998) shows how water distribution, water use efficiency, and agricultural productivity in several Chilean irrigation systems has worsened instead of improved after water rights privatization. Trawick (2003) also describes the causal link between rights privatization and the decline of water use efficiency and productivity in irrigation systems in Peru. Bauer (1998) describes how the neo-liberal model as implemented in Chile has led to enormous challenges and conflicts between multiple use sectors at the watershed level. While decentralization was to help reduce state involvement (and government expenditures), the different actors seem to rely increasingly on legal procedures in centralized courts and bureaucracy for solving their disputes. Hendriks (1998) provides similar evidence concerning the paradox of increased state dependency and less local autonomy for the case of irrigation systems. Dourojeanni (2000) expresses documented concerns about an important »voiceless stakeholder«: the environment. The Chilean model has fostered situations of extreme wa-

ter pollution and ecological destruction within watersheds, impacts that are of little immediate concern to private companies.

Peasant and indigenous communities, have often lost their rights and voice as a result of privatization projects. Not just their water rights, but also their management rules and identities have been denied and undermined after exposure to a model that simply assumes freedom of expression without actually verifying the conditions of its existence (see for example, Gentes 2000, 2002, 2003, Castro 2002, Pacari 1998, Boelens/Dávila 1998, Oré 1998, Gelles 2000, Bustamante 2002). Ironically, although privatization aims at deregulating bureaucratic water management through delegation of decisions to the lowest possible level, the practical and real-life consequence of water reforms in the Andes often includes the destruction of existing local and indigenous water rights systems. The reason is that local communities and actors are only allowed to participate when they accept the terms and conditions specified by the higher levels. The neo-liberal model not just assumes universal laws, it also actively establishes them. Co-existence of a great diversity of rules, rights, and obligations are therefore discouraged. Such diversity would obstruct inter-regional and international transfers and trades, which require a uniform legal framework. Particular rules and rights on the local level, that do not recognize or even forbid market rules stand in the way of investments and profits. Obviously this diversity of water rules and authorities undermines the power and rule-making capacity of the national bureaucrats. State bureaucracies are »reformed« to provide and enact legislation that allows markets to emerge. Communities and rights systems that do not fit the neo-liberal picture are, by definition, inefficient and are thus doomed to wither.

Peasant and indigenous organizations are, however, not that easy to ignore or transform into the rational utility maximizers the model wants them to become. There is an increasing number of documented instances of such organizations fiercely standing up against privatization efforts and neoliberal water reform programs. So far, popular protest and struggle especially in peasant and indigenous sectors have prevented the adoption of an entirely privatised water regime in the Andean countries, except for Chile. It is striking that the neo-liberal water policy model – claiming individual freedom for all - could only be experimented and installed during the dictatorship of Pinochet, one of the most repressive regimes the Andean countries have known. The resistance provides living proof of the fact that neoliberal water reforms are inherently political. They also go to show that water management involves power struggles among diverse interest groups in society.

In fact, large-scale water conflicts and related social differentiation processes under private water property regimes are by no means new to the Andes. In Peru and Ecuador, for instance, private property regimes prevailed before the establish-

ment of the Water Laws (1969 and 1972 respectively) that nationalized property rights. As has been widely documented (Boelens/Dávila 1998, Gelles 1998, 2000, Guillet 1992, Mayer 2002, Oré 1998, Pacari 1998, Van der Ploeg 1998, Trawick 2003, Vos 2003, WALIR 2002), private property regimes were the issue of much violent struggle between large hacienda owners and indigenous communities. These struggles form an important part of the political and social history of many communities, who cherish the memories of won battles and who partly self-identify through the collective memory of such battles. Many battles were also lost and the resulting problems of water scarcity are still fresh in the collective minds of the communities. The new proposals for privatization thus ring familiar old bells. Many communities and indigenous organizations perceive the new water plans as yet another in a sequence of attempts to take away resources that historically belong to them and form the basis of their livelihoods. The long history of struggles over water and land explains the fierceness of current protests against water reforms. In Peru, Bolivia, and Ecuador massive nation-wide uprisings have effectively resulted in a stand-still of the implementation of the new water policies and laws. The current struggles also reflect and highlight that water management is a highly political process of contested resource use, and thus underscores our plea for explicit recognition and analysis of the politics of water. Current struggles and protests can be seen to occur over:

- access to and withdrawal of the water *resources*,
- the formulation of the *rules*: the contents of water rights and management rules, and the mechanisms to acquire rights,
- the *authority* to make decisions and enforce rights, and
- the *discourses* that establish, impose or defend particular water rights policies and regimes.

