Transboundary water justice: a combined reading of literature on critical transboundary water interaction and ‘justice’, for analysis and diplomacy

Mark Zeitouna, Jeroen Warnerb, Naho Mirumachic, Nathanial Matthewsd, Karis McLaughlinε, Melvin Woodhousef, Ana Cascãog and Tony (J. A.) Allanε

Abstract

By reviewing and blending two main bodies of research (critical transboundary water interaction analysis and centuries of thought on social justice) this paper seeks to improve international transboundary water interaction analysis and diplomacy. Various implications for transboundary analysis and diplomacy are grouped under themes of equitability, process/outcomes, and structural concerns. These include shortcomings of analysis and policy based on unfounded assumptions of equality, and options excluded from consideration by the legitimisation of particular concepts of justice over others. As power asymmetry is seen to enable or disable justice claims and conflict resolution efforts, the importance of ensuring equitable outcomes as a pre-condition for cooperation is asserted. Similarly, water conflict resolution is found to be more fair – procedurally – than is conflict management, and may be supported to a limited extent by international water law. A number of analytical tasks are suggested for future research and policy, including a call to scrutinise the source of legitimacy of strands of justice invoked. Given the very many perspectives on justice that exist in the network of relevant actors, potential bias in research and diplomacy could be reduced if all involved openly stated the morals underpinning their understanding of ‘justice’.

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1. Introduction

This paper seeks to strengthen international transboundary water interaction analysis and diplomacy, by exploring possibly relevant contributions from centuries of thought on ‘justice’. There are at least two good reasons for the quest.

The first is because the quest may serve to address unfair international transboundary water treaties, use, and governance arrangements. ‘Unfair’, that is, from an egalitarian perspective of social justice. Our (constructivist) analytical approach acknowledges that there are other perspectives, of course, and that all perspectives serve to shape knowledge and ideas about transboundary waters. As such, we expect any existing arrangement between actors over such flows to reflect not only their perspectives, but also their capacity to shape the processes which led to the arrangement. We have less confidence in hypothesising the extent to which different moral beliefs underpin the perceptions, however, because they are normally not acknowledged, much less considered. Yet, our combined research and negotiations experience in the Mekong, Jordan, Nile, Orange-Senqu, and Ganges river basins tells us that hegemonic actors sometimes use power to deny or curtail the claims by non-hegemonic actors of past injustices, or of current inequitable arrangements of water use, treaties, or institutions. Diplomacy would surely be more effective, if it were based on analysis that appreciates and brings to life these intricacies of justice.

The second reason to explore how ‘justice’ can strengthen transboundary water interaction analysis and diplomacy is to begin to fill the gap we discovered while searching for the theory we sought to make sense of our observations. International and transnational hydropolitical research has almost completely avoided grappling with justice issues\(^1\) – not least of all the critical transboundary water interaction analysis of the London Water Research Group, to which each of the authors belong. For instance, though it may have been conceptualised with an awareness of open and latent injustices, the Analytical Framework of Hydro-Hegemony (see Zeitoun & Warner, 2006) developed without an explicit underpinning in social justice. The approach thus stumbles over some core tenets of justice, most importantly through its original emphasis on state-actors which in some cases obscures the impact upon and influence of non-state actors (see, for example, Davidson-Harden et al., 2007; Selby, 2007), as well as its stress on outcomes – sometimes at the expense of process (see Duarte Lopes, 2012). Discussions held at the Sixth International Workshop on Hydro-Hegemony exposed other weaknesses with the Group’s approach to transboundary water interaction analysis\(^2\), and identified numerous strands of justice theory that are dealt with here.

Transboundary water diplomacy, too, serves to benefit from the effort – not least of all from the emphasis on the importance of different justice perspectives. Diplomatic initiatives that favour conflict management or the efficiency of ‘dollars per drop’ over conflict resolution and the equitability or ‘care per drop’ (Allan, 2001: Fig 4.1), for example, will be judged as eminently fair by those with a particular set of moral beliefs, but fundamentally unfair by others. One implication for viable diplomacy is that researchers and practitioners alike should state the moral underpinnings that support their understanding of justice. In the spectrum of strands of social justice covered in Section 3, we consider ourselves

\(^1\) A single exception is Dicochea’s (2012) justice-informed analysis of US–Mexico river pollution. The related research on water ethics (for example Asmal, 2004; Delli-Priscoli et al., 2004) has focused primarily on the sub-national level.

\(^2\) See http://www.uea.ac.uk/watersecurity/events/hh6-transboundary-water-justice-event-2013.
egalitarian’, though still struggle to clarify under what conditions we sometimes (perhaps without tension or perhaps irreconcilably) can promote utilitarian outcomes.

The exploration of these previously separate bodies of literature ventures into a number of related fields that are not explored further here. For example, this paper is not primarily concerned with issues of community displacement, or access to and exclusion from water, and how these are (problematically) dealt with through the Dublin Principles and the Human Right to water (which are well covered in, for example, Syme et al., 1999; Tisdell, 2003; Woodhouse, 2004; Johnson et al., 2007; McLean, 2007; Zwarteveen & Boelens, 2011; Goff & Crow, 2014; Lu et al., 2014; Mehta et al., 2014; Joy et al., 2014). This paper also does not adequately cover issues of scales of time and space3, nor is it centred on transboundary water resources management and basin development efforts which seek to achieve the Millennium Development Goals (which are highlighted by the growing work on ethics and hydrosolidarity – see, for example, Falkenmark & Folke, 2002; Gerlak et al., 2011a, b; Goff & Crow, 2014). For the weight it places on outcome and process, the paper further ignores the possibilities for resolution that can be opened up through consideration of water use, notably how benefit-sharing (of food, or electrical power produced by transboundary waters) can serve ‘just’ diplomatic initiatives. Lastly, the reliance on so-called ‘Enlightenment’ notions of justice comes at the cost of skipping over very rich and certainly relevant bodies of thought from other cultures.

