El derecho y la gestión local de agua en Santa Rosa de Ocopa, Junín, Perú

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SUMMARY

Municipalities and Irrigators‘ Committees are entities that are not often explored by legislators and experts who expound on the history or current management of water in Peru. And the truth is that the official and scholarly canon has banished them from their field of observation, reflection, and intervention. They have done so because they have imposed a scale in which both are rendered insignificant, irrelevant, and dispensable. However, upon approaching them historical and ethnographically, it is impossible to dismiss them or declare them non-existent by decree or ignorance.

Instead, one comes to realize that both, Municipalities and Committees, wove and continue to weave a dense institutional and legal fabric that articulates the use of water within their fields of action. Acknowledging this is of the utmost importance in order to avoid the taxonomic temptation of reducing this vibrant social and legal fabric to a normative repertoire or a stabilized and abstract legal system that is detached from everyday practices that (re)constitute it every time that people invoke and activate it. It is better to keep the emphasis on ethnographic description, «to follow the actors themselves» and to trace how they interact with each other and assemble their society.

Using historical and ethnographic descriptions, this thesis focuses on local water laws and management in Santa Rosa de Ocopa, a small town located in the Acharmaya River basin, province of Concepción, Junin Region, Peru. It illustrates how Santarrosinos have used and continue to use interlegality in order to revalidate their local autonomy and weave their social relations vis-à-vis water. It identifies that, throughout its recent history, Santa Rosa has channeled this management and local legality through two institutions, i.e., the district Municipality and the Santa Rosa de Ocopa Irrigators‘ Committee.
This thesis comprises two parts. The first, composed of three chapters, presents the normative precedents that regulated water management up to when the Peruvian state enacted its first Water Law in the early 20th century. In contrast with the supposed normative paralysis of the Peruvian state in the 19th century and continued validity of colonial ordinances, study of municipal legislation reveals that it canalized state attempts to develop a decentralized water management system using district and provincial councils.

In the second chapter, this insight is used to explore municipal water management in Santa Rosa de Ocopa over the course of almost an entire century. A detailed description of the key role played by the municipal corporation in local water management is available for the very first time. I portray how the municipality wove a dense legal and institutional complex to manage the water resource, administer hydraulic infrastructure, respond to spasmodic demands from the central state, resolve domestic and external conflicts, and vindicate autonomous control vis-à-vis other users of the waters of the Achamayo, be they individual or corporate, internal or external.

Unlike the usual narrative describing the penetration of the state in local water management systems—especially in regards to irrigation—as a fait accompli, in Ocopa one can identify a trend towards autonomous control, characterized by the interlegal processing of the pressures, demands and conflicts that it faced in order to affirm its control over the resource. In this chapter I also highlight the interlegal reasoning and interpretation that Santarrosinos elaborate to develop their local water legality. I also note how the parallel trends of autonomist spirit and interlegality are projected into the political and legal life of the irrigation organizations that were set up in Santa Rosa in the late 20th century.

The third chapter presents an overview of the formation and activities of the Achamayo River Irrigators’ Commission, the organization of which the Santa Rosa de Ocopa Irrigators’ Committee is, at least in theory, a subsidiary. Despite the fact that according to official water law, Irrigators’ Committees are merely support organizations for their parent Commissions, in the Achamayo basin and in hundreds of other similar contexts, Committees have a wide berth of autonomy that ends up weakening the Commissions to which they are nominally subordinated. This explains why a tense relationship exists between the Commission and its Committees, which only occasionally transforms into cooperation and collective action, be it for the repair of shared hydraulic infrastructure or for supralocal political protest. But, in general, a Commission is as weak as its Committees are strong. This structural tension obstructs vertical articulation of water users’ organizations as established by state law and actually ends up reinforcing the autonomous streak of Committees such as that of Santa Rosa. This trend is expressed, for instance, in the levying of a local water fee that clashes frontally with the payment of the official fee, a key requirement for water supply according to state law.

