



## Governing jurisdictional fragmentation: Tracing patterns of water governance in Ontario, Canada



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### ABSTRACT

This article examines how jurisdictional fragmentation has been addressed in Ontario's governance of the Great Lakes Basin from 1912 to 2012. The water resources literature has frequently lamented fragmentation in water governance and called for integration; however, it infrequently specifies how and what to integrate. By examining key moments in water quality and quantity governance, this study provides insight on how the presence or absence of particular institutional arrangements in the context of jurisdictional fragmentation produced different governance patterns and outcomes. Specifically, to determine governance patterns the study focused on four elements: an institution that facilitates coordination, agreement on roles and responsibilities, agreement on the issue management plan, and the scope of the issue. Combinations of these elements can produce governance patterns that are cooperative, conflictual or reactive and outcomes that are innovative, stagnant, or piecemeal. The study results suggest that when governing in the context of jurisdictional fragmentation efforts may best be directed at particular institutional arrangements. Further, it suggests that jurisdictional fragmentation be understood as a feature of the institutional complexity of water management that can be mobilized to develop unique solutions to multi-scalar water governance challenges.

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### Introduction

The complexity of water governance<sup>1</sup> has become pronounced since the latter part of the 20th century (Freeman, 2000; Lach et al., 2005). Various scholars in the last decade (Head, 2008; Morrison, 2006; Wallis and Ison, 2011) have described water management issues as “wicked” in that they are “ill-defined; and they rely upon elusive political judgment for resolution” (Rittel and Webber, 1973, p. 160). Moreover, water issues are “characterised by uncertainty, complexity, and multiple perspectives that are multi-causal and are interconnected with other issues” (Wallis and Ison, 2011, p. 1). Indeed, the growing prevalence of nexus studies bears out the relationship of water issues with land, energy, food, and climate change issues (see for example, Finley and Seiber, 2014; Kumar et al., 2014; Mo et al., 2014). Within the water resources literature, scholars have called for changes in institutional

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<sup>1</sup> Often used interchangeably, management and governance are distinct, but related concepts. Governance is the process through which decisions regarding allocation, use, and access are taken. Management refers to the quotidian activity of executing the decisions made in governance processes. Since in this paper the focus is to understand the processes through which decisions are made, I use the term governance.

arrangements to improve sectoral, territorial, and organizational integration across various elements of natural systems that are often broken into binaries for management – land–water, surface–ground, quantity–quality, upstream–downstream, fresh–marine (Kidd and Shaw, 2007; Wallis and Ison, 2011). Water experts have advocated integration, often through the paradigm of Integrated Water Resources Management (IWRM), to improve water management and governance (Conca, 2005; Global Water Partnership, 2008; Global Water Partnership Technical Advisory Committee, 2000).<sup>2</sup> Unfortunately, calls for integration in the water resources literature rarely provide details on how and what to integrate operationally; more often they are “generalized condemnations of fragmentation and calls for integration” (see also Biswas, 2008; Blomquist et al., 2004, p. 932). When implemented, IWRM has produced limited results (Blomquist and Schlager, 2005; Edelenbos and Teisman, 2011; Watson, 2007). Nonetheless, the concept enjoys continued popularity because ample historical record shows that across jurisdictions and time “water management has been unintegrated, or fragmented” producing poor results (Molle, 2008; see also United Nations World Water Assessment Programme, 2006). Attractive as

<sup>2</sup> There is not space in this article to explore the meaning of good governance or to discuss that good process will not guarantee particular results.

a nirvana concept, IWRM wholly obscures the political realities of water management that require significant trade-offs when operationalized (Lankford and Hepworth, 2010; Molle, 2008; United Nations World Water Assessment Programme, 2006). Even when actors in a region recognize and agree on its water issues, reaching agreement on a coordinated approach toward resolution often proves challenging (Jønch-Clausen and Fugl, 2001).

Fragmentation exists in water governance when responsibility is divided or allocated among multiple actors and/or agencies (Hill et al., 2008); fragmentation may manifest as duplication, overlap, or gaps in authority. Jurisdictional fragmentation refers specifically to the fragmentation among and within government levels. In the Canadian case jurisdiction for water governance is diffuse (Bakker and Cook, 2011), and is frequently considered a major barrier to management of flood protection, water shortages, and water quality (Ecojustice, 2010; Morris et al., 2007; NRTEE, 2010). Canada's high degree of decentralization of environmental and water governance is attributable in part to the Canadian Constitution – which does not include a head of power for water or environmental management – and, in part to a current political climate that favours decentralization. Provincial authority for water is derived primarily from section 109 of *The Constitution Act, 1867* which grants provinces jurisdiction over land and, by extension, proprietary rights in water (Gibson, 1969; Kennett, 1991). The federal government has authority for particular water issues: international trade and commerce, fisheries, shipping, and navigation. Thus, governance of the Great Lakes basin engages both levels of government in Canada.

