



Original research article

Chipping away at democracy: Legislative slippage in Alberta's energy development zone[☆]

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ABSTRACT

Oil and gas producers have become increasingly reliant on the extraction of marginal and 'non-conventional' resources, like deep-sea deposits, bitumen, and shale gas, which are associated with lower economic returns, and higher social and environmental risks. In order to maintain development trajectories amidst a growing chorus of concerned citizens, state and industry advocates of fossil fuel development must not only manufacture consent, they must silence dissent. While there are a number of means to do so at the disposal of state and corporate development advocates, one particularly effective strategy is through enacting restrictions on democratic rights through legislation. The effectiveness of such efforts, however, requires subtle shifts in policy that often escape notice until the ink is dry, and the consequences emerge incrementally, case by case. We term this tactic legislative slippage, analogous to the bureaucratic slippage documented by Freudenburg and Gramling (1992) [1]. We provide a case study of legislative slippage in Alberta, Canada, exhibited in two legislative acts passed in recent years. The legislative slippage observed has direct implications for the rights of citizens to express concerns about energy development, constraining a key process through which states are compelled to take measures to protect the environment.

1. Introduction

Conflicts over resources may be an enduring feature of capitalist societies, but elites have become quite skilled at manufacturing consent, to use Herman and Chomsky's term [2], for acute disproportionalities in wealth and risk accumulation. Most strategies involve deflecting attention away from those inequities, and drawing attention to something else, preferably with positive emotional appeal (e.g. [3–5]). Such tactics are only effective, however, to the extent that evidence of disproportionality can be concealed; they may not be sufficient to maintain the consent of those who have borne personal and irrefutable witness to the inequitable distribution of benefits and hazards. In those situations, elites face the need to not only manufacture consent, but to also silence dissent. Dissent can be silenced through a number of subtle means, like shaming victims, for example, but the most effective measures involve the removal of the rights of citizens to speak by more authoritative and persevering means. Thus, in response to growing citizen concern, legislation that stifles the voices of dissent can be a particularly valuable resource for elites who benefit from industrial activities that may pose harm to others, by criminalizing

protest, and reigning in opportunities for democratic participation.

We describe the incremental policy measures implemented by the Province of Alberta that serve to silence residents who have first-hand experience of the social and environmental costs of fossil fuel development. We do so through analysis of government documents, transcripts of legislative hearings, and excerpts from interviews with affected landowners who offer their first-hand experience of the erosion of citizenship, akin to the 'bureaucratic slippage' identified by Freudenburg and Gramling [1], describing the incremental re-interpretation of policy mandates during implementation in ways that muddy the original environmental protection objectives, we use the term 'legislative slippage' to characterize this process of incremental incursions into the rights of citizens to protest harmful activities.

2. Material and methods

As part of a larger study on the social impacts of hydraulic fracturing in Alberta, we analyzed Provincial Legislation pertaining to energy development, entailing review of government documents, and transcripts of legislative hearings, compiled in the Alberta Hansards

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database, made available to the public. In addition, we conducted 20 personal, semi-structured interviews with rural residents who live near fracking development in primarily agricultural regions in southern Alberta, and have expressed concern about the impacts of fracking. Interviewees were identified initially through public media and online sources, and subsequently through snowball sampling. The interviews were audio-recorded, transcribed, and subject to analyses that have been featured more extensively in other articles [6,7]. We focus on two new pieces of legislation enacted in recent years, with substantial implications for the governance of energy development in Alberta, explored in further detail below.

3. Theory

Early social conflict theorists parted ways with their colleagues by noting the fact that conflict is an enduring feature of contemporary societies, with different groups contending for greater shares of power, wealth and status (e.g. [8]). Elites have certainly had much success in doing so, in part by ‘capturing’ the state bodies established to regulate their industrial activities [9]. Nonetheless, the status of those in power is perpetually tenuous, since the accumulation of material disproportionalities raises the prospect of discontent. According to Habermas [10], the ability to continue to sanction the unequal distribution of resources imposes a fundamental challenge onto advanced industrial societies that proclaim to be democratic. Highly sophisticated strategies have thus evolved to conceal or otherwise draw attention away from those disproportionalities. The most effective battle, after all, is the one never fought, or, as Lukes put it, ‘power is at its most effective when least observable’ ([11], p. 1). Gramsci [12] paid particular attention to the means by which such legitimacy battles are avoided, arguing that the ruling class goes to great lengths to generate consent for its dominant position, involving most crucially processes of cultural reproduction and representation.

According to Edelman ([3], p. 5), however, this concealment in most cases is not actually that difficult. Politics for the majority is a form of ‘spectator sport,’ involving rituals, myths and symbols that are enormously effective at eliciting continued allegiance to the state, while that state endorses policies that allocate material resources to particular elite groups. Positive emotional alignment with a symbol brings with it quiescence and contentment with the status quo. Meanwhile, myths explain away inequities and depict burdens as justifiable, and rituals involve participants in a seemingly common enterprise, invoking conformity.

