NEOLIBERAL STATE AND THE RISE OF ENVIRONMENTAL INSTITUTIONALITY IN CHILE

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ABSTRACT

Objective: This paper analyzes the emergence of Chilean environmental institutions (1994) within the framework of the neoliberal model established in the civic-military dictatorship (1973-1989). Although said environmental institutionality arises in "democracy", its legal bases must be sustained on a series of legal norms that shaped the neoliberal state founded on dictatorship.

Theoretical framework: The Governmentality Approach affirms that there is a complex network of power relations, supported by political economy as primordial knowledge, which allows this power to be exercised to guide the behavior of the population, through different mechanisms and concrete and practical devices.

Method: Through a discourse analysis of a legal and political documentary corpus, it is evident that the bases of the neoliberal state operate as a condition of possibility for the establishment of an environmental institutionalism that through its discursive practices operates as an adequate device for the principles of the neoliberal model.

Results and conclusions: It is concluded that, in the environmental institutions created in the 1990s, a series of discursive objects, created previously, are reformulated, which encourage the neoliberal treatment of the environmental issue, specifically through new legal tools such as LGBMA. (19,300) and the environmental evaluation regulation (1997).

Research implications: Identifies the limitations and contradictions of the State's environmental management; within the framework of a neoliberal political economic model like the Chilean one.

Originality/value: Contributes to the use of discursive historical analysis methodologies through specific fields such as the environment, through archival material that allows us to understand the specific practices of the State from the perspective of a history of the present of neoliberal governmentality.

Keywords: State, Neoliberalism, Environmental Institutions, Chile.

O ESTADO NEOLIBERAL E O SURGIMENTO DA INSTITUCIONALIDADE AMBIENTAL NO CHILE

RESUMO


Estrutura teórica: O Enfoque da Governamentalidade afirma que existe uma complexa rede de relações de poder, sustentada pela economia política como conhecimento primordial, que permite que esse poder seja exercido para orientar o comportamento da população, por meio de diferentes mecanismos e dispositivos concretos e práticos.

Método: Por meio de uma análise de discurso de um corpus documental jurídico e político, evidencia-se que as bases do Estado neoliberal operam como condição de possibilidade para o estabelecimento de um institucionalismo

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ambiental que, por meio de suas práticas discursivas, opera como um dispositivo adequado aos princípios do modelo neoliberal.

Resultados e conclusões: Conclui-se que, nas instituições ambientais criadas na década de 1990, reformula-se uma série de objetos discursivos, criados anteriormente, que incentivam o tratamento neoliberal da questão ambiental, especificamente por meio de novos instrumentos jurídicos como o LGBMA. (19.300) e a regulamentação da avaliação ambiental (1997).

Implicações para a pesquisa: Identifica as limitações e contradições da gestão ambiental do Estado, no âmbito de um modelo político-econômico neoliberal como o chileno.

Originalidade/valor: Contribui para o uso de metodologias de análise histórica discursiva em campos específicos, como o meio ambiente, por meio de material de arquivo que nos permite entender as práticas específicas do Estado a partir da perspectiva de uma história do presente da governamentalidade neoliberal.

Palavras-chave: Estado, Neoliberalismo, Instituições Ambientais, Chile.

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1 INTRODUCTION

This article answers the research question about what is the state treatment of the environmental issue in the Chilean neoliberal model, from the emergence of environmental institutionality?

For this purpose, the discursive practices deployed by the State of Chile in 1994 through the promulgation of the General Law on Environmental Bases 19.300 and the subsequent environmental assessment regulation that operate the specific procedures for the approval of projects through their environmental impact assessment are analysed.

The justification of the research is based on the need to analyse the historical contingency of the state treatment of the environmental issue, the construction of knowledge regarding socio-ecological problematisations and neoliberalism as closely related contemporary phenomena. The context of the Chilean neoliberal model and the state environmental institutionality as the main body to deal with the environmental issue, operate from a neoliberal logic that in its discursive matrix are aimed at ensuring the conditions that allow the freedom of the market, prioritise private property, promote business competitiveness, grant royalties to extractive companies, enhance extractivism and economic deregulation by the State.

