



# Water on Tap

Rights and Regulation in the  
Transnational Governance of Urban Water Services

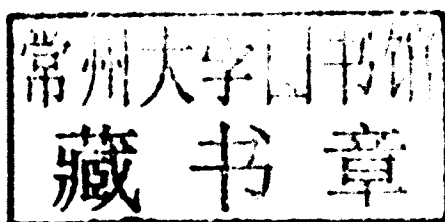
BRONWEN MORGAN

CAMBRIDGE STUDIES IN LAW AND SOCIETY

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## WATER ON TAP

In the 1990s and mid 2000s, turbulent political and social protests surrounded the issue of private sector involvement in providing urban water services in both the developed and the developing world. *Water on Tap* explores examples of such conflicts in six national settings (France, Bolivia, Chile, Argentina, South Africa and New Zealand), focusing on a central question: how were rights and regulation mobilised to address the demands of redistribution and recognition? Two modes of governance emerged: managed liberalisation and participatory democracy, often in hybrid forms that complicated simple oppositions between public and private, commodity and human right. The case studies examine the effects of transnational and domestic regulatory frameworks shaping the provision of urban water services, bilateral investment treaties and the contributions of non-state actors such as transnational corporations, civil society organisations and social movement activists. The conceptual framework developed can be applied to a wide range of transnational governance contexts.

BRONWEN MORGAN is Professor of Socio-Legal Studies in the School of Law at the Faculty of Social Sciences and Law, University of Bristol, and an Associate Research Fellow of the Centre for Socio-Legal Studies, University of Oxford. Her research focuses on the political economy of regulatory reform, the intersection between regulation and social and economic human rights, and global governance.

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## Introduction

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### The field of global water policy: struggles over redistribution and recognition

This is a book about water: water as a basic good, an essential resource and a life need that is deeply embedded in relations of power, meaning and identity. But it is also a book about collective institution-building, about governing in a world of rapidly shifting power dynamics between governments, businesses and ‘ordinary’ people. From this second perspective, struggles over access to water are emblematic. They are an instance – a particularly intense instance – of conflicts over how to provide collective goods and services. The questions about provision and governance of water services explored in this book resonate with the provision and governance of other basic goods too – education, health, transport, communications, energy. These are all areas where the scope of state-led capitalism is especially contested, and many of them also echo the question that water raises most intensely: how far should economic principles of market-based delivery govern the provision of collective goods? What is the fate of ‘the social’ as state–market relations are ever more intensively reconfigured? Where, if not with respect to water, can we find, define and make real the limits of a market-based political economy?

These substantive political questions are deeply linked to the reconfiguration of state–market relations in a context of global governance, where the role of the nation-state in collective provision of essential services is increasingly supplemented and re-shaped by transnational institutions. ‘Globalisation’ is of course, by no means a new phenomenon, but Frank Munger has argued (Munger 2008) that in contrast to earlier periods of global interconnection,<sup>1</sup> contemporary ‘third wave’ globalisation is distinctively about transnational influence on governance through exporting institutions, organisation, and technology. Although much of what is seen as new in those patterns of export relates to the influence of *non-state* actors such as multinational corporations and NGOs, patterns of

<sup>1</sup> Namely, those that were accelerated by revolutions in transportation (from the sixteenth to the nineteenth century) and global finance (post-World War II).

transnational influence are also clearly linked to particular state interests. Indeed, there is a persistent strand of literature that suggests that globalisation is in fact an analogue for Americanisation (Shapiro 2001).

Struggles over how to provide access to water challenge the equation of globalisation and Americanisation. At least in relation to the issue of providing drinking water for domestic, household use, the powerful actors in transnational governance debates have been not US companies or the USA, but French and British companies, and in particular the French state. The historical resonance of colonisation – an earlier ‘wave’ of globalisation if ever there is one – is here profoundly relevant: as the ‘market for water services delivery’ increasingly extended beyond national borders, so too did the direction of foreign investment by British and French companies into water service delivery in former colonies. This growth – particularly marked in the 1990s but still highly politically salient – catalysed transnational trajectories of resistance and routinisation. Activists challenged market-led capitalism, embodied in the cry of ‘water is a human right, not a commodity’. In response, the global water policy field has increasingly attempted to embed social facets into the expansion of transnational markets: part of the incremental growth of ‘globalisation with a human face’.

This book tells the story of these struggles – of how they are both deeply local and yet also embedded in relationships that cross and re-cross national borders. It focuses on the turbulent upheavals of 1990–2005 that held up two models of governance as answers to the urgent questions posed by the provision of collective and essential goods such as water. One was managed liberalisation, the other a reinvigorated image of public provision that aspired to infuse or even supersede bureaucratic state management with participatory democracy. The core message of the evolving struggles between these models is that the striking contrast between ‘water as a commodity’ and ‘water as a human right’ makes considerable sense at a macro-political level, but is deeply ambiguous at the micro-institutional level. This ambiguity is reflected in the hybrid solutions which have emerged across and within the case studies explored in forthcoming chapters, a complication of the initial dichotomy which has intensified since 2005.

On the one hand, the underlying political tensions over the limits of a market-led way of life are remarkably resilient: especially at a macro-political level they continue to be expressed in terms of a tension between commodification and notions of fundamental rights in relation to basic essential needs. On the other hand, it is increasingly clear that as aspects

of the public participatory model are institutionalised at the micro level, they tend to be colonised by managed liberalisation. Without support from an alternative structural development pathway from that of market-led capitalism, micro-level dynamics of governance are likely to continue to reflect the absorption of fundamental rights into trajectories of commodification.

