# The Historical, Comparative, and Convergence Trifecta in International Water Law: A Mexico-U.S. Example

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*Summary*

Doctrinal disconnects complicate adjudication of international water rights controversies. However, legal history and comparative law sources can fill gaps and build analogies to bridge differences in substantive law. Between Mexico and the United States in particular, the civil-common-law divide at times appears vast, but has been occasionally narrowed by reference to shared Roman principles of usufruct or by incorporation of Mexican law into the U.S. system. Such meeting places for doctrine suggest that, even in domestic courts, nations need not attempt to resolve international problems through domestic law alone.

One of the most intractable issues in international natural resources law has been the equitable distribution of water beyond national boundaries. Many watersheds (both surface and groundwater) cross artificial political lines and have created international tensions. These controversies have sometimes been resolved by adjudication or diplomacy, but have often persisted due to legal or policy divides.[1] Mexico and the United States have long been at odds over their common watercourses (the Colorado and Rio Bravo/Rio Grande Rivers on the surface, and various underground aquifers), but analysts of this contestation usually treat it as only political and disregard the problem of their differing legal systems.[2] A recent U.S. decision, *Consejo de Desarrollo Económico de Mexicali, AC v. United States*,[3] illustrates the inadequacy of domestic law to address international water claims in this region. The ruling holds that the U.S. Bureau of Reclamation's lining of California's All-American Canal with concrete could not be enjoined to protect cross-border agriculture or ecosystem use.

This Article explores the Mexico-U.S. legal disconnect epitomized by the case (Part I); historical and comparative perspectives showing that legal dichotomies have been at least partially reconciled in other contexts (Part II); and issues that have separated, but might in fact bring together, the Mexican and U.S. water law regimes (Part III). I conclude by suggesting how the *Consejo* decision might have been otherwise resolved, and assess the possibilities for more comprehensive legal harmonization (Part IV).

## I. The All-American Canal Controversy and the Limits of Domestic Law

Irrigation of the Imperial and Mexicali Valleys straddling the border states of California and Baja California Norte began in the early 1900s when U.S. investors built canals from the Colorado River traversing the less hilly Mexican

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1. Examples of such disputes are detailed in The Evolution of the Law and Politics of Water 227-352 (Joseph Dellapenna & Joyceta Gupta eds., 2008). *See generally* Stephen C. McCaffrey, The Law of International Watercourses (2d ed. 2007) (surveying international water law theories, cases, and principles).
2. *See* Peter H. Gleick, *United States International Water Policy*, *in* A Twenty-First Century U.S. Water Policy 263, 265-67 (Juliet Christian-Smith & Peter H. Gleick eds., 2012); *see* Myron B. Holburt, *International Problems*, *in* Values and Choices in the Development of the Colorado River Basin 220 (Dean F. Peterson & A. Berry Crawford eds., 1978).
3. 482 F.3d 1157 (9th Cir. 2007).

side.[4] Promoters of agriculture in this period knew that water would be lost when transported through dirt canals; for example, one contract guaranteed that 2% additional water would be provided to an American farmer "to make up for seepage and evaporation between the boundary line and the place where the water is to be used."[5] U.S. irrigators' concern that the water supply was unreliable due to Mexico's political instability and the addition of canals to serve the city of Mexicali led to pressure for an "All-American" canal entirely within U.S. territory.[6] The All-American Canal was authorized by the U.S. Congress in 1928 and completed in 1942.[7] In addition to its value to U.S. farmers in the Imperial Valley, the Canal allowed seepage to recharge groundwater supplying Mexicali Valley residents, businesses, and the Colorado River Delta's ecosystem.[8] But in response to Southern California's population growth and accompanying water demand, in 1994, the Bureau of Reclamation approved a project to line the Canal with concrete to prevent further water loss.[9]