For them it is essential to analyse how the State in the neoliberal model fulfils a strategic function of power exercises over the population, which allow to sustain the neoliberal economic model. One of the fundamental aspects of this strategic function is focused on the norms of use of natural resources that are used in the national extractive industries (mining, fishing, forestry, agribusiness). To sustain this extractive use of these riches and comply with the “sustainability” of the model, an environmental institutionality is promulgated that seeks to generate safety and protection devices for nature and population. However, this exercise of power over the population has been questioned at present due to the adverse effects manifested on the ecosystems and their local populations.

In practice, decades of environmental institutionality are questioned due to the deterioration of local natural ecosystems and adverse effects on local populations, justifying
studies that allow understanding what is the concrete practice of environmental institutionality and its weaknesses to correct or recast.

2 FRAMEWORK

The analytics of governmentality is an approach that focuses on the exercises of power and knowledge, and according to Foucault (2006) is understood as the “set constituted by the institutions, the procedures, analysis and reflections, the calculations and tactics that allow to exercise this very specific and complex form of power, which have as its main goal the population, as a primary way of knowing, the political economy, and as an essential technical instrument, the devices of security” Foucault, (2006: 213)

The institutions in this study are mainly referred to the State, although it is possible to approach social institutions from different approaches, we are interested in addressing state institutions and how an environmental institutionality is configured in Chile. State institutions are legally formalised and have a fundamental governing authority for societies by instituting the conduct of the general population.

These behaviours of the population are constituted as practices from the guidelines proceeded by the institutions. The procedures referred to by the governmentality are the practices ritualised, formalised and bureaucratized in the concrete, those that emerge between the normative statements and the actions of the population. From this perspective it is understood “by practice what men really do when they speak or when they act”. (Castro-Gómez, 2010:28). Practices are “not an expression of something that is “behind” what is being done (thought, unconscious, ideology or mentality), but are always manifest; they do not refer to something outside them that explains them, but their meaning is immanent. (Castro-Gómez, 2010:28). These “practices (discursive and not [extra] discursive) are events: they emerge at a specific moment in history and are inscribed in a web of power relations.” (Castro-Gómez, 2010:29). Therefore, “although the practices are singular and multiple, they must be studied as part of an assembly, of a device that articulates them” (Castro-Gómez, 2010:29).

As for the Governmentality Devices, they specifically allude to the security devices. Although they are defined as “[...] a decidedly heterogeneous group that includes discourses, institutions, architectural facilities, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions” (Foucault, 1991: 128), their objective in what the author calls in biopolitics, is orientated to produce the “conditions of existence of a population in order to exercise an economic government over the conduct of individuals: this is the ultimate objective of security devices” (Castro-Gómez, 2010:74).

In this sense, the function or usefulness of each device is given by its objective, and moreover “it is not any of these particular elements that defines the device, but the rationality of the whole”. (Castro-Gómez, 2010:64). This rationality of the device has to be understood as an eminently practical rationality, orientated to the conduct of conduct, to the environment of the bodies that guide their conduct, but that are also linked to a strategic orientation since the devices are "essentially strategic in nature, which implies that it is a certain manipulation of force relationships, either to develop them in a specific direction, or to block them, or to stabilise them, use them, etc." (Foucault, 1991: 130). On the other hand, the concept of Rationality of government is the way of doing and acting that are configured in practice and that at the same time guide the behaviour in the exercise of power of the government of the population. They are that kind of "manual", "scheme", or "model" that dynamically establishes (open to resistance) how to think and act in the government.

Both institutions and procedures, along with their analysis, reflections and tactics, are for the governmentality approach; means whose object is the governance of the population. If
the objective of all these complex exercises of power is the population, the State and its institutions are like a catalyst, where important forces of this exercise of power circulate over the population, since it is a validated and legitimised place by society as a whole (Skornicki, 2017).

