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2008. The evolution of the law and politics of water.  
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## BOOK REVIEW

**Dellapenna, J.W. and Gupta, J. (Eds). 2009. The evolution of the law and politics of water.**  
416 p., Hardcover; ISBN: 978-1-4020-9866-6; €129,95.

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This rich and diverse book hinges on the fundamental question "of how and why after 5,000 years of water governance, that governance still has not reached stability", and seeks to provide a historic understanding of that question. It is divided into five parts and 23 chapters, each contributed by a different author. Part I (Introduction), chapter 1, sets the book against the backdrop of global trends in water law and policy at the national, supranational and international levels, and assesses current global water governance – something the two lead authors will revert to in the concluding chapter. Chapters 2 to 4 reach into the distant past, and illustrate the rules developed by the ancient Mesopotamian civilisations (chapter 2), by Islam (chapter 3), and by the Jewish legal tradition (chapter 3). Of the three, the chapter illustrating the Islamic legal tradition with regard to water resources utilisation and protection is the most relevant to present-day circumstances, for – as the author puts it – "if Islamic sensibilities are involved, *sharia* must be taken into account" in contemporary water law matters. The other two chapters provide very learned and rich accounts of legal systems which either belong to a far too distant past to count or, in the case of the Jewish legal tradition, whose influence on contemporary water law and policy is, by the relevant author's assessment, virtually nil. Hence their limited value to the general discourse advanced by the book.

Part II, chapters 5 to 13, on Evolving National Law and Politics, provides a detailed and consistently rich and insightful account of the evolution of the law and policies/politics of water in Brazil, South Africa, Kenya, Israel, Russia, India, Australia, and the United States. A distinctive feature of these accounts is their steeping the analysis of the policies, laws and institutions of the countries, and their evolution through time, in the ethos and sometimes against the bedrock of the politics of water in those countries. The result is an invariably well-rounded analytical perspective and critique, sparing the reader the dryness of legal analysis alone. In particular, Brazil's significant legal reforms inaugurated by the 1997 Water Act ushered in an ecological era of water policy, public participation, cooperative federalism, and river basin management, and struck a new balance between economic and ecologic values in the management of that country's water resources. In South Africa, the significant legislative reforms brought about by the 1998 Water Act were largely driven by the political imperative to undo the inequities wrought by the apartheid regime. Alas, little is said about the state of implementation of the new legal dispensation. In Russia, implementation of post-Soviet, modern and forward-looking Water Codes, the latest dating back to 2006, has been marred by a chronic conflict between informal practices, i.e. local traditions and customs, and formal regulations, itself a legacy of the Soviet past. Water management there is intimately linked to the political and economic system generally, and is played by the same rules, formal and informal, as that system. Israel, while enjoying a solid regulatory framework for water resources since the early stages of statehood, continues to-date to suffer from considerable institutional fragmentation, compounded by the privatisation of municipal water services.

In India, fragmentation of water laws brought about by pre- and post-colonial developments still prevails, prompted by the constitutional division of responsibilities between the Union and the state governments. Unifying efforts however have been pursued by recent national water and environmental policies, with a new trend emerging which promotes the use of legislation to strengthen the so far elusive goal of government control over water uses, including in particular control over groundwater extraction. In the chapter authors' view, however, the ongoing water law reforms at state level are unlikely to provide comprehensive solutions to the existing problems. The chapter on Australia illustrates the development of that continent's state-driven water laws, and the efforts of the Commonwealth government to effect unity of intent and purpose in state policies and laws in response to persistent overuse of water and to acute environmental problems emerging in train. Such efforts have shifted from an initial approach emphasising federal financial inducements for the states to adhere to national goals and objectives to the development of Commonwealth legislation – i.e. the Water Act 2007 – which leaves the states with the duty to draft water plans promoting conjunctive use and the integration of surface water and groundwater uses, while providing a legal mechanism for the Commonwealth to pursue national, as opposed to purely state or regional, goals by requiring conformity to the requirements of basin plans. The two chapters on the United States water laws and regulations provide a compelling and clear account of, respectively, the complex, different legal systems of water allocation prevailing to-date in different parts of that country – i.e. riparianism and its variations, and prior appropriation and its variations – and of the more uniform, federally inspired law of water-quality protection from pollution which emerged from the rise of environmental awareness in the 1970s.