This study examines how jurisdictional fragmentation has been addressed in governance of Ontario's portion of the Great Lakes basin from 1912 to 2012. Analyzing moments in water quality and water quantity management, the study finds that four types of institutional arrangements – presence of a cooperative institution, agreement on roles and responsibilities, and agreement on an issue and its proposed resolution (the management plan), and the scope of the issue – are determinative of the governance pattern and its outcome under stable conditions of jurisdictional fragmentation. In the Great Lakes basin, Ontario governance patterns have been cooperative, conflictual, and reactive; producing outcomes that are innovative, stagnant, and piecemeal. These results suggest that efforts to manage fragmentation and improve outcomes in multi-scalar water governance should attend to ensuring the presence of specific institutional arrangements rather than a general pursuit of integration.

### Case study background: Ontario, Canada

Situated on four of the five North American Great Lakes, ninety-eight percent of Ontario's population (some 11 million people) lives in the Great Lakes basin, that is, the land area directly draining into the Great Lakes (Ontario Ministry of Natural Resources, 2012) (see Fig. 1). The Great Lakes basin has been governed formally for more than one hundred years: the Boundary Waters Treaty (BWT) was signed by Great Britain (on behalf of the Dominion of Canada) and the United States in 1909.

As part of the BWT, Canada and the United States, (the Parties) created a bilateral organization, the International Joint Commission (IJC), to assist them in implementing the Treaty. If the federal governments agree, they can put a water-related question to the IJC for guidance on resolution. Over the years, Canada and the United States have put forth some thirty references to the IJC that were directly or indirectly related to issues of quality and quantity in the Great Lakes basin (see IJC, 2013).

The federal governments of Canada and the United States led early water quality management efforts across the Great Lakes

basin. Gradually, additional levels of government have become more engaged in water quality and quantity management in the basin, corresponding to wider environmental governance trends, especially decentralization and delegation. Today, jurisdiction for water quality (e.g. drinking water quality, sewage treatment, and fisheries) and water quantity management (e.g. fisheries, drought and flood protection, and navigation) of the Great Lakes basin is shared by multiple governments: two countries; eight American states; and two Canadian provinces. Municipal governments and Aboriginal governments are also engaged in water governance. And, with increasing frequency, non-state actors are playing a role in water governance; the degree to which various stakeholders are satisfied by their representation in various governance forums, however, is beyond the scope of this article.

In the context of Ontario's governance of the Great Lakes basin, jurisdictional fragmentation occurs in the first instance because of the transboundary context: Canada and the United States share the waters of the Great Lakes basin. In the second instance water management is primarily a provincial responsibility in Canada (see Hill et al., 2008); however, the federal government is responsible for international negotiations and a variety of water-related authorities (Bakker, 2007). Although they will not be further discussed here in detail, two other levels of government – municipal and Aboriginal – also have authority for managing water in Ontario. Municipal governments, statutory creatures of provinces, are granted their authorities by provincial statute. Authorities of Aboriginal governments related to water governance are variable and evolving (based on judicial developments).

### Integration and fragmentation in water governance

Two main threads of critique have dominated water governance discussions in the last decade. First, a growing review of the paradigm of integration, especially the concept of Integrated Water Resources Management. Second, a concern with the effect of neoliberalism – the trends of political economic restructuring characterized by commodification, privatization, deregulation, marketization – and delegation of governance responsibilities to non-state actors, on water governance (Cohen, 2012; Heynen et al., 2007; McCarthy and Prudham, 2004). Neoliberalism and the rescaling that often accompanies its restructuring may impact institutional fragmentation; however, this study is not chiefly concerned with an examination of neoliberalism. Given that the article spans a century of review, much of the empirical evidence predates the implementation of neoliberal reforms in Canada. The article is not concerned with rescaling as a separate phenomenon, which the record suggests was employed long before neoliberalism in Ontario (see Cook, 2015).<sup>3</sup>

The concern with jurisdictional fragmentation in water governance emerged in the late 1970s. At the first international water conference in Mar del Plata (1977), delegates found jurisdictional fragmentation in water governance created complexity in water-related legislation, detachment from management practices, and unclear differentiation of responsibilities within governments (Salman and Bradlow, 2006). The notion that water governance could be better integrated was not new; the river basin management approach that sought to centralize planning authority for a basin can be dated to the Tennessee Valley Authority (White, 1957). At Mar del Plata the focus was on the need to integrate government institutions, to rationalize fragmentation. The river basin approach combined with a concern for institutional integration

<sup>3</sup> I do not view scales as 'ontological', but rather accept the argument that scales are socially constructed (Herod, 2011; Kaiser and Nikiforova, 2008; Marston, 2000; Marston et al., 2005; Moore, 2008; Sayre, 2005). Here scale is used as a tool to locate governance.

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