The *Consejo* litigation was initiated in 2005 when a Mexican business and community group and two U.S. environmental organizations sued the U.S. Department of the Interior and the Bureau in federal court to enjoin the lining.[10] Plaintiffs alleged deprivation of property without due process, a constitutional tort, and violations of the National Environmental Policy Act (NEPA),[11] the Administrative Procedure Act (APA),[12] the Endangered Species Act (ESA),[13] and the Migratory Bird Treaty.[14] The district court granted defendants' motions to dismiss on some counts, and for summary judgment on others.[15] After oral argument was heard during plaintiffs' appeal to the U.S. Court of Appeals for the Ninth Circuit, Congress passed an omnibus tax bill containing a section ordering the immediate lining of the Canal.[16] Bipartisan congressional support for the rider, as well as that of the San Diego County Water Authority, aimed at halting the *Consejo* litigation, forestalling further environmental review, and deferring to existing Mexico-U.S. treaties to settle border water disputes.[17]

Based on this legislative support for the lining project, the Ninth Circuit held that the 2006 Act now exempted the Bureau of Reclamation from challenges and ordered the trial court to dismiss all of plaintiffs' claims, either for mootness or for lack of subject matter jurisdiction.[18] One of the environmental plaintiffs' attorneys consulted the author regarding the potential for an appeal to the U.S. Supreme Court—an option which was ultimately not pursued.[19] Significantly for our purposes here, the parties in *Consejo* did not raise, nor did the court address, the disconnect between legal ideas about water on opposite sides of the border. It is likely that the court simply assumed that no claims arising under Mexican law were cognizable in the United States, so the damages to agriculture, urban supply, and the environment in Mexico were simply not remediable.[20] Yet in other contexts, a common legal language for dealing with conflicts between different legal regimes had been developed.

## II. Historical and Comparative Perspectives

As historian Alan Watson has noted, legal history is valuable "for explaining present and future law."[21] The fact that medieval Europe was largely governed by two supranational legal systems, canon law and the neo-Roman *jus comune*, shows us that disputes could be resolved via these structures as well as through local customary law.[22] Even at the end of the 19th century, when Europe had separated into nation-states with more or less distinct bodies of law, aspects of the *jus comune* remained influential in both civil and common-law jurisdictions.[23]

For example, water law came under the universalizing influence of Roman law in periods of doctrinal transition. Historian Frederic Maitland has explained how, as an independent English law was being created in the 13th century, jurist Henry de Bracton incorporated classical references to "islands that arise in mid-stream," among his other uses of Roman law to fill gaps in national or provincial custom.[24]

4. Oscar Sánchez Ramírez, *El Agua del Río Colorado en Baja California*, 1 Voces de la Península, abril-junio 2003, at 7.
5. Agreement, Sociedad de Irrigación y Terrenos de Baja California and D.O. Anderson, 1903, *in* Land and Water Titles and Agreements, 1896-1907 (manuscript in Huntington Library, San Marino, California).
6. Jeffrey Kishel, *Lining the All-American Canal: Legal Problems and Physical Solutions*, 33 Nat. Resources J. 697, 699-704 (1993); Sánchez Ramírez, *supra* note 4, at 7, 8.
7. Boulder Canyon Project Act of 1928, 43 U.S.C. §617 (1928).
8. 482 F.3d at 1163; Nicole Ries, *The (Almost) All-American Canal:* Consejo de Desarrollo Económico de Mexicali v. United States *and the Pursuit of Environmental Justice in Transboundary Resource Management*, 35 Ecology L.Q. 491, 502-04 (summarizing briefs and other evidence of the seepage's ecological benefits).
9. 482 F.3d at 1164; Ries, *supra* note 8, at 496-98. For analysis of the lining project's potentially damaging effects on urban supply, agriculture, and the environment, see generally El Revestimiento del Canal Todo Americano (Vicente Sánchez Munguía ed., 2004).
10. 482 F.3d at 1165. The city of Calexico, California, later intervened as a plaintiff, and various irrigation districts and the state of Nevada joined the defense. *Id*.
11. 42 U.S.C. §§4321-4370h, ELR Stat. NEPA §§2-209.
12. 5 U.S.C. §§551-559.
13. 16 U.S.C. §§1531-1544, ELR Stat. ESA §§2-18.
14. 16 U.S.C. §§703-712.
15. Consejo de Desarrollo Económico de Mexicali, AC v. United States, 417 F. Supp. 1176, and 438 F. Supp. 1207 (D. Nev. 2006).
16. Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922.
17. *See* Ries, *supra* note 8, at 515-16 (quoting San Diego County Water Authority officials' statements regarding the bill's purpose).
18. 482 F.3d at 1158, 1174.
19. E-mail from author to Gideon Kracov, Esq. (Apr. 30, 2007) (on file with author).
20. *See* Ries, *supra* note 8, at 494-95.
21. Alan Watson, Legal History and a Common Law for Europe 176 (2001).
22. *See generally* Raoul C. Van Caenegem, European Law in the Past and the Future 1 (2002).
23. *See generally* Manlio Bellomo, The Common Legal Past of Europe 1-33 (1995) (observing the pervasiveness of Roman legal methodology and substantive law in national codification).
24. Select Passages From the Works of Bracton and Azo xxvii, xxix (Frederic Maitland ed., 1895). This phrase refers to a discussion by the 2d century Roman legal scholar Gaius, who distinguishes between an addition to riparian property created gradually by alluvial accretion, which remains with that parcel's owner, and an island formed in the middle of a river, which is to

