Law activation strategies and
creative responses in environmental policy implementation

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ABSTRACT

Despite the exponential development of environmental policies, problems related to increased pollution levels, natural resource depletion or climate change persist and are constantly evolving. The fact is that, as much as policy adoption, implementation represents a highly conflictual dynamic. Far from being mechanistic or collaborative, it would better be seen as a process of rules appropriation shaped by webs of power relations, within which a large range of protagonists deploy competing strategies and creative responses.

By reconstructing the actors' games inherent to these processes, the contribution aims to shed light on the often-trivialized political dimension of implementation. In this goal, the coping strategies and social interactions of state and non-state actors are put into perspective through a bottom-up and actor-centred approach that captures implementation in a less managerial mode than that which public policy analysis usually proposes. Covering concretisation as well as alternative endeavours (passivity; diversion; circumvention; innovation), the notion of *law activation strategies* is located at the centre of the proposed conceptual framework, where it interacts with other variables such as power relations and institutional context. The theoretical background and main variables of the framework are presented, and its analytical potential illustrated through empirical examples drawn from Swiss case studies (related to various environmental issues such as flood risk management or ecosystem preservation).

All in all, the contribution demonstrates how *politics never end* and how actors always try to reformulate the modalities of collective action, highlighting the pitfalls of recent approaches dominated by assumptions of consensus and collaboration. It allows for organisation of and systematisation of an actorial analysis often neglected or merely considered as an afterthought and, by doing so, emphasizes a very subtle repertoire of actors' games. Its input to public policy analysis is, in that respect, substantial.

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[1] A similar version was presented at the 2014 EGPA Annual Conference (Speyer, 10-12 September).

Introduction

A dried-out river at the height of summer, when withdrawals are at their maximum; a significantly and durably degraded ecosystem because of a massive use of pesticides; an exceedingly high concentration of ozone and particles in a zone saturated with motorised transport. Despite the exponential development of environmental policies, issues related to increased pollution levels, natural resource depletion or climate change persist and are constantly progressing. Discourses have evolved, rules have been adopted (more or less flexible, restrictive, voluntary), and considerable efforts have been engaged without, however, producing the expected impacts (see Gleick et al. 2009 or IPCC 2014 regarding, respectively, water and climate change). Clearly, the question arises as how to explain these gaps between abstract rules and principles, on the one hand, and concrete situations on the field, on the other hand.

One currently widespread perspective within the environmental governance literature is to insist on the inappropriateness of the existing sets of rules. Schematically, the reasoning proceeds as follows: in a first step, environmental problems are presented as (super-)wicked in nature (Levin et al. 2012) and, as a result, as uncommonly difficult to tackle with traditional policy instruments; then, in a second step, changes in the nature of collective action are called for and a vast array of allegedly new approaches proposed – from social resilience (Adger 2000) to adaptive co-management (Olsson et al. 2004), transition management (Kemp et al. 2007) or collaborative governance (Ansell & Gash 2008). In a nutshell, the focus is mainly put on *good policy design* and *wise decision making*, without much consideration for what happened once programs are adopted.

The present paper suggests it could be worth taking an alternative path. Rather than recommending for a 'new' rule, concept or theory, it proposes to focus on the processes by which *existing policies* are translated into action. Recognizing the social complexity of collective action, it argues that the aforementioned gaps are to be explained by as results of the actors' games occurring between rules and action. Building on literature in public policy analysis and sociology, it sheds light on the intrinsically political nature of environmental policy implementation and seeks to fashion an innovative framework to describe, understand and explain these processes.

A three-steps argument is developed in that goal. A targeted literature review of *implementation studies* is, first, provided. The limits of this body of literature, as well as the need 'to bring politics back in', are identified. On this basis, an alternative approach is developed in order to capture the relationship between rules and actors in a less managerial mode than that which public policy analysis usually proposes. Covering concretisation as well as alternative endeavours (passivity; diversion; circumvention; innovation), *law activation strategies* are located at the centre of a framework where they interact with other variables such as power relations and institutional context. The analytical potential of the framework is, in a third step, illustrated through an empirical illustration related to aquatic ecosystems protection in Valais, Switzerland.