This paper takes aim at justice between countries. It is thus concerned with inequitable distribution between countries of control and use of water, the fairness of international negotiations and treaties, the (problematic) response of international water law, and the un-coordinated development of basins or aquifers by different political entities. As the ‘international’ cannot be coherently divorced from domestic or global activities, however, our approach remains multi-scalar, and the influence of principles of transboundary water management and of local resistance and justice claims on diplomacy are considered tangentially. We expect that strict disciplinary focuses from law, economics, or international relations will find their objections, while interdisciplinary diplomats, activists, and analysts may find the effort more useful.

At a much broader level, this paper may serve to partly answer the hydropolitical question ‘who decides who gets water, when, how, and why’, which is based on Laswell’s (1936) observation that ‘politics is who [does] get what, when, and how’. Pointing out the need to ask and answer the justice variation of the hydropolitical question ‘who decides who should get water, when, how, and why’, is one of this exploration’s stronger contributions. Others include the insight into the importance of discourse, legitimacy, assumptions of equality, and other power-related features. Each of these is discussed in the following sections, and loosely grouped under themes of equitability; process and outcomes; or structural considerations. Specific analytical tasks to shape future research and diplomatic efforts are offered in the conclusion.

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3 While much hydropolitical research traces the evolution of conflict (and cooperation) (for example Mirumachi, 2007b; Kistin et al., 2009; Molle et al., 2009), there is little to no analysis of retribution for past events and compensation for future harm in transboundary waters. The bulk of ‘water justice’ research also remains focused on the local or transnational levels (as per the body of work previously mentioned), not at the international level.
2. Review of critical transboundary water interaction analysis

This section reviews some of the contributions of the London Water Research Group to transboundary water interaction analysis. It discusses the weaknesses of the most common analytical methodology, and emphasises the importance of considering the effect of political context and power asymmetry upon transboundary water processes and outcomes. It then discusses how this contributes to theories of change such as counter-hegemony in ways that might eventually prove useful to bring about more ‘just’ outcomes.

2.1. Conflict and cooperation co-exist (context matters)

Much of the critical analysis of the London Water Research Group developed in response to established analytical approaches which relied upon a continuum that posits conflict and cooperation at opposing ends. Quantitative work using the Water Event Intensity Scale (for example Wolf et al., 2003) has helpfully led us away from the threat of ‘water wars’ suggested by more environmentally determinist approaches. But the tools employed in the implicitly neo-liberal institutionalist vein (see Julien, 2012) have diverted attention away from non-violent transboundary water conflicts – which are in some cases driven by the very treaties and discursive acts labelled by the work as ‘cooperative’ (Zeitoun & Mirumachi, 2008). The same polarising effect of the continuum also tends to close down possibilities for consideration of nuance of equitability and other key aspects of justice, as we shall see.

Mirumachi’s (2007a, b) appreciation that conflict and cooperation co-exist, and development of the analytical tool Transboundary Water Interaction NexuS (TWINS) began to redress aspects of transboundary processes previously neglected by the Group. Application of the tool to the Orange-Senqu, Mekong, and Ganges rivers has laid bare how states can cooperate over technical water issues, even while openly hostile and antagonistic over other issues (Mirumachi, 2010). The approach thus clarifies how the existence of technical cooperation may lead an observer to miss the destructive, strategic, manipulative, and coercive aspects of ‘cooperation’. Conversely, in assuming that conflict is the opposite to cooperation (and thus to be avoided) the analyst using the continuum without consideration may also miss out opportunities for resolution brought about through politicisation of the water conflict/issue (Zeitoun & Mirumachi, 2008), a topic that we will return to.

In its focus on the structures that create and maintain such processes and outcomes, the body of work also asserts that useful transboundary water interaction analysis depends entirely upon accurate categorisation of the case under scrutiny. Context matters, in other words. Accurate reading of the processes and outcomes of inter-state interaction requires acknowledgement of the nature of relations between the states, and the over-arching political context creating and created by them (that is, whether relative equality, hegemonic, or dominative – see Zeitoun et al., 2011). The point made is that collective action successes

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4 This body of work employs theory and concepts from political ecology, international relations, and international political economy in a (mainly) constructivist approach to analysis. It includes the Special Issue on Hydro-Hegemony (for example Water Policy Volume 10 Supplement 2 (2008)); the sequential pieces Transboundary Water Interaction I and II (Zeitoun & Mirumachi, 2008; Zeitoun et al., 2011); numerous exploratory thought gathered from six international workshops on hydro-hegemony from 2004 to 2013; and excellent criticism of the work (Furlong, 2008; Duarte Lopes, 2012; Suhardiman & Giordano, 2012; Warner & Zawahri, 2012).

