



“Subsidizing the State:” The political ecology and legal geography of social movements in Chilean water governance

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ABSTRACT

Water conflicts are increasingly spilling into the streets in Chile, as communities struggle to make their voices heard in formal decision-making forums. However, these growing social movements are doing much more than just marching. Combining insights from political ecology and legal geography, this article approaches water governance as a complex field of struggle in which social movement resistance plays a crucial role. In the case of the Alto Maipo hydropower conflict in central Chile, social movement actors have taken on a wide range of roles that they feel should correspond to the state: monitoring the hydropower company, documenting citizen concerns, and demanding accountability from government agencies. Attention to the legal dimensions of this struggle reveals how this work of “subsidizing the state” was built into the new institutional order ushered in during the Pinochet dictatorship, and how the capacity of social movement actors to mold this space to their advantage has been restricted by the legal framework for water governance. While there has been considerable attention to the role of resistance from water user associations in reshaping neoliberal water reforms in other parts of Latin America, the Chilean case highlights the need to also consider social movement actors from outside of the conventional water sector who struggle to defend in-stream uses not recognized under the law. Faced with limited legal recourse in the courts and little legitimacy in decision-making forums, Chilean activists have pursued alternative strategies that have expanded the scope of their resistance and built broader political pressure for change.

1. Introduction

Across Latin America, social movements are contesting the social and environmental consequences of the neoliberal restructuring that took place during the late 20th century under conditions of political repression and authoritarian control. Struggles over water, as well as the property regimes and technologies that control access to this vital resource, have been particularly contentious (Rodríguez-Labajos and Martínez-Alier, 2015; Terhorst et al., 2013). Water privatization, large dam development, and inter-basin transfers have sparked mass protest movements and shifted international attention to the social dimensions of water issues (ibid, Conca, 2006; Routledge, 2003). These conflicts are arenas in which the meaning of water governance is defined, debated, and enrolled in water management agendas. And yet, much of the literature on water governance, from both critical and policy-oriented perspectives, has failed to account for the role of social movements (Perreault, 2008).

In light of the proliferation of the term “water governance” in academic and policy circles alike, critical water scholars are calling for increased attention to the power dynamics, contestation, and social

justice issues that have been left out of many of the mainstream debates (Norman et al., 2012, 2015; Perreault, 2014; Wilder and Ingram, 2015). This article responds to those calls by examining the role of social movement resistance in water governance by drawing on political ecology and legal geography. Political ecology studies have framed neoliberal governance as a hegemonic project of the state and private sector (c.f. Robertson, 2004), often without examining the dynamic role of civil society in pushing back against that project (Perreault, 2008). The political ecology scholars that have examined the role of social movements in water governance (Perreault, 2006, 2008; Bebbington et al., 2010; Boelens, 2008; Boelens et al., 2010; Boelens and Hoogesteger, 2017; Harris and Roa-García, 2013; Rodríguez-Labajos and Martínez-Alier, 2015) have tended to focus on claims brought by rights-based (water user associations) or identity-based (peasant, campesino, indigenous) mobilizations. In this article, I examine how a resistance movement led by actors who have neither water rights nor coherent identity-based claims to water use is nonetheless working to reshape water governance. I draw on legal geography in order to trace how these actors navigate constrained spaces in the legal framework, find extra-legal means of inserting their interests into the sphere of

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water governance, and work to reform the law to provide more protection for non-extractive uses of water.

This article is based on research in Chile, where water conflicts have become a symbol of the struggle against the neoliberal logic imbued in the 1981 Water Code, now internationally recognized as the textbook example of the free-market approach to water management (Bauer, 2004). A number of scholars have noted the rise in social mobilization related to water issues in Chile (Bauer, 2015; Schaeffer, 2017; Borgias and Braun 2017), yet few have considered how these movements articulate with the legal framework and water governance more broadly. Bauer (2015, 154) notes that this new wave of water conflicts tends to be “not so much about conflicting water uses but more directly political, driven by clashing views about the water law itself and its fundamental rules, principles, and ideology.” I examine one such conflict in central Chile, in which a number of social movement groups have come together to oppose Alto Maipo, a large hydropower project being constructed in the mountains above Santiago.

The outline of the article is as follows. In the next section, I discuss how water governance studies can be enriched by engaging with the political ecology literature on social movements. I posit that this literature can be further enriched by an engagement with legal geography in order to consider how movements shape and are shaped by the legal and institutional context. I then turn to the case of Chile and the ways civil society relations with the state were restructured within the legal framework of “the new institutional order” that was installed during the Pinochet dictatorship. The Water Code established during that same era holds important implications for who has access to what legal remedies in cases of conflicting water uses.

After presenting my methods, I introduce the case study of the Alto Maipo hydropower conflict, examining the proposed diversion scheme and responses from local residents, social movement actors, and the government. I then turn to focus on how social movement actors, with few other legal options to defend their interests, take up the monitoring work neglected by the state in its weak regulatory capacity – work they refer to as “subsidizing the state” – while also pursuing policy reform. Additionally, social movement actors have amplified the legal claims of other actors impacted by the projects’ broader water-energy-mining implications, and alerted international investors to these claims as well as the results of their monitoring. I conclude by reflecting on how these Chilean social movement actors, pushed in new directions because of their lack of legal options, are ultimately articulating claims about the neoliberal state, extractive development, and the limitations of the law that have implications for water governance far beyond water issues and the future of this particular hydropower conflict.

