Indigenous Water Governance

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History of Indigenous Water Rights

Colonization and Globalization
- Prior to their “discovery” and colonization by settlers, Indigenous people have managed natural environments through traditional governance systems, cultural and spiritual practices, and intergenerational teachings.
- Since the assertion of colonial authority over Indigenous peoples and their land, Indigenous water rights have been subsequently threatened and outright denied at the hand of colonial policies based upon doctrines of discovery.
- Doctrines of discovery include:
  - Law of Nations
  - Terra Nullius
  - Manifest Destiny.
- These are all imperialist ideologies based upon neglecting to acknowledge Indigenous presence for the acquisition of unceded Indigenous land and adjacent water.

Various Manifestations and Global Context
- Effects of colonization and globalization manifest themselves in various ways.
- Emphasized when comparing Indigenous water rights issues across global scales as each scenario is dependent on who is involved, socio-political climate, timescales, environmental factors, ulterior motivations, etc.
- As we have seen in the past and present, infringements on Indigenous water rights result in contaminated water, shortages and diversions, threatened cultural practices, forced moving of original inhabitants away from traditional water bodies, and a lack of autonomy and involvement in decision making.
- Whether these violations of water rights are physical, mental, emotional, spiritual, or political, they are acts of settler colonial violence that continue to attack Indigenous people livelihoods to this day.

Present and Future
- Currently, Indigenous communities’ water rights suffer across the globe as a result of current policy and long lasting effects on colonial policies and doctrines of discovery.
- Although efforts have been made in order to improve this, this situation is still dire.
- Limits of recognition in the context of settler colonist societies.
- Looking forward, Indigenous academics suggest alternatives of action for both Indigenous and settler people in efforts to combat systemic oppression of these communities in a broader sense, as well as in terms of water rights.
  - Empowering shift toward decolonization
  - Alternatives to state structures and discourses
  - Emphasis on Indigenous resurgence and self determination
  - Regenerative Refusal
  - Legal traditions


Political Issues of Indigenous Water Governance

**Political Ontologies of Water**

Ontological politics refers to the varied processes of asserting particular worlds or enacting realities. Water Ontologies have remained hegemonic in settler-colonial situations, with the Western perspective as an abiotic, nonliving element and a resource. Recognizing different water ontologies and perspectives allow for the potential to decolonize water governance and institute reforms.

**The UN Declaration on the Rights of Indigenous People**

First Nations exercise rights based on their original and indigenous sovereignty through the recognition of the rights of Indigenous peoples to their "lands, territories and resources," including the right to determine the development course for these lands, territories, and resources, including water. While these rights do not lose their meaning when unrecognized by colonial governments, acknowledgment by other legal regimes can make inherent rights more effective.

**Aboriginal Title and Rights**

Aboriginal title adheres to legal and inherent land rights. Aboriginal rights to water are not established or disproven through a court ruling in Canada. The 1982 Canadian Constitution includes Aboriginal rights, which recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples of Canada. Aboriginal rights to water have been a source of dispute in the United States and Australia.

Indigenous interpretations of Aboriginal rights to water are connected to Aboriginal title, and from the rights to use of water associated with the customs, practices, and traditions of a given Aboriginal community. Aboriginal water rights are inherently necessary to fulfill the intent of reserves.

**Collaboration Vs Co-Governance**

Collaborative planning is understood as a process in which First Nations and various stakeholders are consulted, informed, and engaged in watershed planning and decision-making, but do not have substantive decision-making authority.

Co-Governance seeks for the acknowledgment of First Nations as Governments negotiating with Federal Governments, including indigenous participation in the decision-making process with legally binding authority, emphasize power-sharing, and granting equal weight to indigenous worldview, knowledge and governance systems.
Works Cited


Social Perspective on Indigenous Water Governance

Context

United Nations General Assembly recognized water as a human right in 2010; however, Canadian Government to this day does not recognize that right as it abstained from voting. Furthermore, Canada has no national standards for drinking water quality, but rather sets up mere guidelines which are then adopted by provincial/territorial governments as seen fit.

Water is regarded as sacred by many First Nations’ cultures as they are intricately tied to the land and to water, therefore, any changes or restrictions are felt first-hand.

As of 2010, 49 First Nations communities have high risk drinking water systems; and over 100 communities face ongoing water advisories.