Many of these struggles do not just reflect the inherent political nature of water control in a general sense, they are also and simultaneously struggles against the very neoliberal water policies themselves, against the claim that they are based on neutral principles, against these »natural laws« which appear to have hidden contents that actively generate, reinforce or alter power relations.

3.1 Legal Priorities in Water Rights Allocation

In order to promote possibilities for free trade in water rights and to fully enable water's economic function – which is allocation to the most profitable use – Chilean neo-liberal water policy states that water rights allocation should follow neutral market principles. Chilean legislation, therefore, does not establish access priorities or preferences for particular uses (e.g. drinking water for human consumption above industrial use), nor does it express norms to protect particular vul-

nerable groups, the environment or, ultimately, water quality (CEPAL 1998, Dourojeanni/Jouravlev 1999). Peasant and indigenous organizations in Ecuador, Peru and Bolivia, that were to adopt Chile's water legislation, strongly objected to this lack of prioritization in water allocation. They emphasized the need to legally prioritize certain water uses and users, because they felt that market allocation would result in injustices and ecological disasters. 'Neutral' market allocation principles would, in their opinion, deny water access to the economically less powerful (Assies 2000, Bustamante 2002, CONAIE 1996, Pacari 1998).

3.2 Encroachment of Local and Indigenous Water Rights

The next illustration shows the problem of encroachment on existing local and indigenous water rights. In Chile, when the new Water Code was enforced in 1981, most indigenous communities were left unaware of the need to officially register their century old customary rights (Solón 2003). Consequently, water rights that were not claimed were neutrally labeled »unused rights« and allocated to those who presented official requests: powerful commercial companies, especially mining and power generation enterprises, and landlords. Indigenous communities challenged not only the neo-liberal assumption that (market) information is freely available to everyone but also the very basis for rights claims. They feel strongly that the water is theirs, because they have been using it for centuries and because it flows through their territory, whereas the Water Code demands official registration as a first basis for rights allocation (Gentes 2000, 2002, Van Kessel 1992).

3.3 Monopolization of Water Access Rights by the Powerful

Making water rights transferable does not necessarily and naturally stimulate it being allocated to its highest economic value, as the example of Chile shows. In Chile, companies that try to secure water rights do not necessarily generate their profits from using or selling water. Speculation, by holding surplus usage rights, is currently much more profitable, leading to the emergence of private water monopolies. The Chilean Water Code does not prevent the emergence of such monopolies, or the hoarding and speculation by powerful enterprises. It is, first of all, not necessary to pay taxes or fees on owning water. Secondly, the right-holder has no obligation to effectively or beneficially use the water to which he/she owns the rights, or to build the works needed to utilize it (CEPAL 1998, Dourojeanni/Jouravlev 1999). Hendriks provides some striking examples of water speculation by the hydro-power sector. The three major generating companies have accumulated 78% (1,324 m³/s) of the water used for this purpose; they hold rights to 73% (8,162 m³/s) of the currently unused water; and they have applied for 69% (26,753 m³/s) of the total volume of pending water grants. It is estimated that the-

re exists a flow of 30,000 m³/s usable water for electric generation, at the total, nation-wide level. The same tendency of concentrating water rights is repeated in mining activity in the dry northern region (Hendriks 1998). Peasant and indigenous movements actively protest against such water monopolies, and also the government attempts to modify this water legislation to avoid unproductive uses. Such attempts meet with the resistance of the existing right-holders, who are reluctant to give up their privileges, opposing all changes in the Water Code (Dourojeanni 2000).

