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Viewpoint – The Washington Consensus, Chilean Water Monopolization and the Peruvian Draft Water Law of the 1990s

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ABSTRACT: The 1990s were an ideological period whose paradigm was the Washington Consensus. The principles of the Consensus were the guidelines for the privatisation of public utilities, and the dismantling of public service. Dogma and ideology replaced experience and science. The process of the 90s to amend the Peruvian Water Law under the aegis of the Washington Consensus is a good example of this approach. Comparative water law, water economics and anti-trust legislation and economics were ignored.

The Draft Law, sponsored by the Ministry of Agriculture of Peru, was based on the Chilean Water Law of 1981, which resulted in the monopolisation of water resources by a few electrical companies and also in negative externalities associated with the structure of water rights and the poor regulation of water marketing. The Draft Law was part of the proposals, and conditions, of a World Bank loan. At the time it was submitted, the Chilean Government was already aware of, and worried about, the monopolisation of water rights in Chile. However, loan officers insisted on the proposal.

The managers of two public agencies in Peru were concerned about the impact that the Draft Law was to have on Peruvian public interests, such as agriculture, energy, and water supply and sanitation. They spearheaded a coalition, including United States universities (New Mexico, Colorado at Boulder, California at Davis) the Water Directorate of Chile, the United Nations Economic Commission for Latin America and the Caribbean, agricultural water communities in Peru, and the technical offices dealing with water at the Inter-American Development Bank and the World Bank, to have a critical discussion of the Draft Law. The discussion took several years, at the end of which the Draft was rejected.

KEYWORDS: Water, rights, economics, markets, externalities, monopolies

INTRODUCTION

Through the 1980s and 1990s many countries in the developing World were pressed to follow the principles inspiring the Washington Consensus¹ (Williamson, 1989). There were several agents implementing the process: foreign governments, bilateral assistance, international organisations, and multilateral financing.

History, empirical evidence, comparative practice and legislation, economic viability, and the nature of the problem at hand were often disregarded. Privatisations took place without regulation, public utilities were transferred without feasibility analysis, and the nature of some natural resources was ignored in the search for decentralisation and redefinition of governance.

¹ "The term 'Washington Consensus' was coined in 1989 by the economist John Williamson to describe a set of ten relatively specific economic policy prescriptions that he considered constituted the 'standard' reform package promoted for crisis-wracked developing countries by Washington, DC-based institutions such as the International Monetary Fund (IMF), World Bank, and the US Treasury Department. The prescriptions encompassed policies in such areas as macroeconomic stabilization, economic opening with respect to both trade and investment, and the expansion of market forces within the domestic economy" (www.wikipedia.org)

The present paper describes the process of enacting new water legislation in Peru, ignoring the economics of the resource, legal precedent and the negative effects that the legal principles adopted as a model had in other countries. It describes the Peruvian process, comparative water legislation, basic economics of water resources, and the impacts of the philosophy of the 1980s and 1990s on the water resources of Chile and Australia.

FACTS

In the 1980s the Chilean Government enacted a water law that hinged on four main principles: a) to limit the role of government on water administration, b) strong private, non-conditioned, free property rights, c) freely transferable water rights and creation of water markets, and d) perpetual rights not subject to forfeiture for non-use.

In so doing the Chilean system broke away from the international tenets of water management: a) water is a complex resource, riddled with externalities, public good issues, and ensuing conflicts between uses, users, and environmental sustainability, b) the complex and conflictive nature of water demands technical knowledge, competent management, and efficacious and equitable systems for water administration, c) water is a crucial input in many productive processes, and its monopolisation is highly profitable for any monopolist, specially so when dealing with electricity generation, d) water is at the root of many environmental processes and, therefore, issuance of water rights and authorisations for water transfers is subject to special conditions.

The approach of comparative water legislation is that the social and economic roles of water, as well as its environmental importance, merit special principles, to balance public and private interests.