The politics in implementation studies

In environmental as in other policy areas, it is clear that the course of action rarely follows mechanically the paths set out in policy designs. Actors should not be seen as the empty recipients of rules they are eager to bring into life in the real world. This explains why the deficit – or gap, to borrow a less connoted term (Dunsire 1978) – between expectations and effective realisations can be wide. The adoption of policy programs, however well designed, is never an end in itself. Quite the contrary, actors necessarily need, for a given rule to produce its effects, to translate its abstract provisions at the level of action. Analysing public policy beyond the way it has been formulated on paper is, therefore, a necessity to fully understand the logic of environmental collective action.

This necessity, implementation scholars understood it a long time ago (see in particular the founding book of Pressman & Wildavsky 1973). Focusing on the "missing link" (Hargrove 1975) between expectations and realisations, they "succeeded in drawing [political science] from what was once almost an exclusive attention to the politics of making laws to consider what happens once laws are passed" (Ingram 1990: 462). Formerly, the practical details of implementation were left to professional members of the administration (Gunn 1978); with implementation studies, this phase becomes a research object in its own right, leading to a wide and eclectic range of frameworks, theories and models. By bringing into academia the analysis of a stage formerly considered as purely mechanical, this new academic field contributed to open up "the black box of policy making in a number of ways" (Palumbo & Calista 1990: 14).

Going extensively through the four decades, three generations, and wide diversity of approaches that characterise implementation studies would go beyond the scope of this paper (see, for recent and comprehensive overviews, Hill & Hupe 2009 or Winter 2012). What we want to highlight here is the fact that, on some level, the *"link is still missing"* – as Robichau & Lynn (2009: 22) nicely putted it. In particular, although an implementation perspective should have contributed to bring *"politics back into policy analysis"* (Schofield 2001: 247), it appears that this political dimension tends to be reduced to the smallest share. This is not to say that implementation research represents a unified field – clearly, "no general implementation theory has emerged" (Winter 2012: 256) – but only to recognize that it remained dominated by (if not captive of) trends the long-enduring nature of which appears problematic in that respect.

In a voluntarily caricatured way, implementation studies have too often been practiced as a "governing-elite phenomenon" (deLeon & deLeon 2002: 468). They adopt a "straightforward 'top-down' orientation" (Hupe 2011: 65, based on Saertren 2005) and generally ignore the 'bottom-up' challenge that emerged in the eighties (e.g., Barret & Fudge 1981, Hjern & Hull 1982). Frequently framed in managerialist terms, they consider concrete action mainly as a problem of transmission and application of legislative provisions decided at the top. The focus is on 'goal compliance' (Winter 2012) and a rather pessimistic tone is widespread (Hill & Hupe 2009: 45), reflected in research questions formulated in terms of barriers, deficits, or problems (e.g., Nilsson et al. 2009; Dupuis & Knoepfel 2011). For three reasons at least, although implementation studies represent a long and rich research tradition, we argue that they are too narrowly conceived to fully capture the political dimension of implementation:

- The perspective is, first, mainly state-centred. It concentrates on the relations between the top- and street-levels of administration rather than to explore social interactions as a whole. From the beginning, a strong tendency has been to highlight *"the numbers of factors that may adversely affect implementation"* (Ingram 1990: 465): goal ambiguity, number of decision points, quality of leadership, etc. (for an extensive overview, see O'Toole 1986). This focus on factors, rather than *actors*, generally prevented scholars to provide strong and comprehensive actorial analyses.

- Power relations are, in the continuity, not fully accounted for. The focus on factors participates to hide concerns of conflicts, negotiations and bargaining to the benefit of managerial rationalities. Although it represents "standard political analysis" (Dente 2009: 34), questions related to the mobilisation and exchange of action resources remain, for instance, "under-explored" (Aubin 2008: 210).