The tension between commodification and notions of fundamental rights in relation to basic essential needs has a broader resonance that goes beyond water, as does the clash between managed liberalisation and public participatory governance. Challenges arise, however, in moving between these different registers. While the tension between commodification and fundamental rights is often articulated with reference to the ideological clashes of 'high politics', debates about different governance models tend to leach out politics altogether. This makes it difficult to work through the specific implications of the ideological tensions for everyday governance. Paradoxically, perhaps, a special emphasis on the role of law can help to re-insert politics in constructive ways at the level of debates over governance. This book aims to do just this, and in so doing make a distinctively socio-legal contribution to the debate over global water governance. In many strands of this debate, even where struggle and contestation are at the forefront of the analysis, law nonetheless appears as the background structure, or the final glue, of a deal elsewhere formed in the crucible of politics. This book presents law as a crucial lens for understanding the struggle and contestation.

Legality, I argue, is a particularly fertile site for bridging the macro and micro dimensions of transnational governance: a role best illuminated by means of a series of dispute-centred snapshots of struggles over access to water. Law, understood as disputes articulated under frameworks of formal rules allocating entitlements and obligations, freezes politics, routinises conflicts and establishes order. But law in this sense is also a resource for challenging the status quo, for articulating alternative visions of collective justice, and for embedding such visions in concrete institutions and practical rules. Law is the place where aspirations for justice, consensus and stability can crystallise in a form more enduring than most other formal institutional spaces, particularly in a secular society. Because law's form is enduring, and also because it is backed ultimately by violence, however legitimated, the high stakes of struggles over and through law illuminate vividly – almost paradoxically – the ineradicably political, fluid and contested nature of aspirations for justice, consensus and stability. In each of the six case studies that follow, the settlements that flow

from struggles over access to water, however provisional they may be in the long run, give a glimpse of the concrete ways in which the local mobilisation of law is increasingly incorporating responses to global pressures.

The remainder of this introduction has two parts. In the first, I paint a picture of the global water policy field which provides the setting for the struggles over access to water at the heart of the book. That struggle is at its core concerned with the politics of distributive justice between the global North and South, focusing in particular on 'social' dimensions of access to water. 'Social' dimensions of water services policy encompass both *material* redistribution (in terms, for example, of the tariffs charged for access to water and for connecting to networks, or the basis of disconnection for inability to pay) and *recognition* (in terms of the subjective and symbolic dimensions of identity, respect and belonging that are linked to access to a basic essential good such as water). The fate of the 'social' understood in these terms is shaped by a transnational politics that is influenced in particular by international financial institutions and transnational advocacy networks. The influence of these actors reflects a double decentring of both law and nation-state that is central to my theoretical approach, one which constructs transnational governance at the intersection of regulation and rights.

In the second part of the introduction, I summarise the research that underpins the rest of the book and the questions that it will help to answer. The core question is: how have rights and regulation been mobilised to address the demands of redistribution and recognition that are at the core of social protests around access to drinking water? This question, which is linked to the centrality of law and disputes to the politics of necessity, emerges from dialogue with a recent important book by Ken Conca (2005). The framing of the research in the introduction is mainly addressed to readers who aim primarily to learn more on the debates about governing access to water, while Chapter 1 is addressed more directly to socio-legal scholars and those interested in conceptual frameworks of relevance to global social policy on basic needs and essential services more broadly.

### 0.1 The global water policy field

The global water policy field of urban water services delivery emerges from the activities of four types of institutions shaping the problem of access to water at a transnational level: water-specific policy fora and transnational water services corporations (together key to a double decentring of both law and nation-state), and international financial institutions



and transnational advocacy networks (together key to the construction of transnational governance at the intersection of regulation and rights). Before describing these institutions in more detail, I should emphasise that the struggles over access to water at the heart of this book concern the production and distribution of domestic drinking water as a service in urban settings: this could be termed the ‘micro’ water cycle. This is a much narrower and more specific issue than questions of access to water resources in relation to the ‘macro’ water cycle, such as in the context of irrigation, transport, ecological river basin health and industrial water usage. Obviously, the macro and micro water cycles are related: indeed, pressures on access to water in the context of the macro cycle are emblematic of a crisis of rapid urbanisation and access by the poor to essential services that is at the heart of the North/South politics of necessity. But my focus on the micro water cycle informs the picture of the global water policy field I draw below. Although many of the actors and institutions I describe may deal with both the micro and macro water cycles, the detail I highlight is relevant only to the former.

### *0.1.1 Transnational institutions*

The field of global water policy in relation to urban water service delivery refers to the regulation, provision and policymaking environment of urban water services. Narrowly understood, the regulatory framework for delivery of water services is carried out by domestic institutions. Indeed, as the case studies presented in forthcoming chapters will show, national and local regulatory dynamics are the most crucial aspects of water service delivery on the ground. However, despite the absence of any formal international institutions responsible for the regulation of water services at the global level, transnational influence in the provision and policymaking environment of urban water services is now substantial.

Both state and non-state actors have created transnational organisations that debate and shape water policy initiatives in a global context. The most important of these is the World Water Council, created by non-state actors. Indeed, a striking feature of the global water policy field has been the degree to which non-state actors have taken the lead in this respect, particularly in relation to the micro water cycle. The United Nations has never succeeded in creating a single coherent organisation to deal with water (Conca 2005), although access to water in the context of the macro water cycle does have a long history of treaty-based and United Nations activity. But a policy space in relation to the micro water cycle existed, and