Water is not an ordinary commodity. Water is publicly owned. Water rights are subject to effective and beneficial use under penalty of forfeiture (with a few exceptions, such as Chile and Australia, both facing serious environmental water-related problems).

Water transfers are allowed only for effectively consumed waters (USA and Spain) and subject to approval by either courts or administrative authorities.

Both USA (the longest recorded system for the transfer of water rights) and Spain (based on the American experience) require that non-consumed waters (return flows) return to the water source. This is to protect both other users and the source.

Transfers cannot be based on nominal entitlements, but on effectively consumed water. Transfers are subject to social and environmental evaluation. Equity and sustainability are protected to a larger extent than in systems that allow the transfer of non-used, nominal rights.

Two systems allow the transfer of nominal entitlements: Australia and Chile. Australia has implemented a system of water rights that allows the transfer of nominal rights, even if such rights have never been utilised. As a result, rights are marketed without protection of return flows on the one hand, and adding to existing uses the diversion of volumes corresponding to rights that had been hitherto not utilised on the other. The results are over-allocation and depletion. The environmental problems of the Murray Darling Basin are now widely known (Young, 2010, 2011).

In Chile the nominal transfer of water rights from agriculture to mining (meaning from seasonal uses to year-long uses, from valleys and agricultural areas to higher altitude zones, and from lower to higher rates of consumption and pollution) has caused harm to third parties and the environment. Return flows are not protected, and externalities as well as monopolisation by the electricity industry are a problem (Donoso, 2011).

In addition it is clear that the Chilean Code provided a moral hazard incentive to hoard water rights, without using them, since penalties for non-use were only put in place in 2005 (charges without loss of water rights, whose effectiveness vis-à-vis forfeiture is hotly debated). Their value increases over time, they are not lost through non-use, they are useful to block competition, for example in electricity

generation, and they allowed monopolistic returns and profits (Bitran and Saez, 1993). Furthermore, monopolists do not trade strategic inputs such as water (Sullivan, 1977). In addition, original government grants are free of cost.

Ideology

Despite its obvious shortcomings, and lack of tune with the nature of water, the ideology of the Chilean system was a perfect match for some of the principles of the Washington Consensus (WC, 1989): privatisation of state enterprises and public goods; deregulation, and blanket legal security of private property rights, regardless of the nature of the good over which rights are held.

Thus, the amendment to the Peruvian Law was part of a process of uncritical privatisation of public goods and public utilities that took place at global level. It was especially active in water supply and sanitation, including important large cities in a number of countries. Public utilities in Buenos Aires, and most Argentinean provinces, and Jakarta, Manila, Dar-e-Salam were privatised. Stiglitz has argued that the ideology of the time was that Government was inevitably corrupt (Lloyd, 1999).

Decisions were made on the basis of what seemed a curious blend of ideology and bad economics, dogma that sometimes seemed to be thinly veiled special interests. Rarely did I see forecasts about what the policies would do to poverty. Rarely did I see thoughtful discussions and analyses of the consequences of alternative policies. There was a single prescription. Alternative opinions were not sought. Open, frank discussion was discouraged... Ideology guided policy prescription and countries were expected to follow the guidelines without debate (Stiglitz, 2002).

Power politics

As a result of these ideological processes, multilateral development organizations sponsored the transfer of the Chilean water law system to other developing countries. One relevant example is Peru, where in the 1990s the conditionalities of agricultural loans made by the World Bank, included the amendment of water legislation along the lines of the Chilean Water Law. While the views within the Bank were not uniform or monolithic, senior loan officers had the leverage to impose conditions – unless challenged.

The minister of agriculture of Peru was interested in the loan. It would increase the political visibility of the ministry. It would also extend the economic and financial influence of the ministry through contracts, services and construction works, which would not be possible without the loan. Therefore, he authorised the drafting of a proposal, along the lines of the Chilean Water Code. In fact, Chilean advisors wrote the draft proposal.