- What we call an *assumption of implementation* is, finally, largely widespread. It supposes "that actors are raring to go and implement, and that all that is getting in their way is the policy itself, communication channels or the political processes of organization" (Schofield 2001: 259). The facts that "implementing agents may be in a state of ignorance about what to do" (*idem*), on the one hand, or may decide to adopt strategies of diversion, circumvention or passivity, on the other hand, are rarely referred to.

If authors addressed the first and second points – e.g., Bardach (1977) and his idea of *implementation games*; Hjern & Hull (1982) and their work on empirical constitutionalism; O'Toole (2000) or Hill & Hupe (2009) and their dialogue with governance approaches; or Knoepfel et al. (2011) and their focus on *policy resources* –, some are not commonly read anymore and others didn't necessarily receive the attention they deserve. As for the assumption of implementation, it remains largely widespread, with a focus put on the implementing strategies of State agents.

These tendencies are, in our view, problematic when it comes to the study of the political side of implementation processes. Wicked in nature, transcending the vertical (politico-administrative layers) and horizontal (actors in- and outside the politico-administrative apparatus) segmentations of public administration, environmental policy implementation challenges this traditional, top-down view. As much as policy adoption, it represents a political process shaped by webs of power relations, negotiations and bargaining. Those involve a multiplicity of actors and strategies that need to be accounted for. There is, in that sense, a strong need to *bring politics back in*.

Towards an alternative approach

As deLeon & deLeon (2002: 483) putted it, criticizing approaches to policy implementation is one (common) thing, but offering alternatives is quite another. The rest of the present paper must, therefore, precisely be viewed as an attempt to do so. By *alternative*, we certainly don't mean *revolutionary*. Our proposition constitutes, nonetheless, more than an umpteenth attempt to serve the old wine of implementation in a brand new cask. It combines an effort of rediscovery (of some under-used works within the implementation literature), cross-fertilization (by taking into account contributions from sociology) and conceptual development (through the notion of *law activation strategies*) that contributes to provide a fresh look on implementation processes and, ultimately, to explain the gaps between abstract rules and concrete action. The proposed framework relies on three core beliefs that, in our view, are crucial.

It states that, first, a "continued awareness of the […] bottom-up challenge remains important" (Hill & Hupe 2009: 58) given the dominance of a top-down perspective. Pretending that implementation studies have moved past this "sterile" debate, as done for instance by O'Toole (2000: 267), represents an illusion only contributing to reinforce the prevailing top-down view. For this reason, following in the footsteps of Barrett & Fudge (1981) or Hjern & Hull (1982), the approach we are proposing claims a strong bottom-up orientation. Such a view is perceived as essential to better account for the wicked nature of environmental problems, for the diversity of sectorial rules that influence them and, in the end, for the wide range of actors and strategies that impinge on the course of environmental collective action.

Second, we believe that implementation studies could benefit to take into account ideas from other disciplines (Barrett 2004), in particular from sociologists whose works invite to apprehend more openly the interplay between rules and action. Contributions from sociologists of law (Pierre Lascoumes) as well as from Pierre Bourdieu and Michel Crozier are considered. Although Bourdieu's and Crozier's sociologies are opposed in many respects, there are, in our opinion, some convergences in the way they describe the adjustment strategies of actors towards the rules that structure their action. Both their perspectives request considering alternative strategies beside plain and pure implementation, therefore challenging the assumption of implementation mentioned earlier.

Finally, our proposition is based on the conviction that the need "to set implementation research in a political science setting" (Hjern & Hull 1982: 105) remains more than vivid. It considers, in other words, as essential to *bring politics back into the analysis* if one wants to explore the diversity of actors and mechanisms that impact environmental policy implementation. If, indeed, *"policy is politics in action"* (Botterill & Fenna 2013: 3), then the analysis of the former cannot be conceived without a deep understanding of the latter. This deep understanding will be achieved through the mobilisation of the idea of game.