5 The term ‘cooperation’ is rarely defined, and is often ambiguously left unquestioned (see Mirumachi, 2013a, b).
between governments whose good relations are based on mutual respect of sovereignty and valuing of common interests are not relevant to governments with less perfect/more typical relations. Lessons learned by farmers and policymakers in downstream Netherlands about the River Rhine (even if somewhat less than ideal (see Dieperink, 2011)), for instance, cannot be expected to be very relevant to their kind in Iraq. Nor should they be; these latter face upstream actors in Iran, Turkey, and Syria under a wholly different set of relations than currently exists in the European Union.

2.2. The hegemon’s prerogative (power matters)

European experience with transboundary waters is also of little use to the Iraqi farmers, because of the latter’s very disadvantaged position in relation to their own government, and farms and governments in the other riparian states. To sum up the importance of the equitability theme, power matters. The Analytical Framework of Hydro-Hegemony (Zeitoun & Warner, 2006) works best where international relations evolve in hegemonic contexts; that is, where there is equality on paper and inequality in practice. The basin hegemon is seen as the ‘first amongst equals’ (Warner, 2008b: 52), in the same way that Orwell (1951) observed all have equal rights, but that ‘some are more equal than others’. Analysis that fails to interpret apparent or hidden asymmetries in power loses all significance when that asymmetry changes.

The oversight by analysts of the few options open to the Ethiopian government during its involvement in the Nile Basin Initiative (NBI) is a case in point (for example Sadoff & Grey, 2002; Whittington, 2004). These options were circumscribed both by the 1959 Nile treaty, and by its relative lack of power in relation to basin hegemon Egypt – which became more apparent only in the aftermath of the 2010 breakdown of negotiations over the NBI’s Cooperative Framework Agreement. Analytical perspectives sensitive to the influence of power asymmetries had spotted that inter-state cooperation throughout the NBI process was in many ways non-negotiable (Eissa, 2008; Cascão, 2009a, b). More recent shifts in power balances in the basin ensures more analysts are much more aware of the options Ethiopia has created (Mekonnen, 2010; Nicol & Cascão, 2011; Salman, 2012; Verhoeven, 2012).

A basin hegemon has greater leeway to decide whether a transboundary water topic even becomes an issue that must be dealt with, and what form the issue will take, if it does indeed become one. ‘Securitisation’ is a discursive tactic that may serve to legitimise water resources development and lead to water-sharing agreements (Sinha, 2012), though the quality of the cooperation (in terms of equitable allocation of the flows, or decision-making) can be questionable – as in the case of Nepal and India on the Mahakali upper reaches of the Ganges (Mirumachi, 2013b). Conversely, non-hegemons have less ability to be pro-active in determining transboundary water arrangements. Environmental agendas de-politicised or securitised by the powerful can lead to non-hegemons re-politicising or also securitisising the resource (see, for example, Sneddon & Fox, 2006; Fox & Sneddon, 2007). Politicising an issue can serve as a (discursive) trump card played to get an issue onto the agenda; for instance by Bangladesh in response to Indian action in the lower reaches of the Ganges (Karim, 2008), or by the Maldives in global climate change negotiations. But where there is real power asymmetry among formal equals, the capacity to exploit the asymmetry effectively towards unilateral or multilateral ends has been labelled the hegemon’s prerogative (Zeitoun et al., 2011).

2.3. Contesting hegemony

The London Water Research Group originally identified ‘bargaining’, ‘ideational’, and other forms of soft power as the most active in any of the forms of transboundary water cooperation and non-violent
conflict (Zeitoun & Warner, 2006; Daoudy, 2008; see also Dinar, 2009). Examples from the Jordan, Euphrates, and Nile rivers revealed a number of other tactics basin hegemons can employ to achieve transboundary water strategies possibly unacknowledged: active stalling during negotiations, the use of coercion, and the construction of knowledge and sanctioning of discourses about the outcome of a conflict. The initial ideas have been taken further, to note how in waging water conflicts states more often employ words and ideas ahead of actual violence, particularly through ‘securitisation’, as discussed above. Particularly in cases where the basin hegemon has consolidated control of the flows, water conflicts play out as conflict and cooperation that is framed and re-framed in attempts to influence the perceptions of other actors’ about the problem, the situation, and each other. There is no reason to believe statements and perceptions of ‘justice’ would be any less influenced by the use of power to frame and re-frame environmental issues.

Justice should also provide insight into the confrontation of transboundary water arrangements seen as unfair. On the role of countering hegemony, Antonio Gramsci and Stephen Lukes are the lead inspirations. The latter points out that the ‘supreme exercise of power [is] to get another or others to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires’ (Lukes, 2005 [1974]: 27). While his teacher, Mosca, had theorised that acquiring the consent of the ruled was key to maintaining rule, Gramsci understood that breaking the combined effect of force plus consent could act as a mechanism to overturn the hegemonic order (Finocchiaro, 1999; Jones, 2006).

Overturning the state of affairs would require the assembly of a coherent alliance and agenda. Here, the agency of the supposedly less-powerful becomes critical. Scott (2001: 2) elaborates upon the dynamism that comes from the duality of structure and agency: ‘a principal in one relationship may be a subaltern in another, and subalterns often exercise counter-veiling power to that of the principal’. Indeed, breaking the consent the rulers have acquired is seen as the first step to counter any hegemonic order established (Warner, 2008a). Building on this, Cascão (2003, 2009b) suggests that the development of an alternative to the order is necessary for its dismemberment⁶, as in the case of the recent shift in options of Ethiopia on the Nile. The May 2010 breakdown of NBI negotiations over the Cooperative Framework Agreement, and subsequent Ethiopian manoeuvring and alliance-building, can thus be read as the outcome of a counter hydro-hegemonic move (see Cascão, 2014). The relevance of power asymmetry may not be immediately evident to the more powerful actors who question less the established order of the world, and have no need to do so.