And Watson has analyzed how Roman law on neighboring landowners' rights to use water or divert it onto or from another's land influenced developing jurisprudence in France, Scotland, South Africa, and the United States.[25] The fact that nation-states have historically looked beyond their boundaries for legal authority has implications for dispute resolution between countries as well.

Comparative analysis of how different countries have successfully mingled doctrinal traditions, and continue to apply the mixture, provides another model for cross-border legal accommodation. "Mixed jurisdictions" such as South Africa, Scotland, Louisiana, Quebec, Puerto Rico, the Philippines, and Israel currently fuse substantive civil law with procedural and evidentiary common law.[26] In turn, these jurisdictions can become sources of doctrine for other polities still struggling to assimilate distinct traditions, as Louisiana was for Texas and California when they were incorporating Spanish law into common law after the United States acquired the Southwest from Mexico.[27] The comparative method was successfully applied to a water controversy in 1996 by the Supreme Court of India, when that tribunal cited American cases on the public trust doctrine (originally Roman but expanded by U.S. jurisprudence) to block a state from leasing ecologically fragile riparian land to a private developer.[28]

That the doctrinal accommodation model has been used historically and comparatively as a legal source for national dispute resolution augurs well for its applicability to international conflicts. In fact, the contemporary value of legal history and comparative analogies has been demonstrated in Europe by the rise of a unified European Union (EU) jurisprudence, considered by some as "a new *jus comune*."[29] This reconstitution of supranational legal hegemony includes legislation requiring the management and protection of watercourses at the river basin level, whether within or crossing national boundaries.[30] While transnational environmental instruments and litigation to enforce them have been criticized as ineffective and as possibly undermining of state sovereignty, the European experience suggests that Mexico-U.S. water problems could be addressed in a similar manner.[31]

## III. Mexican and U.S. Water Regimes: Contrast and Convergence

The wide divergence in legal doctrine between civil law in Mexico and common law in the United States illustrates why resolution of water disputes like the *Consejo* case has been so difficult. Mexican water rights, descended from Roman and medieval Spanish concepts and applied in the northern territories that became the U.S. Southwest after 1848, have traditionally been shared among various users, especially during times of drought.[32] Groundwater was considered appurtenant to land ownership, but the landowner's use of it could be restricted if he maliciously denied access to a neighbor, ignored an existing legal right, or prejudiced a town with no other adequate water source.[33] Modern legislation in Mexico regulates surface and groundwater together at the national level, and covers extraction, use, and conservation to achieve sustainable development.[34]

U.S. water law is less centralized, being disaggregated into state law.[35] It also differs significantly from Mexican law, particularly in the western states, which developed the doctrine of prior appropriation granting an absolute, exclusive right in surface waters and underground streams to the first beneficial user.[36] In the eastern United States, riparian doctrine provides that every landowner along a watercourse has an appurtenant right to reasonable use of the water.[37] California incorporates elements of both systems.[38] Groundwater, typically defined as percolating waters rather than a stream's subflow, is subject to five different rules, depending on jurisdiction: the rule of capture; American reasonable use; correlative rights; *Restatement (Second) of*

be shared by all the surrounding riparian proprietors. *See* Gaius Inst. 2.70 (William M. Gordon & Olivia F. Robinson trans., 1988).