The second part of this dissertation focuses on the Santa Rosa de Ocopa Irrigators’ Committee, the local organization specializing in the regulation and management of irrigation water in the district. In the three chapters that comprise it, I document the social and legal practices through which leaders and irrigators interact with each other and with the water resource, in contexts such as the formation and operation of their organization, or the distribution of water and the conflicts that intertwine them. I emphasize that the state itself, by means of its regional hydraulic bureaucracy, and the developmental agents that irradiate their «Project Law» within the basin, partake in interlegal and illegal practices in order to interact with the irrigators’ association. In this part I integrate the notion of contractualism into the analysis, which, along with the interlegal dynamic and the trend for self-management, form the conceptual tripod needed to understand how local water law is produced and reproduced in Santa Rosa de Ocopa.

Thus, the fourth chapter is devoted to tracking the interlegal energy and imagination brought to bear by Santarrosinos in pursuit of forming, managing and recreating their self-managing irrigation organization. That is why I pay attention to the processes and tools used in internal management, such as the drafting of their internal bylaws, the registration of its members and the organization of their collective work. In all of these we witness an effort towards interpreting external rules and influences in an interlegal key in order to strengthen self-management. This element colors the relations of the Santa Rosa de Ocopa Irrigators’ Committee with the state, developmental agencies, and the villages and communities with which it shares the
management of the waters of the Achamayo. Since conjugating those resources in terms of local legality is key, appropriation of state law includes the possibility of invoking rules that have been formally abolished, as long as they back up local legal argumentation. It is also possible, when faced with another legal system such as «Project Law», for them to assimilate it inasmuch as it furthers their own ends. And thus we can verify that their strategy does not exclude the possibility of infringing the law—with forged documents, for instance— as long as it aids in the development of a project such as the improvement of their main canal, which in turn strengthens their infrastructure and revalidates their model of self-management.

Furthermore, I emphasize how the Santa Rosa de Ocopa Irrigators’ Committee has managed to establish a direct relationship with the official water authority, the Technical Administration of the Mantaro Irrigation District, and has achieved administrative recognition despite state law establishing that the Committees lack legal existence and status. In order to do so, they have adapted the preset articles of association to their own organizational and functional needs; they have incorporated official law into their inner legality, and have gone so far as to entirely denaturalize administrative documents, such as those produced by district Governors, in order to uphold the water rights of their members within the framework of their own bylaws. The chapter emphasizes that this has been possible thanks to the Technical Administration of the Mantaro’s habit of developing bureaucratic practices such as localization, adaptation and regularization in order to forge ties with the key actors of water management in the basin (i.e., the Irrigators’ Committees) and, in this fashion, adapt their role as water authorities to a context entirely different from that envisioned by official legislators.

The fifth chapter documents the distribution of irrigation turns and the water micro-reforms practiced by sluicegate managers (tomeros) and the Irrigators’ Committee in light of two characteristics that mark the management of water in Ocopa: negotiation and contractualism. Beyond official designs that task the Irrigators’ Commissions with the drafting of the turn schedule, Ocopa and other Committees have assumed this role as a result of their own formation, which has been reinforced by the administrative recognition that it has received. Although this power is fully exercised by the Santarrosino Committee when it comes to allocating turns to each of the seven inlets it manages, this part of the thesis emphasizes that when it comes to allocating watering turns from each of these inlets or lockgates, this power has been delegated to the intake managers.

The most important element for the principal argument in this thesis is that both processes, the distribution of the water to the inlets and, simultaneously, the distribution carried out by sluicegate managers from each inlet, is not carried out by applying a predetermined regulatory repertoire or legal system. Instead, it is executed by appealing to negotiation and contractualism, much as when turns are assigned to the seven inlets of the system, when the regulatory ideal of the alternation of day and night turns is negotiated in each inlet assembly, and when intake managers and irrigators resort to a contractual logic that regulates water rights granted in the weekly allocations. In this process, this dynamic of negotiation and compromise channels the water micro-reforms that the leaders of the Santa Rosa de Ocopa Irrigators’ Committee constantly project and execute with the aim of improving water supply and distribution for its members.

