

Is water a risk?
Synthesis Report of the Water Risk Symposium (2024)

THOMAS SCHELLENBERGER
University of Upper Alsace, Colmar, France
E-mail: thomas.schellenberger@uha.fr
ORCID: <https://orcid.org/0000-0001-6057-4290>

1. Introduction

“Water is the reflection of the soul”, said the director of Mulhouse’s IUT in his opening remarks this morning. It’s hard not to think of the myth of Narcissus, who contemplates his image in the reflection of water, until he forgets himself and dies. Beware, warns Chris Dalbom, of complacency on the part of governments, who assess their performance in integrated water resource management far too generously. Are we heading for disaster?

“When we observe the universe”, announced Dariusz Piatek, “what are we looking for? Water! But water also has a dark side”. The biblical story of the Flood refers to a very ancient catastrophic flood caused by God, who decided on the destruction of mankind, with some men escaping divine punishment. Best known as the story of Noah’s Ark in the Bible, this myth has been recorded more than 600 times in numerous human cultures.

Water poses a risk, but it is also exposed to risk, pointed out Chris Dalbom. This duality ran through all the day’s reflections. There is no life without water, but water is also sometimes on the side of death. There is also, and above all, a diversity of cultures. In some societies, nature is sacralized, their divinities are the forest and the rivers, while in other human groups, Progress or Technology are sacralized. Eco-centrism versus anthropocentrism. The exchanges between Andrés Martínez-Moscoso and Piotr Szewdo showed that water-related risks force us to question our perspectives. “We need to change the way we look at the river as humans,” said Philippe Billet.

But what brings us together? The need to establish rules and principles of justice. This is what law has been all about for millennia: channelling human behaviour, organizing societies in space and time, and anticipating risks. To pursue, in theory, an ideal of justice, and in practice, a more modest attempt to fight injustice.

A shadow has appeared several times today. It’s the risk of lawlessness. Some companies go to places where there are no rights to access resources, warned Marc Davis. Andrés Martínez-Moscoso made me understand that if nature has no rights, we can abuse it without limit. But if there are no rights anywhere, there will always be a law. It’s the law of the strongest. But law, like water, is versatile, because it’s not always on the side of the weakest.

I would like to highlight four milestones in our work today.

2. Resolving conflicts

“Pressures on water resources are becoming increasingly frequent, serious and long-lasting,” warned Loic Peyen. Every use of a resource is to the detriment of someone or something else. It’s a phenomenon of communicating vessels. So it’s a question of justice.

Hirano Miharuru has clearly shown that water-related conflicts can take on a political and international dimension.



And these pressures are only increasing with global warming. Green hydrogen, biofuels, mining, digital services: the decarbonization of our economy is generating increasingly unsustainable pressure on water resources, as our American colleagues have pointed out.

In France, we saw scenes of war during the clashes between demonstrators and police forces against the Sainte-Soline mega-basins last year. Marc Davis quoted Powell (1893): you accumulate a legacy of conflict over water; there are already too many people fighting over the resources. From Indiana to Ecuador, France to Texas, justice must settle water conflicts.

My professor Jochen Sohnle, a specialist in international water law, told me 15 years ago: “I fear that one day there will be water wars”.

3. Working together

We need to work together, and not push water onto others! This is a problem in the United States, but also in a region as small as Alsace. Between Haut-Rhin and Bas-Rhin, there are regular disagreements about limiting the risk of downstream flooding. And that’s without taking into account the role of Switzerland upstream, with the hypothesis of chemical pollution of the Rhine in 2024 examined by Peter Jung. And what about Switzerland’s role in controlling the flow of the Rhône, whose waters are essential for cooling four French nuclear power plants?

At a global level, working together means reaching agreement and basing legal decisions on international law, as Hirano Miharuru and Peter Jung have invited us to do. But it also means being curious about comparative jurisprudence and law, as Andrés Martínez-MoscOSO has done.

Working together also happens at local level. In the south of France, for example, water is transported from one territory to another via a 140 km long aqueduct. In the United States, there’s a problem of connection between federal and state laws, and they have to try to coordinate the two levels. The same is true in France, where Loïc Peyen concluded this morning that to manage water properly, public policies must not be waterproof.

4. Changing perspectives

Balanced, fair and sustainable management of water resources. Law must be long-term.

The French concept of *domanialité publique* (public domain) can help to counterbalance the notion of private property. In particular, Anthony Tardiff has shown that water can only be truly understood by bringing together public and private law. And he also recommends going beyond the distinction inherited from Roman law between goods and persons.

Many speakers stressed the need to bring the law closer to scientific knowledge, in order to forge enlightened rules and make fair decisions.

We also need to blur the notion of borders and build bridges between territories. As water knows no borders, the role of private international law, as presented by Peter Jung, is essential. It is imperative to appreciate the importance of liability law in this area, because it is by demanding accountability that justice is done.

Andrés Martínez-MoscOSO explained that Ecuador’s Constitutional Court had emphasized an eco-centric vision, considering certain elements of nature as subjects of law. This is not a model that can be applied to all societies, but it can nevertheless contribute to finding solutions for better environmental protection. As we have seen, in Ecuador, this approach led to the abandonment of the exploitation of a fossil resource. For Piotr Szwedo, we can draw inspiration from these models, but it’s impossible to import them because they don’t really make sense in Europe.

At the same time, Philippe Billet shows that it is fruitful to put the purely anthropocentric approach into perspective. Relying on ecosystems has become indispensable. We need to act as far upstream as possible with nature-based solutions. We need to find another paradigm,

another way in, one that is dynamic, by giving rivers back their freedom. Anthony Tardiff also helped us understand that, in civil law, the notion of personal injury could be broadened to include ecological damage.

5. Anchoring the law in reality

While legal fictions are indispensable, Piotr Szwedó rightly pointed out that they have their limits.

There's no point in law or legal research if it's not useful, insists Marc Davis. Do legal rules really serve a purpose? For Chris Dalbom, the law is sometimes powerless when confronted with reality, or when cooperation on the ground is lacking. The powerlessness of the law in the water sector, when rules are poorly thought out or poorly applied, was underlined by all the speakers. In Toulouse (France) today, water prices rise in the summer to influence consumer behavior. How can this be implemented in a truly fair way?

6. Conclusion

We were told this morning that chickpeas are the future of mankind. Since corn requires too much water, that's the end of popcorn! But our American friends are inventive and adaptable, and in the meantime, we can continue to enjoy the Kyoto sweets distributed to us by our friend Hirano Miharū.