A social process perspective

The proposed approach endorses a *social process* perspective very common within the implementation literature. In line with bottom-up scholars however, it assumes that actors are bound together by a problem that (at least) some of them want to see collectively solved. *It is, therefore, the problem as socially constructed, rather than a given policy design, that represents the starting point (input).*

The problem in question is not an objective and expert-based phenomenon, but is based on case-specific and subjective perceptions of reality: an alleged risk of water or air pollution; a site seen as contaminated; a resource perceived as over-exploited. The fact that the resource is or is not over-exploited is, to be clear, not relevant; the important thing is for some actors to perceive it as such, to sound the alarm and, finally, to impose the idea of collective intervention. The recognition of a given situation as problematic does, in that sense, not go without saying. To the contrary, it involves trade-offs between competing (private and public) interests that need to be accounted for.

The actors bound by the problem then engage in complex social processes. As much as for policy adoption, theses processes can be highly conflictual. Far from being mechanistic or linear, they are shaped by webs of power relations within which a large range of protagonists deploy complementary and competing strategies. All actors do not pursue concretisation objectives, and some seek to circumvent or divert one rule or another, to lighten its effects or favour tailor-made solutions. *Implementation processes would, therefore, better be seen as*

complex processes of rules appropriation in the course of which actors are embedded in political games (*throughput*).

Developed in various approaches from political science and sociology, the game image is considered by Pierre Bourdieu as "probably the least inadequate for evoking social things" (Lamaison & Bourdieu 1986: 113). It serves as a "master metaphor" (Bardach 1977: 56), as a "frame of attention and interpretation" (Scharpf 1997: 7) that stimulates insight. It represents the "concrete mechanism through which actors structure their power relations" (Crozier & Friedberg 1977: 113) and is, as such, necessarily politically loaded. Concretely, it supposes to decompose the black box of implementation (or, rather, of *rule appropriation*) in three elements: the actors' network (which actors are playing and how do they interact?); the power relations between them (which cards are they holding?); and the strategies they pursue (which cards do they play? are they trying to cheat? to play in creative ways?). It also requires considering the rules of the game, namely all the (policy) rules that structure and influence actors' behaviour.

Law activation strategies within political games

Along with the nature of the players and the power relations between them, the idea of *strategic action* stands at the heart of the game metaphor. In line with Bourdieu (see Lamaison & Bourdieu 1986: 112), we see the notion as particularly relevant because it allows breaking off with the objectivist and agentless perspective assumed by a top-down view of policy implementation. Clearly, a focus on strategies implies to put the actors and their interactions at the centre of the analysis. It does not, however, suppose to concur with (economic) assumptions of omniscience or rational calculation. To the contrary, the concept applies indifferently to (hypothetically) rational and totally erratic behaviours (Crozier & Friedberg 1977: 56).

A strategy is defined as *the intentional conduct by which actors evaluate, select and constantly adapt the course of their action to the behaviours of other actors*. By elaborating on the work of Crozier & Friedberg (1977) and Scharpf (1997), we assume that a strategy presumes five constitutive elements: intentionality, selectivity, dynamism, relationality and embeddedness (see table 1).

Table 1: five constitutive elements of a strategy

(Intentionality)	a strategy has a sense for the actor adopting it, because of more or less ambiguous, explicit and contradictory intentions, preferences and motivations;
(Selectivity)	a strategy involves a (subjective) choice between potential courses of action, that is between the scope of possibilities offered by the game;
(Dynamism)	a strategy never remains frozen in time, but constantly evolves to adapt to the perceptions, beliefs and anticipations of the actor;
(Relationality)	a strategy necessarily falls within a complex web of power relations, within which actors do not have an equivalent strategic capacity;
(Embeddedness)	a strategy is always historically, territorially and institutionally situated, and is defined in relation to these layers of context.