On the other hand, all these means that target the population; it will have in the Political Economy its fundamental knowledge. This fundamental knowledge is the one that, in a relational way with the power, will build the approaches, knowledge, information to exercise this form of government on the population. Foucault will argue that “by capturing this continuous and multiple network of relations between population, territory and wealth, it will constitute a science that we call political economy” (Foucault, 2006:133). Therefore, when we look at the State, its mechanisms and devices of power, we should understand that the use of wealth, the administration of a territory and the management of the life of the population, will establish a way of knowing to maintain this type of government.

On the other hand, the question of the State is understood as an essential force field in the exercise of power, but not the origin or centre of it. Which, as Skornicki says from his reading of the Birth of biopolitics, “does not mean evacuating the State as an object of study, is to abandon its institutional analysis, analysis that [will] turn it into a political universal from which the whole system of power relations that cross society could be deduced” (Skornicki, 2017:18). It is argued that in this reading that “it is not possible to speak of the state-thing [...] the state is a practice”, therefore, it is necessary “to investigate the problem of the state from the practices of governmentality” (Foucault, 2007:96)

Thus “the State is nothing more than the mobile effect of a regime of multiple governmentalities” (Foucault, 2007: 96), therefore “the State are not objects but fields of action and intervention generated from a heterogeneous set of practices,” (Castro-Gómez, 2010:28), therefore more than analysing the State or its institutions in a formal way, it is necessary to study those spaces and fields in which the State is guiding the practices of government in specific cases, beyond the institution self-defined by the State as origin or headquarters of the environmental issue (Environmental Institutionality), but in the multiplicity of practices that ega

For our case in question, we are interested in identifying the process in an intermediate or “medium duration” range (Foucault, 2002a) in which the discursive and extradiscursive practices deployed by environmental institutions account for the discourses, locations, procedures, power relations, analysis, reflections and subjectivation mechanisms. This defines governmentality as a process, which must be tracked and evidenced as it is configured over time, that is, it is proposed as a historical method of investigation from the emergence of the neoliberal state in Chile (Constitution of 1980) and the establishment of its ad-hoc environmental institutionality (law 19.300, 1994)

3 METHODOLOGY

To proceed with the analysis of what is the state treatment of the environmental issue in the Chilean neoliberal model from the emergence of environmental institutionality, it is necessary to focus on what Seville (2014) calls the “history of the present” - as an archaeology of the elements that compose contemporary social structures - that allows us to understand the sociopolitical genesis of discourses, techniques and practices” (Seville, 2014:51).

Regarding the collection technique, this research is carried out with the conformation of corpus and a documentary analysis of archival material. We understand by archival material, “written texts that have not been obtained from experiences designed by the researcher or proposed to the analyst by another professional or by an individual with already determined objectives, but are selected from those that have been susceptible to be preserved thanks to
various social and institutional mechanisms that constitute them in documents” (Arnoux, 2006, 3).

From a documentary analysis of discursive objects, the main foundations of environmental institutionality in the Chilean neoliberal model are identified. Thus, the conformation of discursive objects along a corpus, the analysis of intradiscourse and the generating matrix of a series that is transmitted is analysed (Arnoux, 2006).

The corpus is composed of different official and public documents of the Chilean State. The article analyses the political constitution of the Republic of Chile of 1980, the speech of Chacarilla of the dictator Augusto Pinochet, "The Brick": bases of the economic policy of the Chilean military government, the general law of bases of the environment 19.300 (1994) and the regulation of the system of environmental evaluation (1997).

4 RESULTS AND DISCUSSION

In the year 1980, the current Constitution was promulgated to this day in Chile, through a plebiscite that did not comply with the guarantees of legitimacy that are currently managed (Fuentes, 2013). However, the importance of the simulated plebiscite is fundamental to position the foundations from which a new type of State, the rule of law, is founded.

The contents of this constitution state among the main fundamental axes, the following:

(a) The “bases of the institutionalism”, a question that means a re-establishment of the country and whose bases support all the subsequent regulations that shape the political-institutional order that is being updated to each new law, norm, decree that is created.

“The organs of the State must submit their action to the Constitution and the norms dictated according to it, and guarantee the institutional order of the Republic” (Art. 6 Constitution).