Loans are a powerful incentive to change legislation. The same system was applied to prompt changes in the legal and ownership system of water supply and sanitation systems in Argentina, Indonesia, and the Philippines.

In 1995 a meeting was organised in Washington, DC, to explain the reforms to take place. The Water Law Advisor of the UN Department of Technical Cooperation for Development was invited to the meeting. The Advisor was surprised to know that Peruvian water law reform was to follow the Chilean model. A few weeks earlier he had been called to Chile, by the Water Directorate, to advise on possible amendments to the Chilean Water Code approved in the Pinochet era.

The novel approach of the Chilean Water Code had favoured, prompted, and facilitated the monopolisation of water rights by electricity companies. Hoarding water rights for electricity generation was a manner to keep competition away. Since the privatisation model for electricity relied on competition at the generation level, the Water Code had a negative effect on the electricity sector. Electricity companies operating in Chile have always (and actively) defended the Water Code.

Furthermore, provisions concerning the management of water rights for hydroelectricity generation hindered integrated water management and basin planning. The Supreme Court of Chile ruled that hydroelectricity companies were not obliged to coordinate water uses with agricultural uses (Bauer, 2010).

Thus, the Chilean system, which had prompted a call for advice to the UN, by the Chilean Water Directorate, as a result of its impact on water monopolisation and disservices to International Water Resources Management (IWRM), was a preferred model for Peru. The headwaters of the Amazon River would be granted in perpetuity, for free, with no duty to use water for the public benefit, and with no forfeiture provisions for non-use. Customary water users were given short-time terms, to claim and record existing uses, under a conclusive presumption of abandonment. Conclusive abandonment was to be enforced in a country with a large native peasant population, isolated towns and villages, and low literacy rates in the rural areas.

Complacency and corruption

A single legal blueprint, untested by time, was to be forced upon Peru. Similar efforts were made in Bolivia, Ecuador and other countries in South and Central America.

Brazil rejected the system outright. Its highly competent professional cadres were basically amused at the notion that water rights could be given away unconditionally. Brazilian professional organisations had enough political leverage and intellectual standing to be heard by policy-makers.

But in other countries professional and technical people felt fundamentally vulnerable: the WC had contributed to diminish the image of public servants. Except for highly placed public officers, the average water professional was not willing to enter into arguments with the officers of financing organisations. Times were uncertain and public management systems were being dismantled at a rapid pace. Heroic behaviour and the needs of subsistence were not compatible.

The dearth of critical personal standing did also affect political organs. Peruvian Congressmen, when confronted with the Draft Water Law, asked for the opinion of Fujimori, not for the merits of the proposal. Novel miracle formulae were available and they were not to be unfaithful.

It did not matter that the new credo had not been time-tested, that it applied the same blanket approach to water and bicycles, and that it disregarded worldwide experience concerning water legislation. Brave new beliefs – not experience or research – were the word of the day. In other words, interested ideology trumped science.

The water resource was to be affected by the same forces that were already reforming water supply and sanitation utilities in developing countries. These processes assumed that international companies would finance local services in non-performing economies. They also assumed that virtual competitive forces would force market discipline to monopolies owned by international holdings, operating the services, and transferring prices through intra-holding contracting. Regulation, therefore, had to be light, since (a non-existing) competition would take care of things. The final objective was to transfer management from the realm of politics and public decision-making, to the realm of markets and private profit seeking (Stiglitz, 2006).

Neither national authorities nor the banks sponsoring privatisation, considered that the sustainability of privatised public utilities required appropriate economic context, and regulation. Economic context was ignored and sound regulation was disregarded. Virtual competition, proved to be just that. Relevant regulatory systems, such as the United States and England, were ignored. Urgency beat knowledge and prudence. Ex-post assessment of the Buenos Aires privatisation illustrates the mood of the times: "a private concession was launched with a sense of urgency, (...) the Buenos Aires privatisation went forward as part of the block of transactions because the political net benefits to Menem appeared to be larger than the net benefits from similar actions in Peru to Fujimori, or in Chile

to Pinochet" (Alcázar et al., 2000: 13, 14). The concession contract was granted to Aguas Argentinas, a consortium of private companies, both foreign and national.