25. Alan Watson, The Evolution of Western Private Law 138-92 (2001).
26. *See* Vernon Valentine Palmer, *A Descriptive and Comparative Overview*, *in* Mixed Jurisdictions Worldwide: The Third Legal Family 17, 76-80 (Vernon Valentine Palmer ed., 2001). *See also* Warren M. Billings, *Mixed Jurisdictions and Convergence: The Louisiana Example*, *in* Magistrates and Pioneers: Essays in the History of American Law 333, 361-62 (Warren M. Billings ed., 2011) (Louisiana's blend of Roman, French, Spanish, British, and American law exemplifies the successful harmonization of different systems).
27. *See* Peter L. Reich, *Siete Partidas in My Saddlebags: The Transmission of Hispanic Law From Antebellum Louisiana to Texas and California*, 22 Tul. Eur. & Civ. L.F. 79 (2007).
28. M.C. Mehta v. Kamal Nath and Others (1997) 1 S.C.C. 388. For a discussion of the public trust doctrine protecting rivers, the seashore, and other resources for general use, see Joseph L. Sax et al., Legal Control of Water Resources: Cases and Materials 590-628 (4th ed. 2006).
29. Van Caenegem, *supra* note 22, at 136-37.
30. *See* European Union Directive 2000/60/EC of European Parliament and Council of 23 Oct. 2000 Establishing a Framework for Community Action in the Field of Water Policy, O.J.L. 327/1.22.12.2000, 1-72, http://ec.europa.edu/environment/water/waterframework/index.en.html (last visited Apr. 11, 2013). *See also* Paulo Canelas de Castro, *European Community Water Policy*, *in* The Evolution of the Law and Politics of Water, *supra* note 1, at 227 (summarizing the legislative origins and enforcement mechanisms of the Water Framework Directive).
31. For criticisms of international legal structures, see Eric A. Posner, The Perils of Global Legalism 207-25 (2011) (climate change treaties and lawsuits merely drive polluting industries to nonenforcing venues); *see* Jeremy A. Rabkin, Law Without Nations? Why Constitutional Government Requires Sovereign States 144-48 (2005) (hazardous waste, biosafety, and climate change measures restrict national policies favoring economic growth).
32. *See* Michael C. Meyer, Water in the Hispanic Southwest 145-64 (1984). Many criteria have been used to resolve disputes, including just title, need, priority, reason for use, legal right, and the common good. *Id.*
33. Michael C. Meyer, *The Living Legacy of Hispanic Groundwater in the Contemporary Southwest*, 31 J. SW 287, 297 (1989).
34. Ley de Aguas Nacionales, D.O. 1 Dec. 1992. *See also* Stephen Zamora et al., Mexican Law 407-10 (2004) (summarizing constitutional provisions, regulatory authorities, right to benefit from public waters, and penalties).
35. *See generally* Robert E. Beck, Waters and Water Rights 4 Subpart B (State Surveys) (3d ed. 2009).
36. *See* Sax et al., *supra* note 28, at 124-26. Underground streams were considered part of surface waters, contrasted with percolating groundwater, which is subject to different rules. *Id.* at 411-14.
37. *Id.* at 27-28.
38. *Id.* at 340-42.

*Torts* reasonable use; and prior appropriation.[39] Thus, the Mexican emphasis on communal sharing, in which priority is only one factor, contrasts sharply with the U.S. focus on individual ownership.

