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BOOK REVIEW

AGAINST THE CURRENT PRIVATIZATION, WATER MARKETS AND THE STATE IN CHILE

CARL J. BAUER

Boston: Kluwer Academic Publishers, 1998;
Pp. 184, Price: \$97.50

This book is essential reading for all students of water markets and the rising commodity perspective on water. It is strongly recommended for those readers with a more general interest in natural resources policy and institutions. In 1981 the military government of Chile installed a new Water Code that fortified private property rights to water, legally separated those rights from irrigated land, encouraged the emergence of water markets, and sharply reduced the role of government in water affairs generally. In *Against the Current*, Carl Bauer provides a balanced assessment of the Chilean experience with this Water Code, promulgated pursuant to a 1980 Constitution that established a "new institutional order" intensely "free market" in economic orientation.

Bauer's analytical perspective combines geology, geography, history, political economy, and law, and his methodology relies heavily on both written materials and an extensive set of interviews conducted during two and a half years spent in Chile in the first half of the decade. He divides his assessment into two contexts—water rights trading within the agricultural sector exclusively and inter-sectoral river basin conflicts—and chooses two case study regions for each context. In the agricultural context, he selects regions that are different in climate and crop mix.¹ For the basin management assessment, he chooses two regions in which inter-sectoral conflict is pronounced.²

The political and institutional history of Chile in modern times is summarized using the Chilean "law of the pendulum" metaphor to capture the dramatic swings through the ideological spectrum of left, center, and right that are generally well known. For his purpose of analyzing the Water Code, however, Bauer emphasizes two elements of that history for which sharp ideological constructs are now embodied in the 1980 Constitution: (1) a free market doctrine codified in its "public economic order" provisions, and (2) the strategic role of the judiciary codified particularly by its *recurso de protección* (suit for protection) provision.

1. The Bío Bío River basin, south of Santiago, is fairly cool and wet and produces grains, peas, beans, and industrial crops for the domestic market. The upper Aconcagua River basin, north of Santiago, is hot and dry and specializes in fruit crops grown for export.

2. The Bío Bío River basin is again used as a case study along with the Maule River basin, halfway between Santiago and the Bío Bío region.

For those readers with a specialized interest in water markets and political efforts to "normalize" water as a commodity of commerce, Chile, of course, has acquired an international reputation as a social experiment of considerable importance. These readers will find an informative, balanced, and thoughtful analysis of the Chilean experience. To this reviewer, the only disappointment was the brevity of the book and the consequently numerous intriguing but unanswered questions raised. For example, water rights in Chile typically assign only a proportion of each year's streamflow to the rightholder rather than a specific quantum. Although Bauer touches on the behavioral implications of this characteristic, a fuller examination is left for later students.

For the broader audience of those readers interested in general natural resources management policies and institutions, Bauer's analysis of the Chilean river basin experience should be particularly informative. The Chilean mixture of executive, legislative, and judicial governmental water management functions, or lack thereof, with privately held water rights offers a different and unusual vantage point for assessing institutional performance. And, Bauer's institutional history allows ready identification of those institutions that have survived the law of the pendulum and those that have not. Interestingly, the military government eventually gave preference to the actual users of water rather than those who simply possessed paper titles to water, though the ultimate judicial outcome appears less certain.

Bauer concludes that "Chile's experience with free market water policies has been uneven."³ Within the agricultural sector, he states that "the water market has been less active or successful than its boosters have claimed, but the results may well be satisfactory if we begin with modest expectations." On the other hand, he concludes that at the regional scale of the river basin, "the current legal and institutional framework has done a poor job of coordinating different water uses and resolving conflicts between them." There are numerous caveats to each of these generic conclusions that readers will have to discover for themselves. In many ways, the evidence presented seems to suggest a law of the pendulum that applies more closely to the poles of stability and change rather than, strictly speaking, to the ideological poles of left and right.

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3. All quotations in this paragraph are drawn from the five page long concluding chapter.