



Review

Staking claims and shaking hands: Impact and benefit agreements as a technology of government in the mining sector

Guillaume Peterson St-Laurent^{a,*}, Philippe Le Billon^b^a Institute for Resources, Environment, and Sustainability, University of British Columbia, 2202 Main Mall, Vancouver, BC V6T 1Z4, Canada^b Liu Institute for Global Issues and Department of Geography, University of British Columbia, 6476 NW Marine Drive, Vancouver, BC V6T 1Z2, Canada

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ABSTRACT

Seeking to avoid or resolve conflicts with local communities, extractive industries have increasingly sought to negotiate agreements with the aim of not only compensating for operational impacts, but also sharing project benefits. We compare these impact and benefit agreements (IBAs) with two other major 'technologies of government'—free entry and environmental impact assessments. Special emphasis is placed on the role of IBAs in (re) producing power structures in a context of neoliberal governance, and more specifically, in Canada's politics of recognition and reconciliation toward Aboriginal communities. We suggest that these agreements represent a technology of government, which create distance between the formal governmental institutions and other actors in the mining sector, especially companies and affected Aboriginal peoples with territorial claims. While IBAs often represent an improvement on the other two previous technologies, they also constitute a withdrawal of state responsibilities toward Aboriginal communities that potentially maintains uneven negotiating power, affects conditions for consent, and disciplines Aboriginal self-conduct toward extractive projects. As such, IBAs can come to (re) produce conditions allowing the maintenance of structures of power found under neoliberal governance.

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1. Introduction

Extractive activities have significant social and environmental impacts on local communities. Questions about compensation and beneficiation, therefore, frequently arise in community–company

* Corresponding author.

E-mail address: peterson.guil@gmail.com (G. Peterson St-Laurent).

relations (Goodland, 2012; Hipwell et al., 2002; Sosa and Keenan, 2001). These questions are particularly salient and complex when Aboriginal communities holding territorial and usage claims over affected areas are involved. Fears over land dispossession, economic marginalization, imperilment of cultural practices and traditional livelihoods, and the inability to oppose extractivist modes of development through existing institutions have contributed to a rise in the number of conflicts between Aboriginal communities, extractive companies, and government authorities (Campbell et al., 2012; Fulmer, 2011; Hilson, 2002; Hipwell et al., 2002; Martinez-Alier, 2001). Conflicts are particularly frequent when structures of power are unequally distributed and local communities' rights over development paths are limited; when distrust is rife between local communities, extractive corporations and government authorities; and when local communities can scale-up their struggles through outside alliances and mobilize legitimate indigenous rights and environmental discourses (Ballard and Banks, 2003; Bebbington, 2010; Kemp et al., 2011; Perreault, 2012).

Seeking to avoid or resolve such conflicts, companies, and increasingly communities, have frequently sought to negotiate agreements not only compensating for the impacts of projects, but also sharing in the benefits and profits generated by extractive activities (Prno et al., 2010; The World Bank, 2012). Whereas compensation often maintains a relationship of dependence and victimization between communities and companies, beneficiation aims to extend this relationship into the realm of 'partnership', thereby supposedly redefining the collective identities and interests of communities and securing a more durable 'social licence to operate' through mutual incentives. These agreements – known as 'impacts and benefits agreements' (IBAs) or 'community development agreements' (CDAs) – are now relatively common, especially in regions where Aboriginal territorial claims demand consideration for benefit sharing on the basis of historical resource ownership. This is most notably the case in Australia and Canada, two countries where the absence or major deficiencies of treaties between Aboriginal populations and the settler state leave territorial issues open to contestation (Blackburn, 2005; Cornell, 2006; Maclean et al., 2014; O'Faircheallaigh, 2006a, 2010a, 2013). These agreements are also relevant in formally 'de-colonized' countries such as Nigeria and Indonesia where extractive activities have contributed to shaping territorialized politics of identity (Watts, 2004), and where territorially-based 'indigeneity' has been mobilized as a "vehicle to counter dispossession" (Li, 2010; p. 399). As such, territorial governance – the processes through which authority over a territory is decided and exercised (Larson and Soto, 2008) – often becomes a crucial point of contention within conflicts and agreement negotiations.