These doctrines have borne distinct results in the two countries, and have shaped water negotiations between them. In the late 1870s, when municipal councils in Mexico City and in the state of Tlaxcala attempted to divert water used by local farmers, federal courts enjoined the cities from doing so.[40] By way of contrast, under identical circumstances, the California Supreme Court held in 1895 that the city of Los Angeles could monopolize local water sources to the detriment of other users based on a "pueblo water right" supposedly originating in colonial Spanish California.[41]

These conflicting water doctrines have affected not only internal jurisprudence in Mexico and the United States, but their relations with each other as well. In 1928, the two countries' representatives to the International Water Commission were negotiating the status of existing diversions from the Colorado and Rio Grande, and the American Section proposed that as a matter of comity such uses be recognized and confirmed as prior appropriations.[42] The Mexican Section rejected the proposal, stating that it could not agree to any restriction on its sovereignty over river tributaries within its own territory, and so could not recognize even established uses of this water on the other side of the border.[43] Ironically, taking a less hard-line position against cross-border prior appropriation would have strengthened Mexico's position years later in the *Consejo* case.

Due to these doctrinal disparities, Mexico-U.S. water disputes have been addressed largely through diplomacy rather than the courts. In 1944, the two countries signed a treaty apportioning the Colorado River, allotting 1.5 million acre/feet per year to Mexico.[44] The apportionment, however, was based on unusually high flow measurements during the preceding years, and led to excessive allocation, given the multiple agricultural, business, and urban demands to which the river is put.[45] Water quality, an issue not resolved in 1944, was partially addressed by the International Boundary and Water Commission (IBWC, the successor to the International Water Commission) in Minute 242, which stipulated that overly saline water would not be charged against Mexico's entitlement.[46] The IBWC representatives recently agreed to Minute 319, by which Mexico will accept reduced water deliveries when reservoirs are low, and the United States will increase deliveries when supply is higher, as well as authorize additional investment in Mexican earthquake repairs and conservation infrastructure.[47] This incremental improvement in water dispute resolution benefits both sides, but the IBWC has been criticized for secretiveness, bias in favor of regional agricultural interests, and apathy toward ecology.[48] A further weakness of diplomatic approaches is that many agreements can take place only at the national level, due to the U.S. disaggregation of political authority compared with the far more centralized Mexican governance structure.[49]

Notwithstanding divergent legal regimes and diplomatic limits, a few examples of Mexico-U.S. legal integration suggest opportunities for water law harmonization. The traditional Roman distinction between gradual accretion and rapid avulsion of watercourses became the basis for the IBWC's settling ownership of the Rio Bravo/Rio Grande *bancos* (sandbar islands).[50] Bancos were allo-