Environmental hazards are a particular quandary for democracy (e.g. [13,14]), and yet, given their elusive nature, they are also particularly susceptible to concealment. The ‘resources’ at stake are doubly disproportional: they involve not solely the disproportionate accumulation of wealth associated with development activities; they also involve the accumulation of environmental disruption as a consequence of those activities, disruption that in almost all cases is borne by those who have *not* enjoyed the material benefits. After an initial heyday of social movement-induced environmental state-making in the 1970s that led some commentators to proclaim that environmental protection had become a basic responsibility of western democratic states (e.g. [15,16]), the environmental state is increasingly said to be in decline [17], and ecological critique has dissipated into ‘post-ecological politics’ [18,19]. Researchers have catalogued repeated cases of state resistance to the policy actions necessary for sustainability, particularly those that would restrain fossil fuel development [20]. In most natural-resource-based polities, governments regularly favour short-term economic gain while downplaying environmental protection [21].

The vehicle through which symbols, myths and rituals, and ultimately political power materialize is discourse—who is seen as legitimate participants in that discourse; the information available to inform that discourse; and the framing of that information [22]. A long research record describes state and corporate discursive efforts to conceal

the private accumulation of wealth generated by environmentally risky development, and the imposition of environmental costs onto publics dating back at least as far as the work of Hajer [4]. Research by the late William Freudenburg has been particularly noteworthy in this regard. In 2005, Freudenburg [23] published a seminal piece articulating the two faces of disproportionality as a ‘double diversion’: the accumulation of rights and resources by the few, combined with the diversion of attention through skilful dissemination of ‘privileged accounts.’ Privileged accounts may include, for example, the claim that environmental regulations would impose undue burdens on our economies. Or, as consumers we are all (equally) responsible for anthropogenic climate change.

In a separate paper, Freudenburg and Alario [5] elaborate on the mechanics behind diversionary reframing, which they liken to ‘magicanship.’ Diversionary reframing does not only involve the vociferous proclamation of privileged accounts; it also requires diverting attention away from challenges to those accounts. Such efforts are most effective if inequities can fairly readily be kept dormant or made to disappear from view. The more this becomes difficult, the more acute is the need for the magician to shift attention, and one particularly effective means of doing this is to question the legitimacy of dissenters, resulting in attention being shifted *away* from the shaky status of support for the claims of polluters.

These efforts could be seen as having become an enormously effective form of ‘simulative democracy’ that stifles ecological critique [18,19]. Rather than challenge the urgency of ecological and social disaster, simulative democracy involves narratives of reassurance that those disasters are taken seriously, and are being addressed (with technological expertise), including rituals of participation that offer citizens the guise of inclusion. Meanwhile, the more substantive state actions undertaken behind the scenes disperse political responsibility, obscure chains of accountability, and delimit the rights of citizens to participate.

For Freudenburg, Blüdnorn and others, infringements upon democracy appear to have become increasingly necessary to the continued pursuit of wealth through environmentally damaging means. The development of fossil fuels appears to hold a particularly contentious place in the history of democracy, or, as stated by Mitchell ([24], p. 1), ‘fossil fuels helped create both the possibility of modern democracy and its limits.’ Mitchell describes how carbon energy and democratic politics have been tied together ever since coal became the engine of industry. This relationship has escalated as fossil fuel production has become increasingly dominated by non-conventional sources of oil and gas. The development of non-conventional fuels is both less profitable and more environmentally intensive. [Identifying Reference] [25,26] documents a steep increase in the marginal environmental impact of oil and gas development in Alberta, even in conventional drilling, but those impacts increase substantially with growing reliance on non-conventional fuel sources, such as shale, in which oil and gas can only be extracted through multi-stage, horizontal hydraulic fracturing, or ‘fracking.’ Consequently, continued reliance on fossil fuels portends acute and escalating tensions, between economies based on fossil fuels and democratic politics, and between desires for a healthy environment and global demand for oil and gas ([27], p. 152).

Fracking refers to the injection of water, silica, and a variety of chemicals, many of which are known carcinogens, under high pressure into mineral deposits in order to release the trapped oil or gas. These deposits are characteristically wide but shallow, necessitating horizontal drilling over distances of several hundred meters. The vast increases in depth and horizontal distance of a typical well, in combination with the need to break up the solid substrate, favoured significant increases in the amount of water and pressure utilized in the drilling process. Such practices have been associated with numerous environmental consequences, including air pollution, earthquakes, and in particular, water contamination [28–30]. In a recent assessment conducted by the Council of Canadian Academies ([31], p. 14), authors

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