2. Water governance as a complex field of struggle: insights from political ecology and legal geography

Since the 1980s, the introduction of neoliberal economic policies across Latin America has sparked a shift “from government to governance” (Bridge and Perreault, 2009), in which the state retreats from its regulatory role, cedes power to the market and private sector, and relies on more decentralized decision-making (Liverman and Vilas, 2006). The devastating consequences these reforms have had for livelihoods and the environment, particularly in the water sector, has sparked a wave of resistance movements across the region (Harris and Roa-García, 2013; Terhorst et al., 2013). Yet, while there has been some study of the growing influence of NGOs and international organizations (c.f. Davidson and de Loe, 2016; Conca, 2006), there has been relatively little attention given to the role of social mobilization and civil society resistance (Perreault, 2008).

Political ecology, examining socio-environmental issues through the lens of critical political economy (Blaikie and Brookfield, 1987; Robbins, 2004), is a rich analytical framework for studying questions of water governance with an eye toward uneven power dynamics and processes of contestation. Yet, considering political ecologists’ rich

engagement with social movements (c.f. Moore, 1993; Peet and Watts, 1996; Rangan, 1996; Guha, 2000; Escobar, 1998; Wolford, 2010a; Wolford, 2010b; Wolford and Keene, 2015) and with water issues (c.f. Swyngedouw, 2004; Budds, 2004; Boelens, 2014; Linton and Budds, 2014; Boelens et al., 2016), there have been surprisingly few scholars that bring these literatures together to study water governance. In this section, I review the existing political ecology studies of water governance and argue that an engagement with legal geography can help to better understand how diverse social movements are navigating the complex socio-legal terrain of water governance. First, however, I address the basic meaning of governance and how it has been approached in political ecology.

Attention to the concept of governance has boomed in the last decade, ranging from calls for “good governance” as a policy prescription (c.f. *Global Water Partnership, 2000; Rogers and Hall, 2003*) to critiques of governance as a tool of neoliberal hegemony (c.f. Robertson, 2004). Although the term is often used without clear definition (Bridge and Perreault, 2009; Lautze et al., 2011), the general understanding from the plethora of interpretations is that governance (1) is broader than government, (2) encompasses both formal and informal processes that include state and non-state actors, and (3) is made up of the combination of laws, institutions, and norms that guide resource use at different scales (Conca, 2006; McCarthy and Prudham, 2004; Perreault, 2008; Lemos and Agrawal, 2006). *Water* governance, then, can be understood as the set of processes and mechanisms through which actors influence decision-making and conflict resolution related to water resources (Bauer, 2015).

Political ecologists, generally on the critical side of the spectrum, highlight the need to consider the participation of a range of actors and institutions in governance, as well as the power dynamics involved in negotiating their access to and influence in decision-making (Bridge and Perreault, 2009). However, in framing governance as a hegemonic project of the state (Robertson, 2004), political ecologists have sometimes lost sight of the crucial role that civil society resistance plays in hegemony (Gramsci, 1971) understood as a complex field of struggle (Roseberry, 1994; Abrams, 1988). Polanyi’s (1944) work also demonstrates how the reconfiguration of the institutions of state, market, and civil society under neoliberalism is not an unimpeded force, but rather a “double movement” with communities pushing back against the injustices of free-market policies, filling regulatory gaps, and preventing crisis (136).

Indeed, political ecology studies of social movements in water governance have demonstrated how grassroots social movements have played an important role in resisting, and often reshaping, neoliberal water policies (Perreault, 2006, 2008; Bebbington et al., 2008, 2010; Boelens, 2008; Boelens et al., 2010; Boelens and Hoogesteger, 2017; Harris and Roa-García, 2013; Rodríguez-Labajos and Martínez-Alier, 2015; Romano, 2012). Social movement actors have taken up the work of monitoring extractive development (Boelens et al., 2010) and “mediating the effects of large scale capital investment on rural livelihoods” (Bebbington et al., 2008, 2889). In some cases, such as in Brazil, civil society actors have bridged the gaps left by the retreat of the state and inserted public interest into the state agenda and water policies (Abers and Keck, 2009, 2013; Hochstetler and Keck, 2007).

Interestingly though, while these studies are quick to point out that these struggles are always about more than just water (c.f. Boelens, 2008), the social movement actors they focus on tend to be conventional water users. Drawing on cases from Peru, Bolivia, Ecuador, among others, these studies have highlighted movements led by water user and irrigator associations (Boelens and Hoogesteger, 2017; Hoogesteger, 2012, 2013; Hoogesteger et al., 2016; Bebbington et al., 2010; Boelens et al., 2010; Perreault, 2008), as well as indigenous and campesino groups with identity-based claims to water (Boelens, 2014; Hoogesteger and Verzijl, 2015; Perreault, 2008). These actors are identified as local, rooted to place, and tied to water by their livelihoods (Boelens and Hoogesteger, 2017; Boelens et al., 2010; Perreault, 2008).

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