39. For a full discussion of these distinct rules, beyond the scope of this Article, see *id.* at 414-17. Some jurisdictions, notably in Southern California, have implemented government control and allocation of groundwater basins. *See* William Blomquist, Dividing the Waters: Governing Groundwater in Southern California (1992).
40. Jurisprudencia Federal, El Foro: Periódico de Jurisprudencia, Legislación y Ciencias Sociales, Nov. 1, 1878, at 342; *id.*, July 16, 1879, at 46. *See also* Guía de Fuentes Documentales Para la Historia del Agua en el Valle de México (1824-1928) (Salvador Avila González ed., 1997) (summarizing case files on water disputes between Mexico City and other users).
41. Vernon Irrigation Co. v. City of Los Angeles, 39 P. 762, 766 (Cal. 1895). For a discussion of the judicial invention of the pueblo water right and its application in Los Angeles, San Diego, and New Mexico despite case file documentation that no such absolute and exclusive property in water had existed in Spanish or Mexican California, see Peter L. Reich, *Mission Revival Jurisprudence: State Courts and Hispanic Water Law Since 1850*, 69 Wash. L. Rev. 869, 884-906 (1994). *See also* Sax et al., *supra* note 28, at 354-56. The pueblo right has been upheld in California as recently as 1975. City of Los Angeles v. City of San Fernando, 537 P.2d 1250 (Cal. 1975). It has, however, been overruled in New Mexico. State of New Mexico v. City of Las Vegas, 89 P.3d 47 (N.M. 2004).
42. Report of the American Section of the International Water Commission, United States and Mexico, H.R. Doc. No. 359, at 14 (1930).
43. *Id.* For the history of this principle of absolute territorial sovereignty over water resources, enunciated in 1895 by a U.S. Attorney General as the "Harmon Doctrine" but rarely put into practice, see McCaffrey, *supra* note 1, at 76-110.
44. Treaty Between the United States of America and Mexico Respecting Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Nov. 8, 1945, 59 Stat. 1219.
45. Michael Cohen, *The Delta's Perennial Drought: Instream Flows for an Over-Allocated River*, 19 Global Bus. & Dev. L.J. 115, 121-24 (2006).
46. IBWC, Minute 242, Permanent and Definitive Solution to the International Problem of the Salinity of the Colorado River (Aug. 30, 1973), *available at* http://www.ibwc.state.gov/Files/Minutes/Min242.pdf. For discussion of the salinity impacts on the Colorado River Delta and attempts to mitigate them, see Kara Gillon, *Environmental and Other Implications of Operating the Yuma Desalting Plant*, 14 Global Bus. & Dev. L.J. 129 (2006).
47. IBWC, Minute 319, Interim International Cooperative Measures in the Colorado River Basin through 2017 and Extension of Minute 318 Cooperative Measures to Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California (Nov. 20, 2012), *available at* www.ibwc.state.gov/Files/Minutes/Min_319.pdf.
48. *See* Robert J. McCarthy, *Executive Authority, Adaptive Treaty Interpretation, and the International Boundary and Water Commission, U.S.-Mexico*, 14 U. Denv. Water L. Rev. 197, 199-200 (2011). Robert McCarthy formerly served as General Counsel to the IBWC's U.S. Section. For a summary of IBWC efforts to balance infrastructure projects with environmental needs, as well as expand opportunities for public participation, see Sally E. Spener, *Current Policy Direction at the International Boundary and Water Commission, United States and Mexico, United States Section*, 2 J.L. & Border Stud. 65 (2002).
49. *See* Leonard Cardenas, The Municipality in Northern Mexico 18 (1963) (Mexican municipalities are subordinate to state government, contrasted with U.S. chartered cities). *See also* Carlos F. Lascurain Fernández, El Desempeño del Régimen Ambiental México-Estados Unidos: Manejo de las Aguas de los Ríos Bravo y Colorado (2010) (applying international relations theory to cross-border water problems faced by different levels of government).
50. *See* Comisión Internacional de Límites Entre México y los Estados Unidos, Sección Mexicana, Eliminación de Bancos del Río Bravo, Primera Serie 5-6 (1910). According to classical Roman law, alluvial ad-

cated in the Colorado River on the same basis.[51] Just as Henry de Bracton did in the 13th century, the Commission used a legal historical source, in this instance an ancestor of Mexican civil law, to fill a gap and reconcile two doctrinal regimes.

At the state level, American courts have begun the process of integrating Mexican natural resources law into the U.S. doctrinal system, as a recent Colorado Supreme Court decision demonstrates. In *Lobato v. Taylor*,[52] petitioners, successors in interest to an 1843 Mexican land grant, argued that they were entitled to grazing, woodcutting, and fishing rights on the community's former common lands, now occupied by a ski resort. In an amicus brief for petitioners, the author explained how these usufructuary traditions were recognized by Mexican law of the 1840s, and were therefore incorporated into the 1848 Treaty of Guadalupe Hidalgo protecting the property of individuals residing in territories being annexed to the United States.[53] The state Supreme Court decided the case for petitioners on a number of grounds, including prescription, prior use, and estoppel, and cited Mexican law throughout the opinion, stating that "Mexican land use and property law are highly relevant in this case in ascertaining the intentions of the parties involved."[54] *Lobato*'s successful incorporation of Mexican civil law into a U.S. state's common law offers a prototype for applying this legal mixture at the binational level.