Part III, consisting of chapters 14 to 18, illustrates the evolution of a few supranational and regional regimes for the management of water resources, with four of the five cases involving transboundary or shared freshwater bodies. The European Community (chapter 14) provides the only true supranational water law and policy regime, which has evolved from patchy attention to selected water pollution problems to a comprehensive, basin- and eco-centric water management system and regulation aimed at achieving good-quality status for all water bodies in the member states of the EC. The southern African region (chapter 15) has witnessed a spate of bilateral and multilateral agreements on shared water bodies, including a regional framework-type Protocol closely patterned after the 1997 (draft) UN Convention on the Law of the Non-navigational Uses of International Watercourses. The region has also been home to a spate of domestic water law reforms in most of the countries, underpinning transboundary cooperation. The complex history of interstate engagement in the Jordan basin (chapter 16) bears out the influence of international water law throughout negotiations, official and unofficial. The North American Great Lakes (chapter 17) are the target of a number of treaties and agreements between Canada and the United States, of compacts among the US states, and of other instruments of collaboration between the Canadian Provinces and the US states concerned. They underpin a rich and intense history of collaboration across the international and the intra-jurisdictional borders, progressively focussing on environmental protection and sustainable use, in part as a result of a growing role for the public. Set against the backdrop of the Uruguay river pulp mills dispute between Argentina and Uruguay, the Rio de la Plata chapter (chapter 18) shows the emergence of a consistent body of law, domestic and regional, which should, in the author's opinion, provide useful parameters for the settlement of that dispute.

Part IV, consisting of chapters 19 to 22, provides an overview of Current Trends in International Water Law. In particular, chapter 19 traces the decisions of international adjudication bodies in disputes over transboundary water resources, and provides a detailed account of the relevant case law. In chapter 20, the loose obligation of "cooperation" is investigated by reference to the practice of States, and also of international organisations, with a view to giving that obligation meaning and substance. Chapter 21 explores public participation in water governance in general. It provides an overview of the growing participatory rights and how participatory processes have influenced the institutional, legal and political development of water law in the domestic and international settings. Finally, chapter 22 is a

masterful rebuttal of the market alternative to allocating water resources to competing uses. In Part V – chapter 23 – conclusions are drawn on the evolution and likely trends in water law and water governance. The two lead authors of the book outline discrete trends discernible at the national level, at the supranational level, and at the global level. From these, and from the challenges ahead, the authors move on to call on the United Nations General Assembly to set up an Intergovernmental Negotiating Committee to deal with global water challenges, supported by the legal work of the UN International Law Commission.

The book is extremely rich, the analysis is easily accessible, and the quality of the chapters contributed by the different authors is consistently of the highest standard. Most of the chapters will undoubtedly resonate with the legally minded reader; however a few may do so to a lesser extent in view of their diverse scope and contents. The water lawyers in particular will enjoy the enormous wealth of useful, up to date information and analytical material. The concluding call for action by the UN General Assembly, and the criticism of the work so far of the UN International Law Commission towards the codification of the law of transboundary water resources, however, give pause for thought. In particular, the case for an Intergovernmental Negotiating Committee to deal with global water challenges appears thin, and the criticism of the work so far of the UN ILC is debatable. A striking omission throughout is the work of the late Dante Caponera, one of the founding fathers of water law, both domestic and international, and a recognised world authority in the matter. Not once has his book *Principles of water law and administration – National and international*, published in 1992, or the second edition published in 2007, been cited in the book. Another striking omission is the work of the International Law Association (ILA) prior to the *Berlin Rules on Water Resources*, which were adopted by the ILA in 2004. Such prior work is crystallised in the well-known *Helsinki Rules on the Uses of the Waters of International Rivers*, adopted in 1966, and in a number of subsequent additions, which provided the foundational work for much of the Berlin Rules. In a book dealing with water law, although from a governance perspective, these omissions are near-unpardonable.