In public policy analysis, the study of actors' strategies mainly focused on *venue shopping* (e.g., Baumgartner & Jones 1993, Pralle 2003), that is on the activities by which actors' select the "best" decision setting to air their grievances. Following proposals of Boyer (2003: 183) or Aubin (2008), we argue that there would be strong benefits to consider, in parallel, the way actors strategically select the rule they activate in order to reach their objectives.

In our view, a crucial element of environmental collective action relies in the strategic activation of institutional rules (from public policies to constitutional or property rules). Rather than only constraining, these rules would better be seen as "a system of potentialities from which specific activities of mobilisation are to be deployed" (Lascoumes 1990: 50, our translation); they are not made to be mechanically implemented, but rather to initiate negotiations around their implementation (*Ibid*, p. 59). In other words, they do not act as "the principles of action, [but] intervene as a weapon and as a stake of the strategies that direct action" (Bourdieu 1990: 91, our translation). Playing with rules is, to some extent, part of the game.

Building on that train of thoughts, we consider *law activation strategies as the action by which actors intentionally select the rules and modalities of activation they perceive as the most appropriate to serve their interests*. Implementers, as well as the other actors engaged in environmental collective action (target groups, third parties, etc.), do not remain passive. To the contrary, they consciously chose between the rules and activation strategies offered by the game. Depending on the configuration of other players (their positions, the nature of their relations) and on their respective strategic capacity (the activation of a rule requires the mobilisation of action resources, see Knoepfel et al. 2011), they have a varying range of possible choices at their disposal.

These possibilities go from rigid applications to adaptations to local circumstances, negotiations of circumvention arrangements, diversion, etc. Passivity, concretisation, diversion, circumvention and innovation are the five *law activation strategies* we propose to identify in an effort of systematisation (see table 2 for definitions).

Table 2: typology of law activation strategies

(Passivity)	Strategy by which an actor choose (or is forced, because of an insufficient action resources endowement) not to act, that is not to mobilize or refer to a given rule (*strategy of non-decision*, Bachrach & Baratz 1963)
(Concretisation)	Strategy by which an actor seeks to implement a rule as closely as possible to its formulation and its intent (i.e., *strategy of implementation*)
(Diversion)	Strategy by which an actor seeks to activate a rule to other ends than what it is intended for
(*Circumvention*)	Strategy by which an actor resists to the implementation of a given rule, either by invoking another rule (confrontation) or by assuming that its behaviour won't be punished (circumvention *'en règle'*)
(Innovation)	Strategy by which an actor seeks to develop an *ad hoc*, tailor-made solutions to address a concrete environmental issue, going beyond what is provided for in policy designs

Each actor will select, based on a complex combination of criteria (its interests, its perception of the problem and of the institutional context of action, the other player of the game, the power relations between them), the strategy it perceives as the most suited to its objectives. This choice is, we insist, neither rational, nor based on objective and complete information; it is, to the contrary, a necessarily subjective one. The strategy will then interact with the strategies selected by other actors, and be refined, adapted or soften in the course of a more or less conflictual process of negotiation and bargaining.

Local regulatory arrangements (LRAs)

In the end, some actors will manage to impose their strategies and the process will (temporarily) come to an end. A 'local regulatory arrangement' (LRA, see Aubin 2008, Schweizer 2014) will be reached, whose ambition won't be to solve the environmental problem but *rather to close the political games initiated around it (output)*. Bringing together all kind of policy decisions (authorisations, sanctions, court decisions) or private agreements (written contracts, oral agreements), LRAs materialize a consensus around the problem. This does not mean that they are consensual or voluntarily accepted by all actors. To the contrary, they are more or less coercive and necessarily discriminating, favouring the 'best' players.

