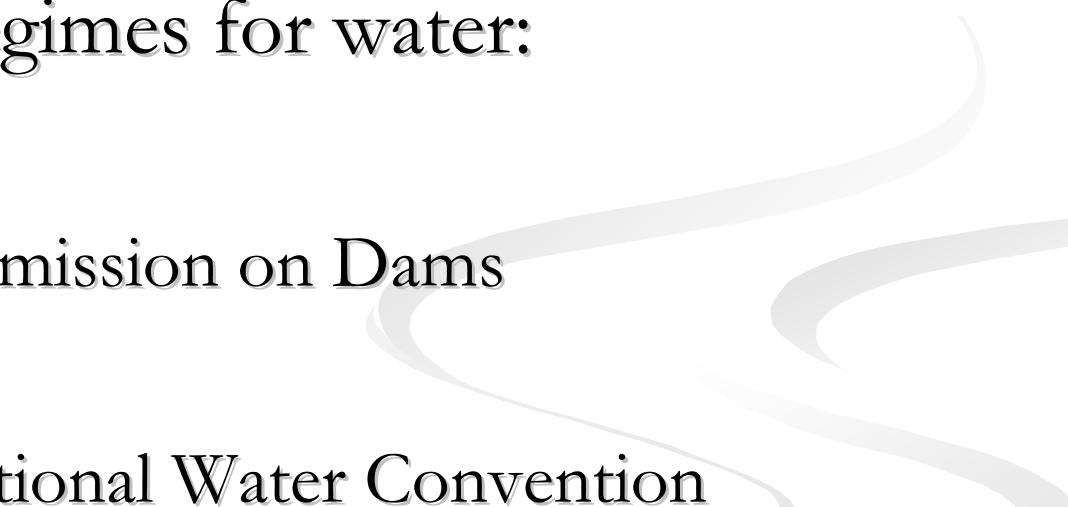


# Dams, Development and International Law

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# What is this paper about?

- This paper revolves around two important events of significance for the transformations in the regulatory regimes for water:
    - the World Commission on Dams
    - the UN International Water Convention
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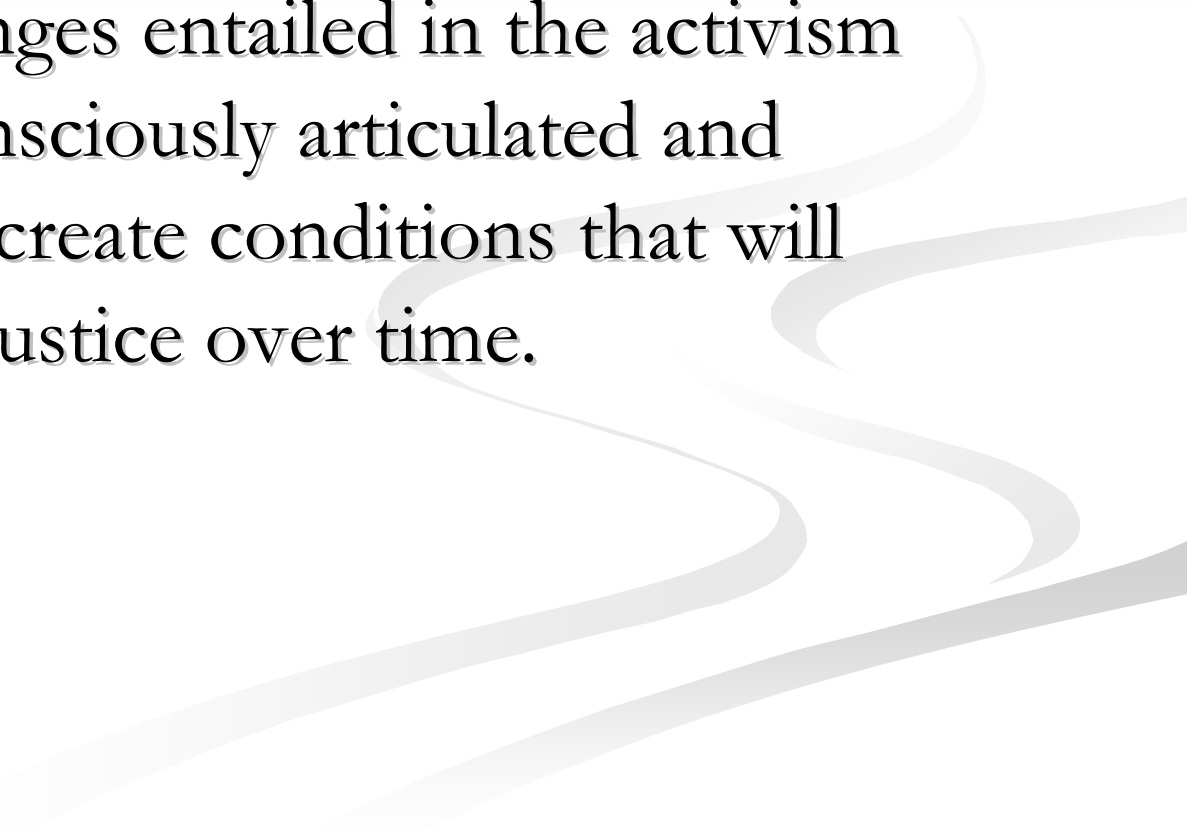
# The paper argues:

1. That the transformations in the water sector need to be contextualized within the wider neo-liberal transformations underway.
2. That state regulation and market regulation of water constitute *two different types* of regimes involving two distinct types of legal frameworks and institutions.