There is no reason to expect that any counter-hegemonic action would do other than reproduce an unjust situation, of course. Warner (2007) notes the Habermasian tradition that opens up the possibility of breaking out beyond even the hegemony/counter-hegemony cycle – through a-hegemony. This is an extension of the boundaries and realm of the possible, through ‘critical social movements’ based on cosmopolitan citizenship. It may be through social movements, then, that transboundary water interaction will best be informed by ‘justice’.

The extent to which social movements may rely on norms to further their (justice) cause is a matter of debate. The work of the London Water Research Group routinely invokes the importance of international norms and international water law (for example McCaffrey, 2007; McIntyre, 2010). As discussed in the following section, however, even as it claims to protect the weak, law in practice often turns out to cement the interests of the powerful, and to be blind to structural power. This does

⁶ Cascão (2009b) identifies coercive, leveraging, or liberating strategies.
not, however, prevent non-hegemonic states from drawing upon law and norms in their negotiations with more powerful co-riparians (see, for example, Rieu-Clarke & Loures, 2009). International water law does not directly address the root causes of state behaviour which prevent states from reaching ‘equitable and reasonable’ arrangements for the use of transboundary flows, but that goal is at least its concern (McCaffrey, 2011). Similarly, the Group maintains that while no standard can be purely objective or universally accepted, the development of a benchmark against which transboundary water use can be judged may serve at least to measure – and possibly prevent – destructive cooperation and uses of power.

3. Review of relevant justice literature

This section reviews social and environmental justice literature for readers who may not be as familiar with the features and debates of this research as they are with water issues. The initial review of basic views and tenets of social justice is followed by discussion of environmental justice, and – to the extent that it can be discussed as a separate subject – ‘water justice’ at the sub-national scale. The loose themes of equitability, process/outcomes, and structural considerations is maintained.

The term ‘equality’ is used when discussing the assumed parity of capacity and rights of actors, and ‘equitability’ when discussing outcomes that may be considered balanced and fair, though not necessarily equal (so, in the same sense that others use the term ‘equity’). ‘Equitability’ can be considered the spirit of justice; that is, the basis upon which we may use fact and thought to reason out what is ‘just’ (Woodhouse & Zeitoun, 2008).

3.1. Strands of social justice (focus on injustices)

One of the most noted concerns with justice in the research literature is that justice, in its philosophical sense, is not achievable – because of the inequalities that pervade society. This fact has not impeded millions of people throughout history from risking their lives fighting for justice, just as it has not prevented states from leaning on international water law to advance their interests. The substantial gap between the unachievable theoretical goal and the blood and sweat on the streets can be attributed in part to the interpretations of justice that societies and people have constructed. While this article alone cannot bring to full advantage the global breadth and centuries of deep thought on social justice, a brief discussion of these different strands of social justice and the different sets of moral beliefs that underpin them is beneficial.

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7 The factors listed by the UN Convention to account for when determining ‘equitable and reasonable utilisation’ may serve as a useful guide for the development of transboundary water justice principles. (These include geography and hydrological features, social and economic needs, population size dependent on the flows, existing and potential use of the watercourse, and availability of alternative sources.)

8 An attempt is offered in Woodhouse & Zeitoun (2008: 115) who suggest that ‘behaviour that obstructs basin-wide integrated water management be considered ‘unfair’, and that ‘fair’ transboundary water management exists when all parties have equitable footing and some form of proportionate say in the management’.

9 For more discussion on the distinction between ‘equality’, ‘equity’, and equitability, see Deutsch (1975) and Young (1994).

10 As noted, Chinese, Arab, Buddhist, Hindu, Islamic, etc. traditions of justice are not considered, though may be more relevant, and are certainly worth exploring.
One strand of ‘western’ social justice is utilitarianism, which seeks maximum benefit for society as a whole, perhaps at the cost of a few – often associated with John Stuart Mill. A second strand is egalitarianism, which seeks equitability in opportunity of distribution (for example access), and is associated with Amartya Sen. So-called Rawlsian justice maintains that resources should be distributed as if under a veil of ignorance as to their eventual recipients, and tolerate inequitability only when it favours the least advantaged – based on Rawls’ Just Society. And individualism/libertarianism sees justice meted out to those who have earned it, and is associated with the ‘just deserts’ view and limited role of government in society advocated by Nozick (1974).

The relevance of understanding the morals behind the different strands of justice becomes clear upon considering Sen’s (2009: 12) parable of the flute. In a fictitious village, there is a debate about which of three children should get the sole flute they quarrel over: the child who can play it, the one who has no other toys, or the one who made it. Utilitarians would favour the first child for the benefits to be reaped by all when she played it, egalitarians would favour the second child out of a sense of equality for all, while libertarians would hand the flute to the child, as it was the fruit (‘just rewards’) of her own labour.

With an appreciation of the ways and reasons knowledge is produced, constructivist analysts expect these very different world views to inform evaluations of the process and outcomes of transboundary water interaction. The selective reception of water-sharing narratives, the drafting of compromise agreements, and the use of coercion to avoid or push for negotiations would be interpreted by libertarian or egalitarian-leaning analysts, for example, in very different ways. Blinkered libertarians may see more water devoted to the most efficient sector or user as fair, while stereotypical egalitarians may wish (and possibly steer) their analysis to inform processes that oppose what they judge as unjust.