3.4 Auction to the Highest Bidder

Another contested example of injustice generated by the neoliberal Water Code in Chile concerns the allocation of new water rights: When (new) water rights are allocated and not all potential uses or users can be accommodated, the water will be auctioned off to the highest bidder. The expectation is that this will result in an efficient and equitable water allocation, based on the premise that everybody can join the market. As it has become clear, this is usually not the case. Subsistence production largely takes place »outside« the market, which means that the benefits of water used for this purpose are difficult to calculate in economic terms. The dignity and quality of life of the families living in subsistence conditions therefore have to be expressed differently (Castro 2002, Gentes 2002, Hendriks 1998).

3.5 Concentration of Decision-Making Rights in the Hands of a Few

Examples relate not only to water access struggles but also concern protest against the concentration of decision-making rights in the hands of the few. In most communal water systems in Peru, Bolivia, and Ecuador, the »one-person – one-vote« rule applies, implying that each right-holder has one decision-making vote in the users organization. In contrast, World Bank and Inter American Development Bank proposals for new water legislation in Peru and Ecuador stipulate that voting rights should be made proportional to the quantity of water use rights each user holds, same as neutral shareholders in an objective joint-stock company. The Chilean Water Code sets the example for these proposals. Hendriks shows how, in Chile (1998) the strong voting weight and related decision-making power of economically wealthy minority groups, owning major water shares but living from non-agricultural businesses, prevented the majority of small-holders who depend on agriculture to improve their irrigation systems and economic productivity. Similar cases have been reported in Peru after the neo-liberal Fujimori government changed the regulations of user associations, concentrating decision-making rights and voting rights in the hands of a powerful minority of large water right-holders (Oré 1998, Vos 2002).

4. Prices or Politics? Some Concluding Remarks

Andean countries, like many others in the developing world, are trying to prevent future water shortages by following the neoliberal recipes of the World Bank, all of which fall under the rubric of »getting the price right« on water - that is: making one's rivers and lakes suitable for market exploitation. As the cases presented here have illustrated, these attempts meet with fierce resistance of different social movements who demand alternative strategies of natural resource use and maintenance. While such movements are motivated by a range of concerns: social justice, the environment, »right to livelihood« or ethnic identity, they all make claims for more equitable and just access to environments and natural resources. As we have shown, all of them center around the question of property rights. This is logical, because whoever controls property rights controls the processes of resource extraction and environmental change. The struggle is not just over control of water, but also and importantly over the right to define what a water right entails. Indigenous communities depending on water for irrigating their crops demand rights that enable continued livelihood security and survival as communities. Drinking water and mining companies aim for commodity and surplus value production, while state agencies hope to mobilize tax revenues and increase juridical control. For all of them, the struggle for control over water is a struggle for existence.

Yet, water reforms are presented as merely neutral and technical interventions aimed at better controlling and managing the water crisis. The suggestion is that such interventions do not fundamentally alter or influence existing social and political relations. What this chapter has shown is that this is an erroneous assumption: the proposed water reforms are not just slight modifications which basically leave existing social relations intact, but they involve quite radical modifications in the social and political structures in which water management is embedded. The proposed ways in which water is to be owned, distributed, and managed imply fundamental change, and so do the ways in which different water users relate to each other. If the policies are implemented, such relations will be increasingly dictated by extra-communal laws, institutions, and markets. This means that the proposed water reforms are deeply political, in the sense that they aim to actively create and transform (through laws and institutions) the political and social waterworld. An important aim of this article has been to illustrate that it is time to discard the assumptions of political neutrality and scientific objectivity legitimizing Andean water reforms.

Three main difficulties with new liberal water reforms stand out. The first has to do with the fact that, inspired by economic doctrines, new water policies and the theories underlying are not concerned with the specific mechanisms of getting

from the present situation - described in terms of waste, pollution, conflict, corruption and theft - to the neat and clean future characterized by efficiency and effectiveness. In the common sense manner of technocrats, good ideas are ideas »that work« , irrespective of how they work. What matters are the measurable final *effects* of the proposed measures – water and money savings, profits – while the ways in which these effects are achieved remain non validated assumptions. Also, effects that fall outside the model, such as social differentiation, remain invisible as consequences of the model and are therefore of no concern.

