

# Reconstituting Water Rights: Pathways for Polycentric Praxis

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# Overview

- Problems in water governance
- Making rights
- Constitutional questions
- Reconstituting water rights
- Options for polycentric praxis

# Problems in Water Governance

1. Stalewatered water laws
2. Rural dispossession
3. River basin disorganization
4. Contested concessions
5. Human right to water

# Key Questions

- Why such intractable problems?
  - Frustrating
  - Polarized
  - Intractable
- How to reach solutions?

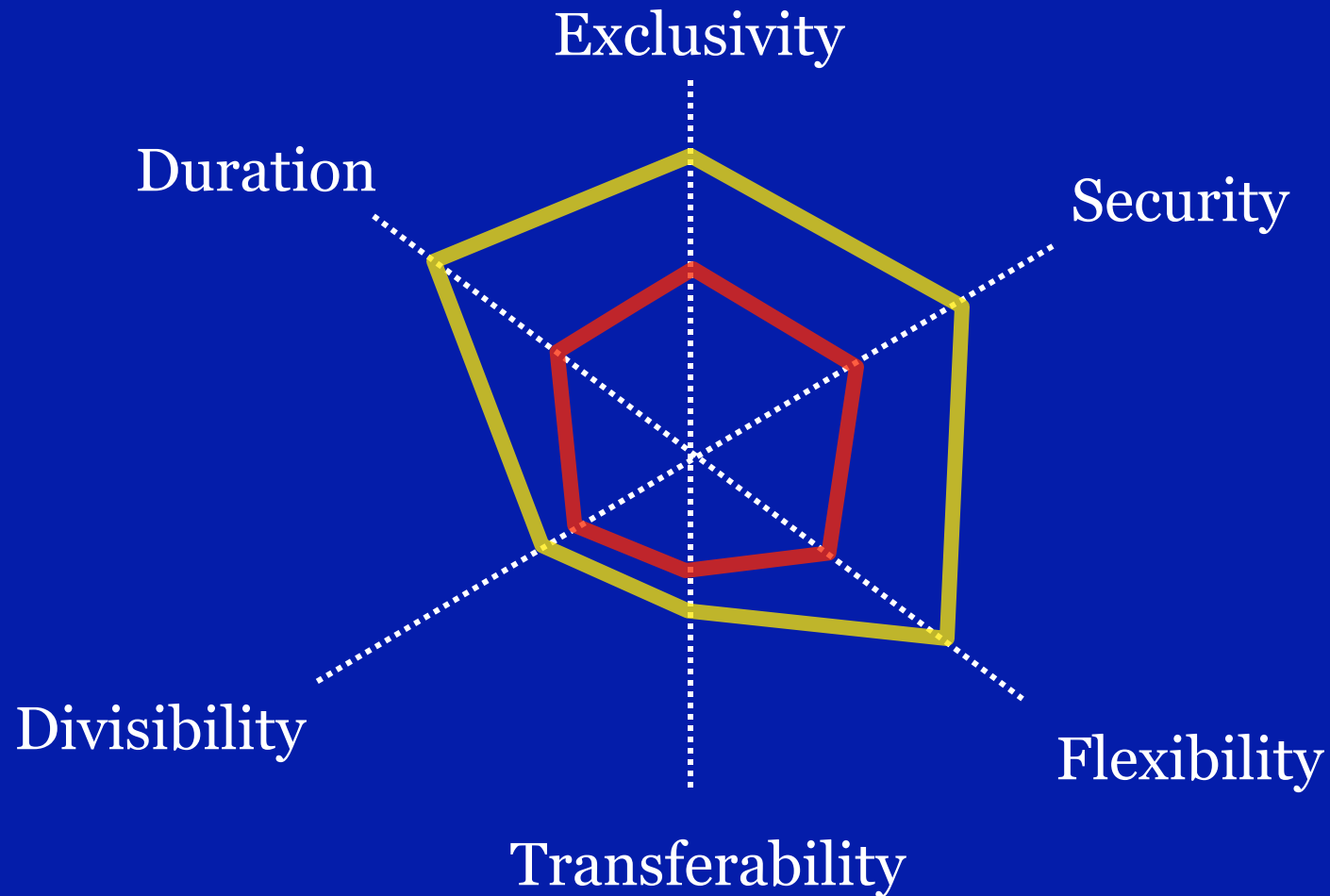
# Answers (Preview)

- Need to reconstitute water rights,
  - resolve constitutional-level questions
  - new “rules for making rules”
- Polycentric practice opens more options