Of course, people rarely fit into any single box of moral belief, and any analyst or diplomat would likely invoke a number of principles for the approaches they take. Still, it is worth investigating the discrepancy in research on the River Jordan, to take an extreme case, that either focuses on trying to explain the asymmetric distribution of water between the actors (for example Zeitoun, 2008; Messerschmid, 2011; Selby, 2013: 19), or does not question it (for example Drieschova et al., 2011; Feitelson & Rosenthal, 2012). While the difference in emphasis is partly attributable to disciplinary nuances and preferences (international relations, political geography), and the preferred strands of justice of the researchers has not been investigated, the point is that the same transboundary water arrangement may be seen as grossly unfair through one perspective, and ‘fair enough’ from another. As Patrick (2012: 117) states, ‘There are no absolutes when it comes to justice – there is no recipe or blueprint that can be followed that will ensure that the right outcome – that the just outcome is achieved.’ ‘It’s all relative’, to use defeatist terms.

The discussion at the Sixth International Workshop on Hydro-Hegemony cautioned against relativism leading to paralysis, however. While the various beliefs defining different strands of justice may make the definition of justice an impossibly subjective task, there is often widespread appreciation of situations that are clearly ‘unjust’. There are few cases in the world where the more powerful actors suffer a clear injustice of any sort for any length of time – where the basin hegemon is coerced into a skewed treaty, for example. In this sense, ‘justice’ itself is very similar to power – justice matters most to those who are denied it. It thus becomes unnecessary for the analyst to focus on determining a ‘just’ (water) outcome, and important to focus efforts on those that are more clearly ‘unjust’.

Here, Patrick’s (2012, 2014) observation of the cyclical features of justice can help. Discussing water justice in particular, she notes how any justice struggle inevitably leads to a new set of injustices – and
thus to an unending succession of struggles. With the earlier discussion of counter-hegemony in mind, the relevant analytical challenge becomes to allow for and interpret the different strands of justice, by considering the extent to which the associated issues of legitimacy create, or re-create, a situation of injustice. These are the first steps to take in order to answer ‘who decides who should get the water’, and are returned to later.

3.2. The problems with assumptions of equality (the ‘justice’ that matters)

Upon closer inspection, the beliefs behind the different strands of justice are distinct from each other for their base assumptions about equality of participants, and equitability of outcome. To exemplify the problems this assumption can lead to, consider national laws that are meant to apply to all in equal measure. ‘Justice is blind’, the noble contention asserts, and all deserve it. But all are not born equal or with equal opportunities, and so the application of law has decidedly unequal impact. As shown in Figure 1, and noted by Anatole France, ‘The law, in its majestic equality, forbids the rich as well

Fig. 1. Law isn’t ‘just’, simply because she is (meant to be) blind. Assumptions of equal capacity and opportunity between actors are likely to mislead analysis away from equitable arrangements between them.
as the poor to sleep under bridges, to beg in the streets, and to steal bread' (Anatole France in *The Red Lily* (1894), ch. 7 (from Messerschmid, 2012)).

Rawls’ pre-condition of a ‘veil of ignorance’ for justice is based on similar liberal conceptions about the extent of equality in society. His ‘principles of justice’ conditions the existence of justice upon a relation that ‘free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association’ (Rawls, 1971: 177 (emphasis added)).

Unfounded assumptions of equality of participants has been challenged, in water research and policy. The 1991 Dublin Principles (and integrated water resources management (IWRM)), for example, subjectively place a marginalised group (women) ahead of others (for example, see discussion in Gleick, 1998). Formal recognition of asymmetries of capacity of actors is also found in cross-subsidisation of drinking water tariffs, and ‘pro-poor’ water development policy. Such policy is based on the ‘difference principle’, where economic inequalities that work to the benefit of the least advantaged are encouraged.

In the same way that environmental sustainability once felt very much like a bolt-on to land-development policy, however, the concept of ‘equitability’ in mainstream water policy seems hollowed of its meaning. Within the Dublin Principles, social and environmental concerns can be read to stand in the shadow of economic efficiency. That is, when trade-offs between efficiency, sustainability, and equitability must be made, all incentives in our political economies favour the former (see, for example, Seckler *et al.*, 2003; Brooks, 2005; Molle & Floch, 2008). Investment schemes favouring ‘dollars per drop’ or even ‘nature per drop’ are favoured over ‘care per drop’ (see, for example, WRG, 2010; FE, 2012), to return to Allan’s (2001) words.

In transboundary water analysis and diplomacy, however, asymmetries between actors (that is countries) is not simply insincere, it is rarely even acknowledged. There is little analysis that suggests the tragic consequences and continued risks of the Farraka Barrage are due in part to India’s much greater military, financial, political (and therefore diplomatic) power (see, for example, Karim, 2008; Bandyopadhyay & Ghosh, 2009). There is no expectation to see any ‘pro-Iraqi’, ‘pro-Namibian’, or ‘pro-Cambodian’ overtly subjective transboundary water initiatives on the Tigris, Orange-Senqu, or Mekong.