The urgency of the processes negatively affected the outcomes of Buenos Aires, Jakarta, Manila, Dar-es-Salaam and numerous other privatisations. "Yet international donors and privatisation advisers largely ignored the substantial risks that political and regulatory capture pose to the public interest" (Kessides, 2004: 81).

This ideological, hurried, and opportunistic movement took place at World level. In Africa, for example, states drastically reduced state ownership. This was partially the result of public utilities not being optimally managed. In sub-Saharan Africa this is attributed to governments not being benevolent. The pricing mechanisms of state-owned public utilities were captured by the ruling elites, at a high social cost (Auriol and Blanc, 2009). In addition, ruling elites did also design and implement privatisation programmes, unlikely to be efficient. Socially bad privatisations are easier to formalise than socially good ones (ibid). A possible corollary is the inability of developing countries to establish regulatory institutions. They lack resources and the credibility necessary to control large corporations. This is why the concessions in Latin America were renegotiated after an average of only 2.1 years (Guasch, 2004).

There are also elements of moral hazard, wrong design and incentives that affect the privatisations, particularly in the context of corruption. Wells and Ahmed (2007) name a number of failed foreign-owned projects in Indonesia, where local partners were powerful political figures, their relatives or associates. In such situations, some governments specifically instructed their lawyers not to invoke the corruption argument.

Water, the resource feeding water and sanitation utilities, were to follow suit, swept into privatisation processes guided by political expediency, and intellectual complacency. In the context of the process personal neutrality was possibly the safer course to follow within governments and financing institutions. However, in the case of Peru, some concerned Peruvian public servants made a difference.

A few concerned individuals

The Draft proposal had the support of the Ministry of Agriculture, who would benefit from loans, while its constituencies expected to benefit from the activities and investments associated to the loan.

Private electricity companies did also support the proposal, as well as mining companies, since the Draft afforded the opportunity to capture water resources, a strategic input to their activities, for free, forever, without conditionalities.

Although the experience in Chile was that a few electrical companies utilised the water law to monopolise water and curb competition in the generation segment, this experience was not considered relevant. Nor were monopolistic rents.

While the discussion of the Peruvian water law was taking place, the chief executive officer of the regulator of water supply and sanitation of Peru (Superintendencia Nacional de Servicios de Saneamiento, Sunass) and the manager of Servicio de Agua Potable y Saneamiento de Lima (Water Supply and Sanitation Service, Lima, Sedapal) requested the United Nations Economic Commission for Latin America and the Caribbean (Eclac) advisory services on water law to advise on the merits of the draft proposal.

ECLAC engaged in the process, with the support of interested individuals at the Water Directorate of Chile, the law schools at the universities of New Mexico and Colorado at Boulder, the Department of Economics at Davis, and a number of professionals working for the technical offices concerned with water at the World Bank and the Inter-American Development Bank.

They all shared the view that it was utterly risky to dispose of the water resources of a country without conditions, perpetually, and for good. Even within financing organisations views were not cast in stone and discussions were acrid.

In addition to the economic, social, and environmental problems inherent in the proposal, the windfall rights resulting from it would be protected under the provisions of a newcomer into the institutions of a global economy largely devoid of balanced governance: International Investment Treaties. Under such treaties local public interest concerning environment and society, is a secondary consideration.