## IV. Conclusion

Mexico and the United States allocate water, and natural resources generally, in markedly dissimilar ways, but the examples above demonstrate that these doctrines are not necessarily incompatible. How might a more "mixed jurisdiction" model be applied to the *Consejo* case? Drawing on the mutual Roman heritage of both civil and common law, combined with Mexico's flexible water system, the court could have awarded uses to the country most in need in times of shortage. In effect, this is what IBWC Minute 319 already does, but characterizing such access as a legal right, or as emanating from the public trust, would carry more force.[55] Minute 319's delivery plan presumes voluntary cooperation, and is limited to the five-year duration of the agreement.[56]

Common-law prior appropriation could also be integrated into the system, which would protect Mexican farmers' pre-lining diversions, and arguably the Colorado River Delta, as well as allow surpluses to be transferred where they were most needed.[57] The lining project itself would not have to be blocked; in fact, lining the Canal would facilitate water control and distribution for implementing usufructuary and prior appropriative rights.

Even if hypothetical, this blending of civil and common-law concepts as a way to resolve the All-American Canal controversy strengthens the argument for a larger North American Community. Legal harmonization could ultimately help synchronize Canadian, U.S. and Mexican transportation, infrastructure, currency, a customs union, and regulation.[58] Canada, of course, already includes the mixed jurisdiction of Quebec, which would facilitate the dialogue of civil and common law.[59] However, it may be too soon to speak of a North American *jus comune*, given policy clashes and the economic decline associated with the North American Free Trade Agreement, a more narrowly trade-focused structure than the EU.[60]

It is clear that at least on a regional basis, employing legal history, comparative law, and the idea of legal convergence will help solve cross-border allocation problems of river systems such as the Colorado. The future of international natural resources law lies not in piecemeal adjudication relying entirely on one country's domestic legal sources, but in traversing doctrinal boundaries to find more comprehensive solutions.

ditions, or accretions, altered a riverine boundary while rapid changes, or avulsions, did not. *See* Gaius Inst. 270 (William M. Gordon & Olivia F. Robinson trans., 1988); Fritz Schulz, Classical Roman Law 363 (1951, reprinted ed. 1992).

51. *See* IBWC, Minute 83, Re Survey of Portion of Colorado River That Forms Boundary Between U.S. and Mexico (Aug. 4, 1926), *available at* www.ibwc.state.gov/Files/Minutes/Min83.pdf.
52. 71 P.3d 938, 943 (Colo. 2002).
53. Brief of Amici Curiae Bi-National Human Rights Commission et al., Lobato v. Taylor, 71 P.3d 938 (Colo. 2002).
54. 71 P.3d at 946. *See also* Peter L. Reich, *Litigating the Sangre de Cristo Land Grant Case*, 5 Scholar 217 (2003) (discussing *Lobato*, and comparative perspectives from Native American and New Zealand Maori indigenous rights cases).
55. *See* Shelley Ross Saxer, *The Fluid Nature of Property Rights in Water*, 21 Duke Envtl. L. & Pol'y F. 49 (2010) (arguing for converting U.S. water law to a usufructuary rather than private property scheme and giving federal and state governments stewardship over a public trust in water in order to distribute uses).
56. *See* Minute 319, *supra* note 47.
57. *See* Micha Glaser, *The Appropriation Doctrine: A Tool For Continental Water Marketing Along the U.S.-Mexico Border*, *in* Continental Water Marketing 93 (Terry L. Anderson ed., 1993) (arguing for a cross-border water market where rights are defined according to consumptive use and protected against third-party impairment).
58. *See generally* Robert A. Pastor, The North American Idea 168-69 (2011) (discussing necessary components of a North American Union).
59. *See* Claire L'Heureux-Dubé, *Bijuralism: A Supreme Court of Canada Justice's Perspective*, 62 La. L. Rev. 449 (2002) (Canada's development of two legal traditions increases opportunities for commercial exchange with other countries).
60. *See* Pastor, *supra* note 58, at 7-10, 16-18.