There may be similarities between international transboundary and sub-national water issues, when it comes to coincidence of specific morals in the established political economy. Though further research is required, the authors’ experience tells us that the utilitarian preference for maximum benefit for society as a whole is more frequently in mind, or invoked by water policy-makers, than the ‘every man for himself’ of libertarianism, or the Rawlsian/egalitarian quest for equality. This would be in keeping with the findings of Clayton’s (1998) environmental behaviour research investigating the strands of justice preferred by both environmentalists and anti-environmentalists (all sides claim ‘justice’ favours their position).

It would be expected to find mainstream political economy principles informing transboundary water diplomacy: a favouring of efficient (not necessarily equitable) transboundary arrangements that seek to satisfy the bulk of the more influential actors – typically the basin hegemon (and the political or economic elites in non-hegemonic countries). These arrangements could be considered just, even as the interests of the powerful are met, and those of the less powerful are not. As in the earlier discussion on the importance of power, then, some views of justice are more equal than others. The views on justice that matter – those that accompany the discourses and other processes which influence policy – are those sanctioned by actors considered legitimate, and whose legitimacy is generated by the mainstream political economic institutions, discourses, and thinking.
The problem for international transboundary water diplomacy is that arrangements over distribution and control of transboundary waters linger as conflicts, so long as they are seen as unfair by any side, even the weaker one. The risk is that practical and expedient ideas are reached for as ‘solutions’, while alternatives are ignored or de-legitimised. Water conflict management (rather than resolution) (for example Delli-Priscoli & Wolf, 2008; Islam & Susskind, 2012) may be an example of accommodating transboundary water arrangements created through asymmetries in power. Based on political pragmatism, the conflict management approach is at odds with the more principled approach of conflict resolution or conflict transformation (for example Lederach, 2003; Rodríguez & Correa, 2006).

3.3. Fair processes leading to unfair outcomes

‘Participation’ is a second tenet that is central to water policy, but generally ignored in transboundary water diplomacy. It is more meaningfully and directly tied to justice in the Report of the World Commission on Dams (WCD, 2000) chaired by Kader Asmal\textsuperscript{11}. The report emphasises how the recognition and involvement of local people is key to the development of alternatives, and to public acceptance – and thus the sustainability – of any dam project. It further recommends the recognition of entitlements, and equitable sharing of benefits, but distributive justice takes second seat to both recognition and participation (Sneddon & Fox, 2008).

Schlosberg (2004) is convincing in his reasons to draw similar attention to environmental justice issues, stressing the importance of fair representation and due process. This is argued on the tendency of ‘environmental justice’ research to focus on the distribution of environmental harm or benefits. Acknowledging the inherent inequality of the starting point between different groups or individuals, Schlosberg asserts that environmental justice includes equity in distribution, recognition of the diversity of affected people, and participation in environmental policy-formulation. The emphasis on process and participation comes as no surprise to analysts of power asymmetry, who have theorised on exclusion and agenda-setting (for example Bachrat & Baratz, 1962; Scott, 2001). In his Justice and the Politics of Difference, Young (1990: 23) makes the point emphatically, arguing for ‘democratic decision-making procedures as an element and condition for social justice’\textsuperscript{12}.

However, the transboundary water interaction analyst is aware of the broad criticism of participatory processes\textsuperscript{13}, and how a hegemonic order may be formed by the consent of a particular group. Young’s assertion thus begs interrogation: that is, to what extent is recognition and respect within any environmental (or transboundary water) process a condition for distributive justice. Analysis of the World Bank-coordinated negotiations between the governments of Ethiopia and Egypt on the Nile, and the US-coordinated talks between the Israeli government and the Palestine Liberation Organization (PLO) on the Jordan, has revealed the limits of joint talks and confidence-building measures sanctioned by the international community to take up social justice claims (Zeitoun, 2013). Similarly, comparison of water governance in Lao People’s Democratic Republic and Canada demonstrates that participation and equitability is not guaranteed by any particular political system, institutions or laws (Matthews & Schmidt, 2008).
Rather, politics and powerful agendas often control the space in which they evolve, and allow processes that appear procedurally fair to lead to highly asymmetric outcomes.

As such, recognition and participation may be necessary but not sufficient conditions for ‘just’ transboundary water outcomes. To the previously identified criticism of participation that warns of elite capture, tokenism, and exclusion of alternatives, should be added (once again) the trouble caused by implicit assumptions about the fairness in the order of the world, and thus to the same weight being given to equity, recognition, and participation. The critical analyst would thus be wary of justice work or transboundary water diplomacy narrowly focused on process, as it may in effect – if not in words – displace the basic condition for (egalitarian) justice, from equitability of outcome for different actors, to simply their inclusion in an apparently fair process.

4. ‘Justice’ implications for international transboundary water interaction analysis

This section teases out the implications that the readings of critical transboundary water interaction analysis and social justice holds for transboundary water analysis. Each implication is found to be under written by a process of principles and discourses informed by particular – usually unacknowledged – moral beliefs. The themes of equitability; process/outcomes; and structural considerations are maintained.

The first implication is that assumptions of equality about actors perpetuate inequitable water allocation. While the limits of Rawls’ vision have been roundly critiqued (see, for example, D’Souza, 2008), there is no similar constructive questioning of the implicitly neo-liberal institutionalist international relations approach to transboundary water interaction analysis.14 Like the philosophical underpinning of a just society, this body of work remains based on an assumption of equality between actors. The assumption is certainly unfounded at the international level, where the actors are states full of decision-making and influencing individuals, and no equality in power or capability between them is pretended. When the approach is conducted on transboundary water negotiations, it has led to useful improvements of the process (Dinar & Dinar, 2000), and the design of optimal treaties (Swanson, 2001; Gerlak et al., 2011a) – but the benefits are limited to contexts where states for all practical purposes have roughly equal power. The hegemon’s prerogative to influence in all other cases – like the limited extent of the utility of the analysis itself – is ignored.