The nationalisations of the 1950s, when developing countries took control of strategic industries (i.e. oil, electricity, railroads, water and sanitation) prompted investors' countries to search for institutional alternatives to protect investors' interests. International investment agreements were the answer. They are based on a limited set of substantive principles, aimed at the protection of foreign investors, and on arbitration procedures that take adjudication processes away from the national courts of host countries. The rationale is that host governments control their domestic courts, and investors are not assured of fair and equitable treatment.

Simmons et al. (2007) argue that the spread of bilateral investment treaties is driven by international competition among potential host countries – typically developing countries – for foreign direct investment. Their main finding is that diffusion in this case is associated with competitive economic pressures among developing countries to capture a share of foreign investment. Consequently, developing countries have signed, sometimes without due consideration of their implications, numerous agreements for the protection of foreign investment over the last two decades.

The agreements protect the rights of foreign investors, but not of the public interest issues of host countries (Solanes and Jouravlev, 2007; Wells and Ahmed, 2007). They automatically apply to conflicts involving foreign investors (i.e. mining, forestry, agribusiness, hydroelectricity, oil, water and sanitation). Neither national laws, nor contracts, need to refer to them for them to be enforceable. They are part of the legal context and do not need specific identification to be applied and enforced. Every public attorney in a developing country knows this, at present. In the past they ignored what the treaties amounted to (Peterson, 2006).

Even at present most politicians and high ranking technical people ignore that sovereign rights on water, and any other public good or interest, for that matter, are conditioned by these agreements.

Few developing countries have been as careful as Brazil, which:

despite growing pressure from developed countries (...) for Brazil to ratify these agreements, remain held up by concerns about their constitutional implications. Brazil (...) had long resisted offering foreign investors greater rights than those accorded to domestic firms. (...) Brazil remains wary of permitting investment disputes to go to international investor-state arbitration (Peterson, 2003).

Under investor-state arbitration adjudication, processes are conducted in a private, commercial process, through arbitrators. Only foreign investors have standing to initiate litigation (therefore an investors' market). There are no appeals and arbitrators are not necessarily obliged to consider national legislation, although they can obviously invoke it, if favourable to their clients. It is a well-known principle of law that treaties cannot be breached invoking national law.

The 'sanctity of contracts' is the standard under which the international arbitration system operates. Yet, critical thinking based on experience and national precedent, indicates that under a number of conditions (changed circumstances, unconscionable terms, public policy, compulsion, corruption, inconsistency, asymmetry, moral hazard, etc), contracts and other aspects of property rights may not be held sacred:

The 'magic' of property rights in the industrialised countries comes not from their being absolute, but rather from a balance between individual or corporate rights and fairness, and, especially, overall

economic benefits. That balance is regularly fought over (...), but the battles are engaged in forums that enjoy broad public acceptance (Wells and Ahmed, 2007).

Thus, the new international rules securing foreign investor rights give them little reason to worry much about risk, fostering moral hazard:

[e]xcessive awards not only impose direct costs on host countries, but they also can lead to perverse behavior by investors, discouraging renegotiations that might lead to assets being put to productive use. If such awards become common, they will encourage corporations to seek out risky investments and even to encourage governments to breach contracts. In sum, they pose moral hazards similar to those that often accompany other kinds of insurance coverage (Wells and Ahmed, 2007).

If Peru had amended its brave new water legislation after giving away its water resources, free, without conditions, perpetually, any foreign investor, affected by the amendment, could have taken the country to an international arbitration process for confiscation.

Local people would have been bystanders. New technical knowledge requiring changes in water rights and water management practices would be put into practice only at the expense of paying people having speculative water rights, even if they had never put them into beneficial use. In fact, this is what Australia will be doing. While rights holders can sell rights that have never been used, the government will have to pay for environmental water (Young, 2010, 2012).