In other words, LRAs designate the winners and losers of the game. This approach is interesting because it brings back into the analysis the seminal question of 'who gets what, when and how' (Lasswell 1936), letting aside a 'functionalist' perspective. To speak about *agreements* does not, indeed, say anything about their desirability or fairness. Depending on the strategies that prevailed, LRAs will be more or less favourable in terms of environmental protection. Their *impacts* on actors' behaviours, their *outcomes* in the real world, and their potential retro-effects on the institutional context (*feedback loops*) also need to be questioned.

Synthesis and research protocol

The notions developed in this section (socially constructed problems, political games, law activation strategies, local regulatory arrangements) lay the foundation of a general analytical framework (figure 1) and a research protocol (table 3) to analyse processes of rules appropriation.

Table 3: research protocol

<u>Collective problem</u>
(input)

- identify the problem as socially constructed

- identify the diverging interests at stake (both in- and outside the polit-
ico-administrative apparatus)

<u>Actors' game</u>
(throughput)

- identify the actors engaged around the problem, their positions, the
nature of their relations and their respective policy resources endow-
ments

- identify the different rules these actors are activating or referring to (in
other words, the rules that are structuring the process)

- identify the different *law activation strategies* the actors are pursuing
(passivity, concretisation, diversion, circumvention, innovation)

<u>Results</u>

- identify the local regulatory arrangement (*outputs*)

- identify the (un)desired changes in actors behaviour (*impacts*)

- identify the (un)desired 'real world' effects (*outcomes*)

- identify the retro-effects on institutional rules (*feedback loops*)

Figure 1: analytical framework for the analysis of processes of rules appropriation

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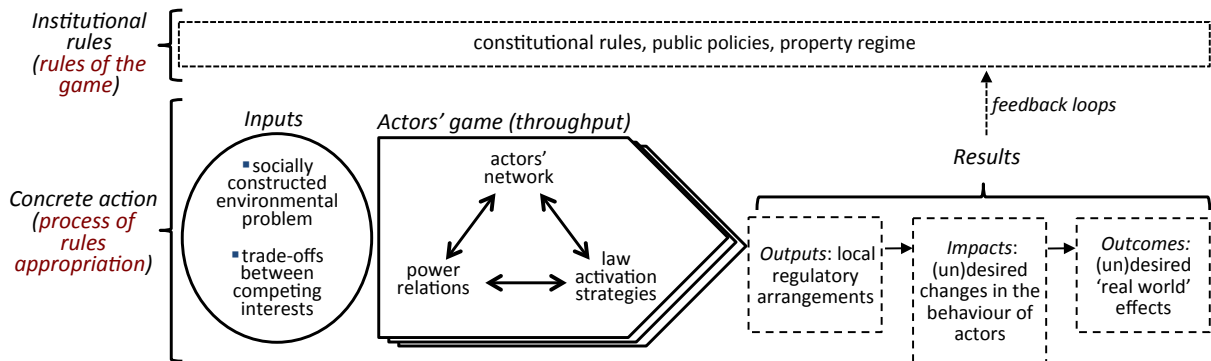
Empirical illustration

The explanatory potential of the framework is illustrated through a case study related to the protection of aquatic ecosystems in Valais, Switzerland. It is worth noting that this empirical situation, although presented here as an illustration, was also a great source of inspiration in the development of the framework. Indeed, despite an important theoretical background, our research was based on an iterative process. The identification and operationalization of the variables were not given in advance, but emerged through constantly going back and forth between the existing literature, conceptual assumptions, and empirical observations.

The case represents a situation where there is a clear and widely recognised gap between a formulated rule (obligation of watercourses remediation, art. 80ss of the Water protection act, WPA) and the concrete situation in Valais (total absence of remediation, see the report of the Federal Office for the Environment, OFEV 2012). It was selected because of this strong policy incentive, thus allowing an application of the approach in a context where most implementation scholars would have gone with a traditional, top-down lens. This will make it possible to highlight more directly the advantages of the proposed research protocol (see table 3) and analytical framework (see figure 1).