Transboundary water analysis could thus be sharpened through greater focus on the inequalities that exist between formal equals. There may be instances where the goal of ‘equality’ itself is inequitable – for instance when entitlements are equal but needs are unequal – and this may lead to subjective privileging of a particular group, state, or system (for example the previously mentioned pro-poor ‘development’ policy, or water policy reform to favour ‘previously-disadvantaged communities’ in South Africa (Movik, 2014)). Another cosmology in international relations, Realism, does not see inequality as a problem, as the strongest party keeps the others in check and therefore guarantees stability and welfare, an assumption that created incentives for the USA to support the hydro-hegemonic

14 The quantitative work on armed water conflict prediction, for example, considers geographic, demographic, and – increasingly – political factors (even power) (for example De Stefano et al., 2010; Brochmann, 2012; Dinar et al., 2012), but not justice. Similarly, the work on treaty formation and resilience (for example Drieschova & Fischhendler, 2012) does not look at basic indicators of fairness, despite its relevance for sustainability.
powers in the Middle East (Warner, 2012). As a result, more power has been given to those who already had it, in a spirit of benevolence and common interest. The outcome was arguably the management of water conflict, but also the perpetuation of inequitable distribution of transboundary water and decision-making.

A second equitability-related implication is that the justice that matters is a function of power asymmetry and legitimacy. If trade-offs are inevitable in hegemonic transboundary water arrangements, political and economic features can incentivise (and thus favour) an approach of efficiency over one of environmental sustainability, and both are expected to be preferred over (an egalitarian view of) justice. Market mechanisms such as green water credits (ISRIC, 2008), for instance, are expected to receive greater buy-in in some circles than would moral approaches, such as water ethics, or legal tools like the UN Watercourses Convention.

If water policy reflects current socio-economic trends in the established global political economic order, the analyst must ask to what extent pragmatism is favoured over justice, in diplomacy. In his discussion of environmental ethics – which he defines as a limitation on the freedom to act – utilitarian Leopold (1989: 202) rates politically expedient or pragmatic policy as ‘anti-social’, for being against the ‘greater good’. In the view of egalitarians, the politicisation of an unfair water-sharing arrangement is seen as a progressive step towards its resolution, while attempts to simply manage the conflict (through securitisation or de-politicisation) will lead away from its resolution. The consequence for the analyst is to search for and interpret the means by which attempts have been made (by the non-hegemon or hegemon alike) to resolve (or manage) the conflict – be they moral, legal, market, or technocratic.

An implication deriving from the process theme is that power asymmetry can permit an illusion of justice. The review of the bodies of research has shown how evidence of procedural justice during transboundary negotiations may mask such asymmetries, and turn attention away from an unjust outcome. Similarly, an outcome judged as unfair by an egalitarian perspective may be judged as fair enough from a utilitarian perspective. Where one perspective is backed by an inordinate capacity of power (in the sense of being able to generate discourse and policy), the analyst would do well to investigate if the other perspectives may not be considered or legitimised. Clues here would be provided by searching for evidence of destructive cooperation.

The analysis also suggests that more attention should be paid to the structures of injustices. If one accepts that the strands of justice underwriting discourses which support the transboundary arrangements preferred by the powerful may have more legitimacy among decision-makers, one must investigate the structure that supports it. More specifically, scrutiny should be applied to the way that agendas are set, and how actors are de-legitimised or otherwise excluded.

The combined reading has lastly shown that for water justice between countries, outcomes are equally, if not more important, than process. Procedural justice has the possibility of shedding light to stakeholders otherwise ignored. However, depending on the moral beliefs and justice approaches taken, distributive justice can be more problematic. This is the case when trade-offs and environmental goods/bads are simply quantified for ease of comparison and evaluation (see Mirumachi & Toriti, 2012). Integrating the philosophical concept of justice into the analysis can provide a more sophisticated and useful basis for evaluation of negotiations of international transboundary waters. Such analysis would consider the outcome of negotiations along with an assessment of the fairness of the process, which itself would oblige an examination of the influence of power plays and power asymmetry between the actors. Focus on the process alone is considered entirely insufficient.
5. ‘Justice’ lessons for international transboundary water interaction diplomacy

Our combined reading of social justice and critical transboundary water interaction also reveals a number of lessons for transboundary water practice/interventions.

Perhaps the first of these is to seek conflict resolution/transformation instead of conflict management. If power plays can set expectations to maintain or alter the status quo of a water conflict, we would expect mediators to prefer politically pragmatic interventions over principled ones. The former technical and pragmatic water conflict management approach has been critiqued most prominently by Chupp (1991), who asserts that the mediator’s original goal of reconciliation is forsaken when the root causes of tensions are displaced in the quest for more readily achievable goals. While such interventions may have measurable impact, Chupp continues, they are devoid of a sense of (or infused with a will to accept) the outcomes of imbalanced power plays. They are also unjust, at least according to an egalitarian perspective.

