

## **Evolution of Canadian Water Law: From Abundance to Sustainability**

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Canadian water law, originating in English riparian and civil law principles in the eastern provinces, subsequently incorporated variations of prior appropriation water law from the western United States which became applicable in the prairie provinces. In the succeeding decades licensing and administrative arrangements have been introduced across the country, and these have further evolved in response to changing social, economic, and environmental conditions. This presentation outlines the overall evolution of water law in Canada with particular reference to recent developments associated with efforts to safeguard in-stream uses and to promote conservation and sustainability. These measures include the preservation of in-stream flows, the adoption of a precautionary approach in some jurisdictions, the elaboration of pricing arrangements, and regulatory initiatives to promote efficiency in water use. The underlying theme of the paper is the role of law in relation to the gradual transformation of public values and expectations in relation to water availability in Canada.

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### **Community, Commodity, and Corporation: Local Use of and Response to Changing Water Law in Albuquerque, New Mexico**

In January of 1898, a coalition of Hispano *acequia* irrigators and Pueblo Indians thwarted surveyors' attempt to map the route of a proposed 35-mile-long canal that would divert waters from the Río Grande. In response, the canal's backers, organized into the Albuquerque Land and Irrigation Company, took the Natives and Hispanos to court. This incident reveals that the shift from Hispanic customary law, which focused on "sharing the shortages," to the regime of prior appropriation that came with the influx of Gilded Age corporations and twentieth century interests (like municipalities and industry) was never absolute nor uncontested. In the U.S.-Mexico borderlands, water was simultaneously necessary and scarce; its allocation and management reveal the ways in which individuals and communities interacted with legal and economic institutions in the eighteenth, nineteenth, and twentieth centuries.

This paper uses law and legal cases, supplemented with newspaper accounts and census data, to contextualize the cases of *Albuquerque Land and Irrigation Corporation v. Gutierrez et. al* and *Albuquerque Land and Irrigation Corporation v. The Pueblos of Sandia, Santa Ana, and San Felipe* within the themes of community, commodity, and corporation. I study the ways in which local communities reacted to and shaped changing water laws. Building on Alan Trachtenberg's analysis of Gilded Age corporations, I explore how irrigation and other types of corporations contributed to the commodification of natural resources like water. Simultaneously, prior appropriation came to be the predominant water law in the American West. In New Mexico, this occurred in conversation with alternate approaches to natural resource management, including those utilized by Pueblo Indians and Hispano communities.

Studying these types of interactions touches on questions pertinent to legal history and ongoing litigation today, as Pueblos and *acequia* associations, continue to lay claim to the waters of the Río Grande, as do various industrial, municipal, tourist, recreational, and environmental interests.

## **The Odd American Influence on Water Law in Mandate Palestine and Early Israel**

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While the British rulers of Palestine legislated on a wide range of water issues, especially sewage and municipal supply, the core of water law – the allocation of rights to water sources – remained practically untouched, with the Ottoman *Mejelle* and Land Code remaining the law of the land. Yet the British were keenly interested to reform water law, proposing draft after draft of progressive, modern water legislation. The story of the failure to enact new law reveals the interplay of contradictory influences of American law, mediated through the interests and understandings of British officials and local (Arab and Jewish) lawyers and organizations.

This paper began with the 1925 case of *Murra v. District Governor* (a leading case in the law of Mandates and Trusteeships), in which the Palestine Supreme Court boldly ruled that legislation confiscating part of an Arab village's water for the benefit of Jerusalem's municipal supply was an unconstitutional violation of private rights. Regardless of whether the inspiration for this attack on primary legislation was American (there are indications that it was), the effect was to set up a dynamic in which the colonial administration was deterred from enacting legal reform by fear of infringing private property rights.

In the following years, as the British attempted to legislate state control of irrigation and water rights, based on Wyoming law, the Zionists, ostensibly socialist, used the rhetoric of private property to successfully stymie their efforts. Then, in 1959, with the socialist Zionists in power, the successor state, Israel, essentially adopted the British water reform. The paper examined the reasons for the British turn to the law of Wyoming of all places, the legal arguments around the reform, and concluded with some thoughts on the wider significance of the story:

1) Much has been written about between colonial state control of natural resources imposed from above conflicting with local, indigenous, communal regimes of resource governance. We need to add to the mix consideration of how liberal ideologies of private property were influential not only in western legal systems but also in the colonial regimes they instituted abroad.

2) Empires are a natural candidate for transnational legal history, and the case of Palestine, part of the British Empire, might teach two lessons: First, even when in possession of draconian legislative powers, in practice colonial authorities had considerably less latitude than their formal powers indicated, and were often frustrated by the same combinations of politics, interest-group pressures, and legal argument that often prevail in liberal democracies. Second, when legal transplantation did take place in a colonial setting, the source of the transplant was not necessarily the imperial metropolis, but might be anywhere - transnational legal

influences could come from surprising directions - to Jerusalem from as far afield as New York and Wyoming.