The discussions, and fierce confrontations, concerning the Peruvian amendments to the water law took the best part of six years. They included rich research and arguments and resulted in a coalition of some of the best water experts on the technical, legal and economic factors affecting water, in South and North America and the US. The World Bank and the Inter-American Development Bank organised a workshop to discuss the model. The Economic Commission for Latin America and the Caribbean of the United Nations, the University of California at Davis, and the University of Colorado at Boulder, participated in the workshop that took place in Washington, DC. At the end of the process the World Bank concluded that, according to the information coming out of the discussions and the workshop, the Chilean water law system was not the best alternative for Peru.

The process of critical review was strengthened by the activities of agricultural communities in Peru, who saw the risks of water being monopolised by electricity companies; by the participation of a group of American law professors, from the universities of New Mexico and Colorado at Boulder, who saw the draft as an abuse to public trust, and by a number of principled individuals at both the World Bank and the Inter-American Development Bank. Interestingly, these individuals were mostly engineers and lawyers having experience at field level.

By that time the Constitutional Court of Chile had ruled that the Chilean Government had a right to amend the water law, which was changed in 2005. Also in Chile, the anti-monopolies authority had ruled that no further generation rights for hydroelectricity were to be granted until the water law was changed. The possibility of hoarding generation rights had hindered the development of the hydroelectricity sector. It was in fact an invitation to do so. Even at present, the water rights acquired under the 1981 Chilean Water Law pose hurdles to IWRM, competition, and sustainable management (Donoso, 2011).

One of the main flaws of the Peruvian draft Water Law was that it ignored the economics of water and its institutional and social implications. The economics of water, briefly explained in the next section, is the reason for its special legal treatment.

THE ECONOMIC NATURE OF WATER

One of the obsessions of water users is to have water rights that have the security of an ordinary land right. Australia and Chile have gone the farthest in this direction.

Yet, water is so important to many activities and essential to life that for this reason it has never been granted as freehold. The purpose is to control speculation, hoarding, and unsustainable use. Licences are not equivalent to land titles, however desirable to water users (Quiggin, 2011).

The crux of the matter lies on the essentiality of water, and the several roles it has (environmental, economic, social). Water generally cannot be fully substituted, in biological, agricultural, and industrial processes. Its use is widely dispersed among the population, historically practised and fragmented. These features determine its economic conception and nature. Private managers of the resource may not respect the environmental dimension of the resource value (Hanemann, 2006). They will not consider social costs, if their internalisation implies higher costs for them (Colby, 1990). In many cases it is not renewable, and present levels of use are not sustainable (Heal, 2011).

This is why property rights to use water are usually recognised and granted subject to conditionalities. Water is too unlike land to be subject to full, fee simple, and private, property holdings (Saxer, 2010). However, the Chilean law and the Australian law have granted unconditioned water rights, without a public interest associated with their use.

In Chile and the Peruvian Draft, the public interest is simply associated with unconditioned private rights over a public good, period. For them the public interest consists just of private appropriation, without any of the conditionalities and principles typically found in American water law, such as beneficial use, and public trust. Public interest is simply, and simplistically, assimilated to private appropriation, as if they were one and the same. Externalities and monopolies are ignored.

At the time the Draft Peruvian Law was proposed Chile, and the Chilean authorities, already knew that the system was not adequate. Monopolies were already active and transfers of nominal entitlements from agriculture to mining were negatively affecting downstream users. Curiously, the individuals and firms making monopolistic profits invoked competition and the free market, even if they profited from monopolistic rents. They defended their monopolistic rights to inputs that were essential to the well being of the country, on grounds of economic freedom (Bitran and Saenz, 1993; Sullivan, 1997; Bauer, 2010; Chile, 1997).

WATER OWNERSHIP AND WATER RIGHTS

In most countries water is a public resource, i.e. a resource owned by the state, or the people, depending on the terminology of choice. Public ownership results from the economic characteristics of water. Private appropriation of a fluid, multi-use, and multi-purpose resource does not warrant that the public interests associated with the resource will be well served. Thus, the water resource is publicly owned, *urbi et orbi*.

However, the economic needs of society demand that water-related investments have a minimum of legal and social security and exclusivity.