In any case, the basin hegemon retains the prerogative to accept or initiate changes to the arrangement established in a basin, and thus to initiate, accept, or dismiss any transboundary diplomacy efforts. Unprincipled or justice-blind hydro-diplomacy efforts may follow the tone established by the hegemon, in an effort to appease. Justice-based diplomacy would seek to resolve the conflict, possibly through redressing inequities among actors or inequitable water allocation – and could appear as problematic or inefficient. Yet viable diplomacy would make space and encourage alternatives that are not sanctioned by the more powerful forces, instead of de-legitimising or ignoring them.

A second important lesson is that equitability is a pre-condition for ‘positive’ cooperation and a sustainable outcome. While cooperation remains the least well-defined term in hydropolitics, the analysis here suggests at least two core criteria for any assessment of ‘high intensity’ cooperation (employing the term of the TWINS tool): equality of process, and equitability of outcome. Any managed or unresolved water conflict is an injustice to someone, and any unjust situation is ultimately untenable. It follows that financial backers of transboundary water initiatives would get better returns on their investment over the long term, if the stated goal of cooperation is defined in terms of equality and equitability. This could imply foregrounding ‘care per drop’ in a genuine people-first policy, rather than the pursuit of greater ‘dollars per drop’, to fit into existing political economies.

A related lesson in the process theme is that there are limits to the utility of ‘participation’ in transboundary water negotiations. Millions of people are usually left out of transboundary water negotiations processes. While most definitely unwieldy, ‘fair’ participation – as Young (1990) stipulates it – and wider recognition of all those affected by transboundary water processes would ultimately better inform all transboundary hydro-diplomacy efforts. On the other hand, the appreciation that conflict and cooperation exist simultaneously draws attention to the less pretty faces of cooperation. Participatory processes can be just as strategic, manipulative, and coercive as these forms of cooperation (as witnessed by international campaigners over-claiming local people’s representation and interest; see, for example, Abitbol, 2010) – and may be very distant indeed from any world view of justice.

One structural lesson is that international norms can support diplomacy, to a degree. International Water Law is concerned with states reaching ‘equitable and reasonable’ water-sharing arrangements, and thus provides the basis for resolution of water conflicts. Similarly, international norms about rights to and ethics of water challenge the sovereignty approach through establishment of a ‘community of interests’ (McIntyre, 2010). Support of international norms from states and organisations acting as mediators provides those involved with a benchmark standard which can serve as the basis for a just
(and therefore sustainable) water diplomacy strategy. Of course, law is not justice, and hopes pinned to any such process should be tempered by consideration of the competing conceptions of justice, and the degree to which power can circumvent laws in any given basin.

A final implication is that sustainable transboundary water arrangements can be informed by considering the alternatives generated by counter-hegemonic movements, or justice analysis, because they can provide the basis for a strategy to alter the status quo. Identification of the forms of power behind and ‘mechanisms of injustice’ (Zeitoun & McLaughlin, 2013) that drive force plus consent could provide the basis for the optimum strategy of counter-hegemony. In cases where institutions and structures supporting hegemonic claims remain entrenched, the original unjust hegemonic arrangements would very likely be replaced by new hegemonic configurations, very possibly equally unjust. The cosmopolitan citizenship espoused by hegemonic ideals is thus preferred, to avoid entering Patrick’s ‘cycle of injustice’.

6. Conclusion – analytical tasks and suggestions

This paper’s combined reading of transboundary water interaction and social justice has revealed numerous implications for analysis, and lessons for water conflict diplomacy. The answer to the broadened hydropolitical justice question ‘who decides who should get water, when, how, and why’ is (still) ‘typically the most powerful’, but considerable nuance has been identified.

In general, ‘transboundary water justice’ seems influenced by many of the same dynamics that impact transboundary water conflict and cooperation. These include the disabling or enabling role of power asymmetry, the construction of scale to promote agendas, and the use of discourse to frame trade-offs and legitimacy.

Given the very many perspectives of social justice that are rarely invoked explicitly, clarity on the strand of justice taken would serve to reduce potential bias in research or policy. It follows that researchers and the parties involved in negotiations alike should openly state the morals underpinning their understanding of justice, or simply state their preferred view of justice (that is egalitarian, utilitarian, libertarian, etc.).

The analytical and practical implications that have come from the combined reading suggest a defined, if complex, set of follow-on analytical tasks. The first is to map transboundary arrangements (for example policies and resolution options) preferred by different actors. This would be followed by interpretation of any preponderance or assumptions of particular strands of justice supporting such arrangements. A critical examination of the assumptions behind these views (that is equitability, efficiency, or environmental sustainability) would lead to querying of the legitimacy and source of legitimisation of those who hold the views. This should be followed by identification of the manner in which the views and principles are enacted (through, for example, securitisation or politicisation). Perhaps most importantly, there is a need to for scrutiny of the underlying structure and forces that drive and enable both the processes and the outcomes – the so-called mechanisms of injustice.

There are also numerous gaps left to fill in this research area. Transboundary water management most certainly has a lot to teach, and to learn from, ‘transboundary water justice’. An improved handling of spatial scales – to include cultural and livelihood considerations (for example Norman, 2012; Conker, 2014), for example – will expose further nuance. Inclusion of time scales would serve to reveal the influence of past injustices, and the implications of current treaties upon future generations. The particularities of water that make its use a fertile ground for diplomacy, furthermore, have yet to be
considered. The most important task is to explore relevant contributions from the traditions of justice not addressed here. Future research that attempts these tasks can only further serve the goal of addressing unfair transboundary water arrangements by improving international transboundary interaction analysis and diplomacy.

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