

Joseph W. Dellapenna and Joyeeta Gupta (eds.): The evolution of the law and politics of water

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How has water law and policy evolved through the centuries? What factors can explain this evolution? And why is it that after 5000 years we do not seem to be any better in understanding and addressing water governance? These are the three key questions that the recent volume *The Evolution of the Law and Politics of Water* sets out to address.

The bulk of the volume consists of 21 articles, written by different authors. These include articles on water law in Mesopotamia, Islamic Law and water in the Jewish legal tradition, as well as eight articles discussing the evolution of water law in eight countries: Brazil, South Africa, Kenya, Israel, Russia, India, Australia and the United States (two articles). International issues are discussed in articles on the European Community, Southern Africa, the Jordan Basin, the Río de la Plata Basin and the North American Great Lakes. Finally, the volume contains articles on case law on international watercourses, on the concept of international cooperation, on public participation, and on water markets. Most articles focus on the modern era and especially the post World War II period. Moreover, most attention is paid to water right issues, followed by water quality protection; flood protection, drainage, urban water supply and sanitation receive no or very little attention.

The quality of the articles differs somewhat. Perhaps the most interesting paper is the one by Joseph Dellapenna on the water rights systems in the USA. This article discusses the development of the riparian rights doctrine in the USA and England, the emergence of the prior appropriation doctrine among the California miners during the 1849 Gold Rush, and the subsequent development of both water right systems. Other interesting articles include the articles on Islamic Water Law, on Israel, on the Jordan Basin and on Southern Africa. A number of articles, however, try to cover too much ground and consequently do not always provide sufficient detail.

As a whole, the volume contains a wealth of information, but it does not constitute a complete overview of the evolution of the law and politics of water. There is no discussion of Roman water law. Roman water law has been extremely influential in Europe and through Europe in the rest of the world, but it is mentioned only briefly in a few articles.

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Second, the volume lacks a detailed example of an indigenous legal system and its fate after colonization. It would have been interesting, for example, to know more about the South American Law of the Indians, which is now mentioned only briefly in the paper on the Río de la Plata Basin.

The concluding chapter provides answers to the three key questions posed in the introduction. It identifies four factors leading to different water laws—geography, economic activities, history and hydro-politics, and importance to ecosystems—and eight factors promoting convergence—the spread of civilizations, religions and communism, international codification, environmentalism, international epistemic communities, and globalization. It does not really explain the evolution of water law and politics: it just lists these factors. What is missing is an explicit discussion of the relation between water law and politics. Who makes water law and how does it function in practice? Is law the ideological branch of the ruling class, as some Marxists would have it, or does it constitute an autonomous “social field” (cf. Bourdieu 1987) that can prevent the arbitrary exercise of power and protect weak interests, such as environmental interests? As the articles in this volume suggest, the answers to these questions differ in time and place, which makes them interesting historical questions in their own right. More importantly, some reflection on these questions could have helped in gaining a deeper understanding of the diffusion and evolution of water law systems and of the apparent lack of progress in water governance.

The value of *The Evolution of the Law and Politics of Water* lies primarily in the individual articles. Despite of their limited size, nearly all articles contain interesting information for those interested in the specific case and some articles are relevant for anyone interested in the evolution of water law in general. While the book does not provide definitive answers to the three key questions that it poses, it does give ample food for thought.

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Reference

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