As a result, legal systems have devised a special mechanism to ensure that water, as a public resource, be privately utilised for the good of society. There is tension between the private and public components of the system, which in a permanent search for balance between public good and private profit.

This mechanism is the system of water rights. Private persons are assigned usufructuary water rights on water. While the corpus of water is publicly owned, the right *to use and profit from water is private*. Yet, usufructuary rights on water are not ordinary private rights. They are subject to special terms and conditions. Conditions can include time terms, duties concerning environmental quality, conditions of use, and even the possibility of amendments, based on the principle of public trust, to the extent of water rights, as needs and knowledge change.

Some systems accept water trading. But they subject trading to different structural and regulatory conditions. The United States only accepts trading of water that has been effectively and beneficially used. It also regulates social and environmental externalities.

Australia and Chile have subjected markets to fewer conditions and regulations than the United States. Unfettered markets cause environmental and social externalities (Donoso, 2011; Young 2010, 2011, 2012).

CONCLUSIONS

Legal principles to balance public and private interests associated with water have been known and utilised for centuries. Systems have evolved and changed according to economic, social and environmental needs. They have usually been successful in striking balances between different water roles, interests and needs.

There has always been ample access to comparative economic and legal principles and literature. And the examples of the effects of ignoring relevant principles and common practice are readily available, as illustrated by Australia and Chile, and their problems of sustainability and monopolisation.

This makes it difficult to explain the endorsement of unproven theories by staffers of competent international institutions. Ideology, complacency, and the dogmatic approach denounced by Stiglitz in 2002, played a role.

The Peruvian experience leaves some relevant, and uncomfortable, findings:

- Funding needs lead developing countries into the uncritical acceptance of loan conditionalities that are not backed by either experience or science.
- In the particular case of Peru, the officer responsible for the loan actively promoted the Draft Law. However, the technical officers responsible for the water resource at both the Inter-American Development Bank, and the World Bank promoted, and participated in, the interdisciplinary discussions that ended up rejecting the proposal.
- The economic conception guiding the Peruvian process was dogmatic and partial. It ignored monopolies, monopolistic rents, public goods, and externalities. The discourse was either ideological, reckless, or both.
- The importance that legal concepts concerning the conditionalities of water rights had on its efficient allocation, and distributional equity, was ignored. The minister was willing to accept the contents of the draft law as if they were words without functional meaning, or devoid of ex post legal consequences.
- The happy 90s put heavy emphasis on curbing transaction costs. However, there are transaction costs in proper research, evaluation, participation, and control of externalities. Elimination of transactions costs at their expense may be as successful and sustainable as a flash on a pan. The costs of externalities, monopolistic profits, and uninformed decisions end up being higher than transactions costs. Moreover, their distribution does not match that of benefits. Externalities, monopolistic transfers and poor decisions burden the population at large, while benefits concentrate on a few privileged special interests.
- There are moral hazard elements created by emphasising speed and expediency at the expense of sustainability and equity. Moral hazard results from the unbalanced nature of lending processes, from the fact that when failure happens ministers have already retired, and also because self-serving special interests have been assimilated to public good.

- The 1990s had a very negative impact on the self-respect, standing, income and job security of many a public servant. Complex and conflictive water management depends not only on good technical judgment but also on personal attitude. If self-respect and job security are destroyed responsible behaviour is compromised.
- Only two resident Peruvian public officers, the managers of Sunass and Sedapal, dared to question the Draft Water Law. They were at the roots of a continental coalition and paid a great service to their country.
- International alliances of high-level professionals were useful to question quickly thought out policy proposals.
- Resources and activities having an impact on public welfare require appropriate regulation. Arguments based on the need to eliminate transaction costs may be affected by moral hazard. There is enough knowledge to devise proper and balanced regulations. Ignorance and indifference are difficult to justify, in terms other than ideology, or the influence of special interests.

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