Health Impact

First Nations individuals face elevated levels of waterborne disease when compared to other Canadians:
- Higher levels of influenza
- Higher levels of bacterial skin infections (which leads to kidney problems)
- Disproportionately higher levels of suicide, associated with greater psychological distress in the communities

Indigenous communities of Great Lakes Basin show increased incidence of cancers, birth defects, diabetes, and multiple chemical sensitivities
- Linked to domestic and industrial contaminants in the water basin
- Bioaccumulation of toxins, that travels up the food chain, gathers at great concentrations in breast milk

Recognition/Implementation & Echoes of Colonialism

Recognizing the right to water as implicit in the Canadian Constitution would promote accountability, offer remedies (reconciliation movement), and ensure non-discrimination
- EAGLE -> Effects on Aboriginals in the Great Lakes Environment, an organization that focuses on collection of traditional ecological knowledge and monitoring of pollution in the Great Lakes
- Indigenous Peoples’ laws teach how to live in a way that sustains the water for the future generations and all life forms. It is done through honouring water as a separate being, meaning honouring the fact that water has a life of its own, that it flows at particular places, and particular purpose.

Collaborative decision-making process as the seen ideal for water governance, but, as a result of colonialism, First Nations are prevented from participation due to difference and distance in views.
- First in Time, First in Rights water licensing scheme as seen in BC. Under FITFIR system, earlier recorded licenses have priority to water access in times of shortage.

Local knowledge on local jurisdictions – multitude of Indigenous knowledge systems and traditional ecological knowledge; gives localized insight, but due to power disparity held in favour of the settlers and the overall Western society, passing on the local knowledge can feed into the post-colonial framework.
- Relinquishing decision making to the Crown when sharing knowledge (once again Indigenous communities are not seen as equal).

Inequality in ‘knowledge integration’ paradigm in that the Indigenous discourse of traditional ecological knowledge is recognized as inherently political (which it is), but scientific discourse is portrayed as objective (which it is not). Attempts at proper integration will result in continuation of colonialism and the growth of the settler-colonial state at the expense of the Indigenous cultures.
- Only solution is to give total Indigenous authority over environment and hence the overall geographical and spatial narrative.

Indigenous knowledge is not inherently superior or accurate, but it is the morally and politically superior in the outcome as it can be seen as part of the greater reconciliation effort through the work or proper recognition and acknowledgement of knowledge, as well as the being beneficial to the wider goal of conservation and sustainability.


Economics

What are the economic reasons Indigenous peoples do not govern their own water?

Colonial Histories – State assumes ownership of water

a) Decisions and policies regarding water were focused on global economic growth, rather than putting emphasis on social and environmental health.

b) The State has encouraged developments (and sometimes, privatization) to generate capital. Examples of developments include: Dams & Hydraulic Fracking.

c) There is a lack of treaties which outline the rights and responsibilities of all parties. Without this, legally the land and resources are often owned by the State, allowing them to be the sole decision makers. Treaties can take years to develop. There is a disincentive to start the process of these treaties because when they are "in the works", ownership of the land is a grey area, and discourages developers to start their projects on that land.

Marginalized Indigenous Voices

a) The way the State and Indigenous peoples govern water differ ideologically. For example, Indigenous peoples place emphasis on spiritual and environmental health. This is what they perceive to be "wealth". The State sees "wealth" in monetary terms.

b) The State sees Indigenous peoples as mere "stakeholders", rather than "nations". This implies they are simply an interested party, like you and me. This neglects the fact that they have ancestral roots to water, and that the health of the water directly impacts their ability to survive. From the point of view from the state, Indigenous peoples lack the money, resources, and knowledge needed to have more power in decision making.

c) There was a sudden shift for Indigenous peoples from their Sustainable Trading economy to a Capitalist economy. The ideologies behind each differ, making it a difficult transition. This is especially true as the transition was sudden. Europeans had already accumulated wealth, which gave them power. Indigenous peoples had little capital, and accumulating capital was difficult as their resources & land had been taken from them.
Works Cited


Case Study: New Zealand
By Amanda Chambers

The Māori
- The tangata whenua (indigenous peoples) of New Zealand.
- Bodies of water are viewed as ancestors, where rivers and lakes are situated at the beginning of the life cycle as they bring an abundance of life for all other living beings on Earth.
- Tino rangatiratanga (soverignty, self-determination, autonomy) is an essential principle for the Māori to maintain political negotiation leverage and gain water allocation rights.

The Treaty of Waitangi
- Crucial piece of legislator establishing the relationship and a hybrid planning system between the New Zealand government and the Māori.
- Signed in 1840 between the Crown representatives and Māori chiefs, it was viewed as an act of cession by the Crown.
- Only written in English and there is evidence of several mistranslations as to misguide the Māori on the true exchange and their level of tino rangatiratanga.
  - Māori believed that tikanga (Māori way of doing things) would remain first law, with Crown authority subject to tino rangatiratanga.
- Attempted to integrate Māori knowledge but because they must speak through foreign systems and lexicon, familiar European models were fallen back on.
- Failure to honor treaty rights for 140 years = exclusion