The case of aquatic ecosystems protection in Valais
Water is a resource whose economic importance is crucial for the Swiss canton of Valais, in the heart of the Alps. Both the Rhône and its lateral tributary watercourses provide a wide range of services to the population, from irrigation and hydropower production to more symbolic and recreational uses (e.g., for touristic purposes). They also represent a living environment for plants and animals. Over the past century however, these aquatic biotopes have been under both qualitative (i.e., increased pollution levels) and quantitative (i.e., insufficient residual flows[2]) threats.

If the qualitative side has been addressed since the second half of the last century (with globally positive results, see the assessment provided by the cantonal Service for environmental protection, SPE 2007), it's only since the 1990s that quantitative problems have been put on the agenda. The present case study relates to this aspect by dealing with the actors' games surrounding aquatic ecosystems protection in Valais.

(NB: the rest of the paper is a draft version providing
the empirical elements to discuss the framework)

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[2] Defined in the Swiss Water protection act (WPA) as the "flow rate of a watercourse which remains after one or several withdrawals of water" (art. 4).

I. Input

- definition of the problem: risks related to the aquatic ecosystems of the Rhône and of lateral tributary rivers; that is, rivalries between conflicting water uses: direct withdrawals on the one hand (for irrigation and energy production in particular), and the living environment water provides for plants and animals, on the other hand.

- the problem is recognized in the Water protection act (WPA) since 1991, with an obligation of remediation for cantonal authorities: art. 80ss states that "substantially affected" watercourse shall be remediated before 2012, without however "infringing existing water use rights to the extent of justifying a claim for compensation"

- in Valais, this problem is put forward by environmental NGOs and fishermen's associations, through numerous press releases, media interventions, and so on; the inaction of cantonal authorities and the consequences for aquatic ecosystem are underlined

    -> both top-down and bottom-up incentives to engage in collective action

- nevertheless, the social construction of the problem meets strong competing interests (agriculture and hydro-power production in particular)

- there are conflictual views within the cantonal administration, between Services that pursue opposite public interests: environment, agriculture, energy production; an inter-Services working group was created to gather these interests together and elaborate a consensual cantonal remediation plan

    -> despite incentives to act, the construction of the problem does not go without saying;

    -> the adoption of the LEaux does not mechanically lead to a recognition of the problem at the cantonal level, but rather to a conflictual process of social construction

II. Actors' game

Three 'fronts' of actors emerge, that corresponds to three main competing interests. Each front is composed of a Service from the cantonal administration, and of social groups who defends the interests of target groups (agriculture and energy) or of beneficiaries (the environment)

1. the "Agriculture" front

- *Service for agriculture (SCA)*: refuses to participate in the inter-Services working group; argues that irrigation withdrawals shall be given priority over other water uses (including living environment) because of their destination, and are therefore not subject to remediation; in other words, activates the Swiss property regime (that recognizes "immemorial water rights" for irrigation) to circumvent the obligation of remediation.

    -> strategy of circumvention of art. 80ss LEaux, with a concretisation of the rules related to "immemorial water rights" for irrigation

- *Other agricultural circles*: because the strategy of the SCA appears sufficient to protect their interests and the remediation of irrigation withdrawals is not a priority for the other actors, agricultural circles remain 'out of the game'

  -> *strategy of passivity*

2. the "Energy" front

- *Service for energy and hydropower forces (SEFH)*: drives and coordinates the inter-Services working group (leading Service); pursues a two-folded goal that fits to the politically supported view in the canton: to delay the implementation of remediation measures, through a the elaboration of a complex web of intermediary policy decisions (cantonal directive in 2002, cantonal remediation plan in 2008, intermediary decisions related to feasibility studies, etc.); and to lighten their effects, through the adoption of measures that do not lead to a loss of production for hydropower companies (measures of coordination, construction or exploitation rather than measures requiring specific water endowment downstream of withdrawals); works in close collaboration with hydropower companies, that are for instance responsible to mandate and to finance feasibility studies

  -> *strategy of concretisation 'a minima' of art. 80ss LEaux*

- *hydropower companies*: works in close collaboration with the SEFH

  -> *strategy of concretisation 'a minima' of art. 80ss LEaux*

3. the "Environment" front

- *Service for environmental protection (SPE)*: participates in the inter-Services working group; seeks the implementation of strong remediation measures (specific water endowment downstream of withdrawals), but appears politically isolated; lacks the resources to pursue its strategy (personal, political support, consensus, etc.)