(b) This institutionality prioritises private property (over natural common goods), free competition, trade openness, market deregulation. Article 24 shall affirm “the right of ownership in its various forms over all kinds of tangible or intangible property”.

(paragraph 6). “The rights of individuals over waters, recognised or constituted in accordance with the law, shall grant to their owners ownership over them” (para.

(c) It organises the country territorially in 13 regions, which are the ones that remain until today, and that, despite calling the country as unitary, decentralised and deconcentrated, the problems of centralism Santiago are perpetuated.

(d) It consolidates the relationship between the State and the law, the legitimacy of the constituent State and constituted by the law, and the law as constituted by a decision, which is finally consolidated according to its concrete “application” rather than its legitimacy. (Kelsen-Shimdt controversy, in Murillo, 2016) (Fernández, 2001) which will lead to a subjective effect of the forcible establishment of a model of society, state, region that is difficult to irreversible since it is normalised.

(e) Dismantling of State areas and privatisation, and outsourcing of services.

On these axes neoliberalism is institutionalised in the Chilean case. We can add the enactment of the Water Code in 1981 as a pioneer in the private treatment of water at the South American level (Álvez, 2020), the mining concessions law in 1983; which establishes the opening to international capital with benefits, and the regionalisation law in 1978 which aims “the exploitation of natural resources” and “promote private activity, orient it towards regional development” (DL:575, 1975).

Similarly, with regard to the treatment of the environmental issue, article 8 of the 1980 Constitution states: “The right to live in an environment free of pollution. It is the duty of the State to ensure that this right is not affected and to protect the preservation of nature”. These purely legal orientations, plus the ideological ones raised by the political discourse of the
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dictator, would give rise to what are the discursive axes of environmental treatment by the State in Chile: Notion of environment, democracy, participation, development and new institutionality.

Thus, the civil-military dictatorship left several fundamental elements present in the Constitution, which can be summarised and evidenced, on the ideological level, in the speech made by Pinochet in 1977 (Discourse of Cerro Chacarilla):

“For a proper approach to this problem, it is appropriate to reiterate once again that September 11 (coup d'état against Salvador Allende) did not only mean the overthrow of an illegitimate and failed government, but represented the end of a political-institutional regime that was definitively exhausted, and the consequent imperative to build a new one” (Pinochet, 1977: 13).

The ultimate goal was to generate a “new institutionality.” This institutionality has as its fundamental value Democracy, but a “New democracy” which, according to Pinochet, “raises the duty to walk the path of law, always harmonising flexibility in social evolution with the certainty of an objective and impersonal legal norm, which obliges rulers and governed alike. In this perspective, we clearly warn that our duty is to shape a new democracy that is authoritarian, protected, integral, technologically advanced and of genuine social participation” (Pinochet, 1977:13).

The chicago boys (Valdés, 2020) are the ones who write a document that establishes the bases of the new neoliberal institutionality, known as “the brick”. This document sets out the functions of the State, arguing that for “proper global and decentralised planning [it] must ensure the proper functioning of the markets; this makes it necessary the active intervention of the State in the economy through global policies to achieve an efficient allocation of resources and an equitable distribution of income” (CEP, 1991:63). “It should also be the concern of the State to ensure a stable institutional framework, with an impersonal and non-discriminatory system in decision-making and in the application of the rules or controls that are established.” (CEP, 1992: 64)

When transitional governments began their terms in 1990 after the dictatorship ended, many of the pillars of the neoliberal model were sustained. (Riquelme, 2015) Among these pillars we find the legal norms already mentioned, and it is from them that another series of legislative exercises are beginning to be deployed that are overlapping on the legal bases of the model, without questioning the origin and content of the preceding normative pillars.

This, linked to the increasing demands of multilateral organisations or international cooperation regarding the environmental measures that national states must implement, led to the beginning of the 1990s of a legislative discussion on what would be the General Law on Environmental Bases, an issue in which all countries at the Latin American level are beginning to be involved (Brañas, 2001).