In recent years, various scholars have noted a shift from "government" to "governance" in natural resource management. Cast within broader neoliberalization trends, this shift is notably characterized by a move away from a bipartite government–industry negotiation to "multi-stakeholderism", repositioning the state and its responsibilities (Cheshire, 2010; de Loe et al., 2009; Head, 2009; Howlett et al., 2009; Newig and Fritsch, 2009; Swyngedouw, 2005). For Cameron and Levitan (2014; p. 34), IBAs constitute neoliberalization processes insofar as they "remove barriers to capital accumulation by securing community consent to extractive development; privatize state assets, functions, and services; and promote market-based solutions to various social, economic, environmental, and political struggles", with these shifts being themselves "rationalized and validated through neoliberal discourses emphasizing entrepreneurial, individualized understandings of citizenship and social life". Following a discussion on some of the main technologies of mining sector governance, we look at the case of the Canadian mining regime and

the role of IBAs in (re) producing conditions allowing for the emergence and maintenance of power structures in a context of neoliberal governance.¹

Drawing on the concepts of 'governmentality' (Foucault, 1991) and 'neoliberal governance', we explore the different rationalities regarding IBAs, considered as a "technology of government", that is, a set of discourses, techniques and tools shaping the governance and conduct of subjects (see Agrawal, 2005; Dean, 1995), and how they are used by the state to internalize its mandate of governing and regulating within the broader context of extractive sector development. Building on the rapidly growing literature on IBAs we examine how the government, through a "selective absence" from the negotiation (Campbell et al., 2012; p. 37), uses IBAs to "govern at a distance" and thereby "create[s] locales, entities and persons able to operate a regulated autonomy" (Rose and Miller, 1992; p. 173). As; clearly demonstrate, in their study of IBAs in Northern Canada, this selective absence is largely explained by a rationale of state disengagement and shift to private forms of governance that help to accelerate and secure resource development through absolving the state from many of its responsibilities but the enforcement of private contract law guaranteeing the implementation of IBAs. Thus, IBAs allow governments to reconcile both the pressure to ensure more ecologically and socially 'sustainable' practices in the mining sector while maintaining economic development and competitiveness. As such, IBAs have the potential to maintain and (re) produce the state's historical role as an ally of the mining industry in developing the sector. Beyond enabling this very selective role for the state, IBAs also constitute a technology of government typical of "development", whereby the technical "quick-fix" of IBA-promised funds and jobs risks postponing deeper structural changes to uneven power relations, notably between Aboriginal communities and settler-state societies (Cameron and Levitan, 2014; Luning, 2012; see also Li, 2007). Following a discussion of these shifts and associated technologies of government, we present a research agenda that helps to articulate the implications of the negotiation and implementation of IBAs.

2. From government to governance

In many countries, territorial governance has followed the more general shift from 'welfare states', where regulations and power are mainly exerted by the state, to 'advanced liberal societies' characterized by high level of deregulation or re-regulation, where many actors participate in the act of governing (Barry et al., 1996), including through de-centralization and state recognition of community property rights (Bryan, 2012) and corporate self-regulated mechanisms (Blowfield, 2005; O'Faircheallaigh and Ali, 2008; Sagebien and Lindsay, 2011). This new type of governance is increasingly recognized as a form of partnership between different actors – the state being only one of these – involved in projects of development in rural areas (Jones and Little, 2000; Lowndes and Skelcher, 1998).

In particular, there is a growing interest in studying the ways through which "environmental management and governance become normalized within communities" (Robbins, 2012; pp. 75–76). Relating to what Foucault (1991) termed "governmentality", such governance conceives of a radical change from the exercise of power of a central authority to practices of governance occurring through a process of rationalization (and banalization)

¹ We limit the scope of this paper to the tripartite relationship between the government, Aboriginal communities and mining companies, but acknowledge the important role played by other groups (e.g., NGOs, media, civil society) in shaping structures of power and the outcomes of potential mining projects.

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