# The paper argues: contd...

3. That *both* state regulation and market regulation are designed for expropriation of natural resources including water and labour facilitative of capitalism and imperialism.
4. That the transformation from state regulation of the post World War II era to market regulation entailed in neo-liberalism in the post Cold War era *restructures* relations between states, between international organisations, between states and international organisations and between states and citizens (corporate and natural) to service capitalism and imperialism after the end of the Cold War.

# The paper argues: contd...

5. That the relationship between social agency including activism for social justice and the structural changes entailed in the activism need to be consciously articulated and envisioned to create conditions that will sustain water justice over time.
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# Market Regulation

- Markets are a complex of laws.
- Legal frameworks for market regulation are premised on and support:
  - Multiple institutions
  - Communities formed around economic interests
  - Incorporation of communities of economic interests into legal entities
  - Laws to regulate the relations between different legal entities
  - Application of private law principles (from Roman law traditions) to regulate relations between the state and the legal entities

# State Regulation

- States are also a complex of laws
- Legal frameworks for state regulation are premised on and support
  - Monolithic institutions e.g. civil service
  - Communities formed around rights and obligations towards the state and its institutions
  - A constitution as the founding document that governs relations between the state and citizens
  - Application of public law principles (from Roman law traditions) to regulate relations between the state and citizens, corporate and natural

# The World Commission on Dams

- The WCD affirmed the core principles of market regulation for the water sector within national jurisdictions
- The WCD followed a series of actions to restructure international organisations and states along neo-liberal lines to bring about a regime change from state to market regulation.
- The WTO was mandated to initiate “interagency cooperation” to align international organisations, specifically World Bank and IMF and states, to market regulation internationally.



# WCD contd...

- In the water sector, the World Bank set up the WCD.
- The WCD brought together communities of interests - the “stakeholders”
- The stakeholders differed on substantive claims to water but nevertheless consented to the transformations in the regulatory changes underway

# Stakeholder participation and market regulation

- i. Stakeholders agreed to new ways of making laws entailed in market regulation by participating and endorsing the processes and procedures
- ii. Stakeholders constituted themselves as legal entities, if they were not one already, and made themselves capable of participating in the water markets in the transformed regime
- iii. Stakeholders accepted the principle that economic regulation must be underpinned by social prerequisites for proper functioning of market regulation of water

# Stakeholder participation and market regulation contd...

- iv. The social justice “stakeholders” contributed to the process of regime change by emphasising the social dimensions of water appropriation and use for enduring mechanisms of water regulation.
- v. Stakeholders concurred on the foundational principles of public and private law in liberal theory and positive law.
- vi. Stakeholders agreed to roll back the state and curtail the state institutions in the water sector or remodel them as market institutions.

# The UN International Water Convention

- The UN-IWC develops public international law for decision making and dispute resolution between states over transboundary waters
- The UN-IWC follows initiatives by private actors representing economic interests in dams and water projects
- The UN-IWC reaffirms developmental models and goals; and modes of appropriation and use, developed by international development organisations such as the World Bank and IMF

# Codification of international water law

- Provides for states to concede power to regional economic integration organisations
- Takes the meaning of “equitable and reasonable apportionment” in law from international organisations
- Stipulates that no use of water enjoys priority over other uses
- Envisages a role for organisations like the World Bank to be a mediator in dispute resolution between states following economic development of international rivers

# Regime changes and social agency

- The WCD and UN-IWC are complementary processes that redefine the public and private spheres and the role of states and “stakeholders” in the water sector
- Social actors engaged in transformative social actions did not make the connections between the two processes
- The consequent gaps in knowledge conceal the real politics of water

# To create knowledge in aid of transformative social action

- The role of law in sustaining social structures and social relations need to be interrogated and incorporated in social action
- The expropriation and dispossession of people from water needs to be anchored to the transformations underway in the phases of capitalism and imperialism
- Social agents need to explicitly envision and articulate the structural ramifications of their transformative social actions

# Apologies

- I am in the middle of changing jobs and relocating to London and therefore unable to present this paper in person. My apologies.
- Comments and feedback may be sent to [r.dsouza@waikato.ac.nz](mailto:r.dsouza@waikato.ac.nz)
- Thanks to the organisers for presenting the paper on my behalf.