In 1990, when former President Patricio Aylwin took office at the hands of Augusto Pinochet, the National Environment Commission (CONAMA) was created, “a superior and interministerial body responsible for coordinating the public sector to design and implement the basic instruments of proper environmental management: a policy, legislation and institutions that can, realistically and gradually, promote sustainable development, integrating economic growth, social equity and environmental conservation” (CONAMA, 1992:s/n).

One of the first efforts of this commission was to prepare a repertoire of the legislation of environmental relevance in force in Chile in 1992, this work was reflected in an extensive document that met all the standards that had some environmental relevance. In its presentation, it already states the argumentative orientation that discursively founds these original exercises of government around the environmental, specifically when it is stated that “the search for the compatibility between the economic growth that we require to maintain, the proper management of the natural resources, basic for that growth, and the effort of decontamination
to improve the quality of life of our population, is [...] a collective task that mobilises the
growing interest of the representative organisations of the country” (CONAMA, 1992: s/n).
From here, several elements that lay the foundations for the capitalisation of nature as a
paradigm are evidenced, through the “basic natural resources for growth”, for example.

Thus, as early as 1994, this commission had succeeded in installing and discussing in
the legislature the LGBMA 19,300 law enacted as a milestone of Chilean environmental
institutions. The law institutionalises the entire discursive matrix of the treatment of the
as the “nuclei of the neoliberal rationalities of governance of the environmental issue” (Seoane,
2017: 331). According to the author referred to “these nuclei are: a) the epistemic construction
of nature as capital; b) the conformation of scarcity as a subjective consideration linked to the
deterioration of the environment and the natural world; and c) the attribution of the causes of
the environmental issue to the common (non-commercial) character of the natural world and
the consideration of its treatment as creation of private property rights” (Seoane, 2017: 328).

These 3 nuclei of rationalities operate on an environmental institutionality that is
configured as an organisation of different laws, regulations, agencies, services and state
functionalities that are focused on a specific object of state intervention: “the environmental”.
Environmental institutionality in Chile has its “beginning” in the discursive practices that place
it from the formal political world since the enactment of the environmental basics law (LBMA)

The LBMA defines the environment as: “the global system constituted by natural and
artificial elements of physical, chemical or biological nature, sociocultural and their
interactions, permanently modified by human or natural action and governing and conditioning
the existence and development of life in its multiple manifestations. ( LBMA: art. 2, point 2) ,
“i.e., as a global system which is, its natural, artificial and sociocultural constituents act not
only in isolation but also through indivisible and reciprocal links, influencing each other”
(Guzmán, 2012:23). In theory, the definition is broad enough to integrate multiple human and
non-human elements.

However, the object of the regulation of the BMA is the regulation “of the right to live
in an environment free of pollution, the protection of the environment, the preservation of nature
and the conservation of the environmental heritage, without prejudice to what other legal norms
establish on the matter”. (Art. LBMA). The anthropocentric turn is evident here, where the
“human” right to live in an environment free of pollution is parted. Here an interesting element,
since pollution is the parameter to establish the management of the environment, but this
definition of what is pollution and what is not pollution, will be at the discretion of studies and
subsequent policy decisions, which in practice will lead to a series of discussions regarding this
threshold as a parameter for environmental management.

With regard to the principles of law, we can see five that are very interesting. First, the
“Principle of the rational use of natural components” states that “the use and use of renewable
natural resources shall be made by ensuring their regenerative capacity and the biological
diversity associated with them” (Art. LBMA). Here the name and construction of the discursive
object of “natural resources”, which is reformulated from the international guidelines of the
UN, positions nature as a resource for economic production. The paradigm of capitalisation of
nature as the first principle of law. Along with this, the ‘regenerative capacity’ threshold poses
an unattainable scientific challenge despite being the main criterion for assessing the risk of
environmental impacts.

The second principle, the “polluter-pays-polluter-pays principle”, states how the law
must punish pecuniarily those who fail to comply with such regulations, which was set out in
proposed here is that a deterioration caused by pollution can be valued monetarily, which has
been strongly discussed from different ways of achieving this valuation. In the framework of the processes of environmental assessment there are some elements that show greater implementation of this type of economic valuation, and perhaps pollution and the effects on the health of the human environment are the most controversial to agree.