The end result is that both sluicegate managers and irrigators develop behaviors that stress advantage and pragmatism, as well as contractual practices that dissolve the legal framework that is supposedly in force. Their attachment to water legislation, the internal bylaws of the Committee, or the rulings made by the board is fickle, which is why I claim that they amble between rules and contractualism. Intake managers, much as the users of the system, steal water, irrigate out of turn and without permission, soak their fields, waste the resource, finish irrigating before the assigned time, do not close their channels; and use residual waters as much as they can. Graft, internal exchanges, pacts of reciprocity, mutual concessions, unauthorized simultaneous irrigation, buying and selling of turns and the non fulfillment of the duties demanded by membership in the Committee are commonplace and significant. This all happens even beyond the leeway enjoyed by intake managers when managing the demands of irrigators within local legality. It is as though irrigators question local regulations at every turn and choose to rebuild it on the basis of their everyday practices and needs.

The final chapter of this thesis studies the interlegal processing of domestic and external conflicts over water in Ocopa. It analyzes, for
instance, how the Committee invokes mandates and sanctions set out in state law and uses them to discipline its members when domestic disputes over flooding arise. But, depending on the dispute, it may also uphold the exclusive jurisdiction of its internal bylaws in order to achieve its main objective: that the parties in conflict reestablish their ties so that water may flow. In any case, the treatment of internal conflicts is also characterized by the prudence and flexibility that authorities showcase in each instance. I observe that both are indispensable in order to prevent conflicts from getting out of hand, to bring the parties together, to legitimize the mediation carried out by the leaders in the handling of disagreements and to not alienate the members of the Committee. And thus we see that considerations like «as it is the first time» or warnings such as «may it be the last time» are commonplace in rulings destined to soften punishments that in principle correspond to the gravity of the transgression. It is thus deduced that this flexibility tallsies with the way that Santarrosinos interact among themselves and use water—including residual waters—, going so far as condoning mutual transgressions or negotiating rules and punishments to deal with their conflicts.

This flexibility in invoking rules from different legal fields (legal shopping) and even using them idiosyncratically is conjugated with the resolution of conflicts before a slew of authorities, be it the Irrigators’ Committee, the Justice of the Peace, or the Governor, with the aim of covering all the fronts of local legal action (forum shopping). When domestic conflict intensifies and local instances are overwhelmed by the litigating parties, it is common for the irrigators to activate mechanisms of state justice (i.e., the Justice of the Peace), but they do not appeal to the special administrative jurisdiction (i.e., the Technical Administration of the Mantaro). In a detailed case study, I document how the parties in conflict generate a fascinating argumentative fabric, which is quite appropriate in interlegality. While the Santa Rosa Committee demands that special water legislation be enforced and must instruct the state judge on its validity and its binding status, the magistrate resorts to a persuasive discourse, aiming to «de-legalize» the matter and resolve it through conciliation. In the end, the conflict peters out, not due to the success of the judicial mediation to resolve it, but because the involved parties reach their objectives by means of direct negotiation (i.e., reestablishment of water flow and respect).

This chapter also examines an external conflict in which the Committee did resort to the water administrative jurisdiction despite lacking an actual license to use water. It did so because over the course of many decades it faced an important water user in the Achkamayo, a trout farm. This conflictive interaction generated a series of armistices between the parties, which have been the fruit of long processes of open confrontation, negotiation, transaction and conciliation of interests. More importantly yet, the consequence was that an Irrigators’ Committee devoid of an official license for water usage has kept on controlling the main water inlet of the canal and has been able to limit the flow that a business with a license should receive; and, in so doing, has increased the amount of water that goes into its own irrigation system.

Finally, the dissertation concludes that in order to improve our understanding of local water laws and management it would be more productive to renounce the pretension of identifying the legal system (state, indigenous, peasant, local) or the available regulatory repertoire in a given social reality and, instead, turn our attention to everyday interlegal practices and interpretations. By doing so, we will observe that autonomous streaks and interlegality come together with contractualism in defining the texture of management and local water laws in contexts such as Santa Rosa de Ocopa.