# Levels of Collective Action

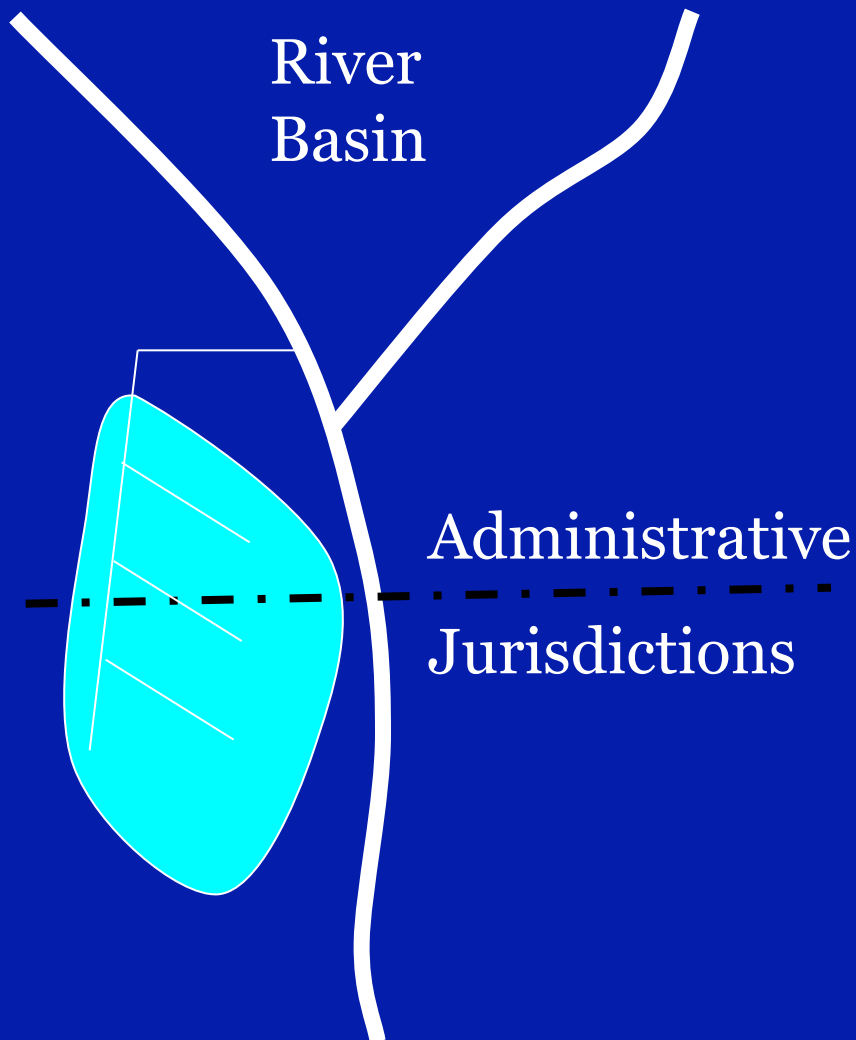
<b>Constitutional</b>	Rules for making rules	Who decides what, how
<b>Collective-choice</b>	Rulemaking	Devising and revising laws (regulations, customs, etc.)
<b>Operational</b>	Rules-in-use	Using resources, monitoring, disputing, etc.

# Multi-Dimensional Rights



Source: A. Scott 1989

# Overlapping Jurisdictions



Multiple National Governments	Common Property
National Government	State Property
River Basin Commission	Delegated Authority
Subnational governments	State Property
Community or association	Common Property
Individual	Private Property

Source: Adapted from Challen 1998, 2002; See also Yahua Wang, 2004



# Overlapping Legal Fields

**International**

Religious

**Government**

**Project**

*Local/  
Customary*

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# Constitutional Questions

Who participates?	Which Forums?	What Decision Rules?
<ul style="list-style-type: none"><li>• Irrigators</li><li>• Industries</li><li>• Cities</li><li>• NGOs</li><li>• Legislators</li><li>• Agencies</li></ul>	<ul style="list-style-type: none"><li>• Bureaucracies</li><li>• Courts</li><li>• Parliaments</li><li>• Markets</li><li>• River basin councils</li><li>• International treaties</li></ul>	<ul style="list-style-type: none"><li>• Hierarchical command</li><li>• Legal judgment</li><li>• Legislative majority</li><li>• Trade transaction</li><li>• Negotiated consensus</li></ul>

# Options for Problem-solving

	Centralized	Polycentric
<b>Water law stalemates</b>	Impose formally-registered water rights	Craft coalitions to solve specific water conflicts
<b>Water dispossession</b>	Government protection for rural rights	Enhance user capacity to defend and negotiate rights
<b>River basin disorganization</b>	Control by river basin organizations	Enable self-organization at multiple scales
<b>Disputed concessions</b>	Improve water management monopolies, private or public	Encourage choice and cooperation in local public economies
<b>Human rights to water</b>	Obligate state to deliver water, with legal and political accountability	Stimulate co-production combining public and user provision

# Polycentric Praxis

- Water governance is already polycentric - multilevel, multiregional, legally plural, with multiple forums and principles
- Problem-solving requires resolving constitutional questions: who decides what, in which forums, and how will decisions be made?
- Recognizing and working with polycentric praxis opens more pathways for solutions