A second and related difficulty is that the validity of the new institutionalist theories that form most neo-liberal water reforms is seldom exposed to empirical testing. In monitoring studies and reports, the methods employed to assess water management processes and impacts are borrowed directly from neo-classical economics: studies tend to rely heavily on the deductive method, and to place greater emphasis on formal modeling and assumed relations than on the empirical validation of the behavioral and institutional assumptions employed. If the effects fall short of expectations it is not the theory or the policy that needs revision. For one, there are the whims and fancies of the market to blame. Faulty implementation, caused by poorly functioning government machineries is another likely explanation for disappointing results. Of course there is always the backwardness and stubbornness of traditional communities, who fail to act »rationally« and »democratically«. Disappointing effects thus do not question the reforms themselves, but call for better laws and state institutions that will turn the neo-liberal water dream into a reality.

Directly connected to the two first flaws, the third is about the universalistic pretensions of neo-liberalist water solutions. The assumptions are that water control obeys universal, scientific laws and that all human beings share the same aspirations and motives everywhere. Neo-liberalism thus establishes a universal rationality and efficiency, based on a »natural« and »objective« truth. The policies that are based on new institutional theories, in turn, establish universal criteria for optimizing water management. »Economy« becomes the metaphor for complex social and ecological dynamics, and people and nature are deemed relevant only in their commodified form imputed with value useful to the economy. Such universalization can be seen as a process of Foucauldian disciplining. Through prices, very diverse water values can be compared, categorized, measured, and judged and thus transferred and traded. Through reducing motivations for human behavior to self-interested profit maximization, water actors are judged upon their degree of market-orientedness.

In all, neo-liberal policies and the theories underlying them can, indeed, as Bourdieu has done, be typified as »pure mathematical fictions, based from the outset on a gigantic abstraction«. But, as Bourdieu continues to explain, »it has now

more than ever the means of *making itself true*» (Bourdieu, 1998: 94-95). In the current era that celebrates the death of ideologies and the rise of belief in markets, the power of neo-liberal water policies and discourses is indeed not to be underestimated. However, as we have tried to show, the take-over of water rights by private companies is not a silent one. Peasant movements and indigenous organizations are actively and loudly standing up for their rights. Understanding such protests requires a more layered, contextualized and complex analysis than the one that currently tends to dominate global debates. The current struggles are not, as many observers would see it, a simple battle between common and private property regimes the prior being associated with tradition and the latter with modernity. It is not simply North against South, economic growth versus subsistence, abundance versus scarcity or rationality versus irrationality. The cases we have presented illustrate that Andean irrigators demand that their worlds and livelihoods are being recognized and protected. They are not against new water reforms or liberalization per se, but fear the loss and destruction of their land and water scapes. They organize for continued collective control over water, without being solely anti-commodity and pro-subsistence. The struggles over water, over the right to sustenance and livelihood, over the right to healthy and socially just forms of water use cannot be understood in mere economic terms, since they are also and fundamentally about livelihoods, culture and identities.

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Abstract

Andean water policies and issues are increasingly framed in neoliberal terms. This paper shows that this terminology is ill suited for understanding actual water realities, as well as for visualizing the harmful effects of neo liberal water reforms on local and indigenous water rights collectives. The latter, however, do not remain silent but fiercely defend their common property water resources, rules and authorities. They actively question the universalistic pretensions of neoliberal policies that claim to be based on natural laws and objective truths. A contextualized rights approach is proposed as an alternative framework, allowing the recognition of water as a politically contested resource.

Die Andine Wasserpolitik wird in zunehmendem Ausmaß von neoliberalen Rahmenbedingungen beeinflusst. Dieser Artikel zeigt, dass die neoliberale Terminologie nicht nur ungeeignet ist um die aktuellen Wassernutzungsformen zu verstehen, sondern dass die neoliberalen Reformen zudem schädigende Effekte auf die lokalen und indigenen Wasserrechtskollektive hat. Letztere erdulden dies nicht wortlos, sondern verteidigen mit Stolz ihre gemeinschaftlich genutzten Wasserressourcen, Regelwerke und Institutionen und stellen den universalistischen neoliberalen Ansatz, welcher vorgibt auf Naturgesetzen und objektiven Wahrheiten zu beruhen, in Frage. Ein kontextualisierter Rechtsansatz, welcher die politische Umkämpftheit der Ressource Wasser anerkennt, wird als alternatives Rahmenwerk vorgeschlagen.

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