  -> *strategy of concretisation of art. 80ss LEaux*

- *Environmental NGOs & fishermen's association*: seeks the implementation of strong remediation measures; mobilizes two main action resources: information (press releases, media interventions); and right of recourse (opposition against eleven out of twelve final decisions)

  -> *strategy of concretisation of art. 80ss LEaux*

III. Results

- LRA: in a first time, largely congruent with the dominant strategy of concretisation 'a minima' –> web of intermediary decisions that delay the application and small numbers of final decisions (with eleven oppositions); as a result, in 2012 (that is, at the end of the implementation period), only one final decision in force; this LRA reflects the political and economic importance of water in Valais

- in a second time however (end of 2012, beginning of 2013), following NGOs' oppositions, two Cantonal court decisions put into question the whole implementing scheme (in line with a recent decision of the Federal court regarding a case in another canton)

- if impacts & outcomes remain absent (no change in actors' behaviours and no effects in the real world, that is no amelioration of the situation in terms if ecosystem protection), the two court decisions open a new round of negotiations, that is a new sequence of games

Synthesis

Figure 2: application of the framework to the case of aquatic ecosystems protection in Valais

Inputs
- environmental problem: risks related to aquatic ecosystems of the Rhône and of lateral tributary rivers
- trade-offs between competing interests: environment, agriculture, hydropower.

Actors' game

Actors' network
- highly open, with three main fronts (agriculture, energy, environment)
- conflictual views inside the cantonal administration
- close collaboration between hydropower companies and the Energy Agency

power relations
- not favourable to environmental interests (lack of money, personal, political support)
- strong economic resources and political support for hydro-power interests

law activation strategies
- SCA: circumvention (contest the application to irrigation withdrawals); other agricultural circles: passivity
- Cantonal government, SEFH & hydro-power companies: minimal concretisation (delay the application and lighten the effects)
- SPE, environmental NGOs and fishermen's association: concretisation

Opens a new sequence of actors' game

➢ Policy provisions related to residual Water flows (art. 80ss LEaux)
➢ Rules related to 'immemorial water rights' for irrigation
➢ Rules related to the right of appeal of environment associations

Results

Outputs
- remediation plan (2008)
- intermediary decisions and feasibility studies
- 12 final decisions
- 11 oppositions
- 2 court decisions

Impacts: no change in the behaviour of actors

Outcomes: absence of 'real world' effects

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Discussion
(to be elaborated later on)

Conclusion

The role of actors, strategies and power relations appears to be central in explaining the gaps between policy programs and concrete action. Contrary to a widespread assumption, actors (even politico-administrative ones) do not mechanically seek to implement rules. Quite the opposite, they follow the strategy they see the most suited to their interests and goals. Depending on the configuration of actors, on their strategic capacity and on their perception of the problem, they will have a varying range of choices at their disposal. The selected strategies will then interact and be refined in the course of complex processes of rules appropriation. The proposed case study illustrated how these processes can influence the results of collective action and, in the end, explain the gaps between what is provided for and what actually happens in the field.

Through the notion of *law activation strategies* and the analytical framework built around (bottom-up and game-centred), the present paper proposed an approach to organise and systematise an actorial analysis often neglected or merely considered as an afterthought. By doing so, it highlights a very subtle repertoire of actors' games. All in all, it speaks in favour of a more political approach to environmental policy implementation, by demonstrating *how politics never end* and how actors always try to reformulate the modalities of collective action.

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