Resource Management Act (1991)
- Current juridical water planning framework
- Intent to minimize land and water resource regulation and encourage expansion for agricultural exports
- Major responsibility delegated to elected regional councils based on subsidiarity principle (central government has failed to exercise leadership
  - lack of resources, capacity, political capability
- Māori governance is constrained
  - water property rights not allocated
  - under-represented in government
  - relies on advocacy to promote values and concerns for water allocation and quality

Whanganui River Personhood
- Located on North Island, running 290 km from Mt. Taranaki across volcanic planes through to farmland
- Te Atihau-nui-a-Paparangi are the Māori peoples of the river
- Tourism and river transport seen as economically important priorities for usage by the Crown
  - ignored strictures of Māori law, ecological health and disregarded time immemorial
  - not equivalent to foreign concept of private ownership
- Deterritorialization: destroyed conceptual bond between specific groups of people and specific water bodies
- 10+ years of negotiation to recognize the status of the Whanganui River as a person
  - transformed property to a legal person
  - rights, powers, duties, liabilities of a legal person
  - represented by 2 Te Pou Tupua (one appointed by the Crown, one by the Te Atihau-nui-a-Paparangi)
- Te Atihau-nui-a-Paparangi are the Māori peoples of the river
- Māori relationship to the river and its values shaped new the river’s new legal personality - indivisible and living whole
- Inherently good, still puts humans above all others in natural world, forcing Māori to further speak through foreign systems

Te Waihora Joint Management
- Low lying lake with a shallow depth and naturally eutrophic, located in Canterbury region, South Island
- Cultural historic importance
  - source of mahinga kai (food substance) for Ngai Tahu tribe
  - diverse bird and aquatic life
- Kemp Purchase in 1840, there was a dispute about the boundaries of land purchased from the Māori, Crown enforced interpretations including parts of the Lake not agreed upon
- Settlers prefer low lake levels for arable agricultural land, Māori prefer high lake levels to keep mahinga kai flourishing
- Treaty negotiation found Ngai Tahu rightful owners and governors for Te Waihora, Crown refused to transfer this lake bed and short land was transfered over
- Joint management plan between Department of Conservation (DoC) and Ngai Tahu
  - biggest conflict was whether to allow vehicles on floodplain land, DoC made this an nonnegotiable for their cooperation
- Māori role in governance for Te Waihora is constrained by: property rights, globalization, and the regulatory environment
  - issue of ownership - water as a transnational problem
  - intensification of land from agriculture and its pollutants the biggest concern for Te Waihora
    - drove mostly by globalization and comparative advantage
  - most important is shaping Māori role in regulation
    - exogenous vs. endogenous regulations
Works Cited


Case Study: Bolivia

**Background**
- Indigenous Bolivians are a large ethnic group in Bolivia: According to latest National Census, indigenous people account for 60% of Bolivia's population.1
- Their indigenous cosmovision belief indicates 1) to prioritise harmony with nature over economic development. 2) Water as the source of life. 2

**Water Privatization in Bolivia**
Privatisation took place during the second mandate of Bolivian President Hugo Banzer (1997-2001) and there were 2 major private concessions:
1. La Paz & El Alto to Aguas del Illimani S.A. (AISA), 1997
2. Cochabamba to Aguas del Tunari (subsidiary of the multinationals Biwater and Bechtel), 1999

**Purposes:**
Implementing privatization in order to 1) renegotiating Bolivia's foreign debt in 1998, 2) to solve the water scarcity issue, 3) solution for governmental corruption.

**It results in:**
- **Against the indigenous traditions of self-sufficiency:**
  half of the population in the city of Cochabamba was not connected to the water network. Hence, the southern zone where most of the indigenous working-class population resided built their own water network. However, the government gave private companies the right to take over their water, which led to their bill increasing by 200%.4

- **Ideology conflict behind skyrocketing price of water:**
  Rooted in the indigenous cosmovision belief of Quechua peoples of the Andes, the concept of sumak kawsay (well living) describes a way of doing things that is community-centric, ecologically-balanced and culturally-sensitive. It is a far cry from how privatization serves water under a profit-driven basis and lead water become unaffordable.5

- **Loss of indigenous community irrigation practices:**
  the majority of irrigation systems were built by their users (indigenous communities) that manage their systems using collective control and their own rules. These systems constitute a structural basis to local cohabitation (living together in community); they generate relatively sure productive systems, adapted technologies, their own rules schemes, and generally solid and strong organizations. Privatization leads to the loss of indigenous community practices in terms of irrigation.6

**Water War**
A series of protests between 1999 to 2000 that ousted a multinational corporation from control over the working class' water supply in Cochabamba valley. The water war successfully put the first Indigenous president Evo Morale in power, which was a defining moment that has shaped Bolivian politics.7

**Under the new indigenous leadership**
- the Ministry of Environment and Water and the Right to Water was created. 8-9
- Indigenous communities were granted legal title to drinking sources and farmers were able to freely irrigate their crops without fear of market priced water. 10
Works Cited