Thirdly, the ‘principle of participation’ (Art. 4 MAL) sets out ‘citizen participation’ as a way of including citizens in the democratic system of the rule of law. This type of participation is regulated by other institutional instruments, and allude to those that Pinochet raised regarding how political participation should be organised, regulated who can and how to participate in these processes: “democracy” Pinochet. This point will be controversial over the years, as criticism of such participation asserts that it is not possible without effective procedures or education by the population (Lostarnau et al, 2011).

Fourth, the “Efficiency Principle” is at the heart of institutions and their aspiration to develop efficient management. This form of state management is framed by the growing proliferation of international documents that aimed to “modernise the state”, which will characterise this institutionality with modern management tools different from the state bureaucratic culture of other sectors. (computerisation, intersectoral coordination, decentralisation, scientific expertise).

Thus, the organisation and design of environmental institutions begins “from 1994 to the beginning of 2010, whose institutional framework was composed of the National Environment Commission (CONAMA), which in turn was composed of a minister president (since 2007), a board of directors or ministers, an executive director, a National Advisory Council (plus its regional expressions) and the Regional Environmental Commissions (COREMAS). In short, it was a “cross-cutting coordinating body, in the form of a technical director, under which other public actors in environmental matters would have to act” (Guzmán, 2012:99).

The Board of Directors is headed by the Senior Directorate of CONAMA and consists of 13 ministers: the Secretary-General of the Presidency, who chairs it with the title of President of the National Environment Commission, including the Ministers of Foreign Affairs, National Defence, Economy, Development and Reconstruction, Planning and Cooperation, Education, Public Works, Health, Housing and Urban Planning, Agriculture, Mining, Transport and Telecommunications and National Property. (Fernández, 1998:36).

Pursuant to article 75, paragraph 3, of Act No. 19,300, the National Environment Commission is administered by the executive director, who is appointed by the President of the Republic. This executive director is the senior head of the service and is legally represented. (Fernández, 1998: 37).

The senior management of CONAMA is the advisory board. This Advisory Council is composed of the following persons: two scientists proposed in quinoa by the Council of Rectors of Chilean Universities, two representatives of non-governmental non-profit organisations that have as their object the protection of the environment, two representatives of independent academic centres that study or deal with environmental matters, two representatives of the business sector, two representatives of the workers and a representative of the President of the Republic. (Fernández, 1998:37)

With regard to the regional representations of environmental institutions, the National Environment Commission is deconcentrated territorially through the Regional Environmental Commissions (COREMAS). In each region of the country, there is a COREMA, which is composed of the regional mayor, who presides over it, the provincial governors of the region, the Seremis of the ministries that form the Governing Council, four regional councillors elected by the respective Council and the regional director of the Environment Commission, who acts as secretary. (Fernández, 1998:38)
In addition, each COREMA has a Technical Committee composed of the Regional Director for the Environment, who chairs it, and the regional directors of public services with competence in environmental matters, including the relevant maritime governor. This Technical Committee is extremely important, since it is the body that makes the technical analysis of environmental impact studies, making the relevant recommendations for its modification, approval or rejection. His report, while it is true, has not been duly considered by COREMAS, it has been considered by the jurisprudence of the Courts of Justice, which have taken into account their judgements to resolve the conflicts that have been submitted to their jurisdiction. (Fernández, 1998:38)

In each COREMA there is a Regional Advisory Council for the Environment, whose members are appointed by the regional mayor, on the proposal of the respective organisations that they represent. Thus, each Regional Advisory Council consists of two scientists, two representatives of NGOs that have as their object the protection or study of the environment, two representatives of the business sector, two representatives of the workers and one representative of the regional mayor. His term in office is two years. It is the role of these Regional Advisory Councils to respond to the consultations of the Regional Environment Commission. (Fernández, 1998:38)

On the other hand, there are environmental units in some sectors of State institutions, which are parts of organisations that have resources for environmental issues.” The ministries that have Environmental Units so far are: Economy, Development and Reconstruction, Public Works, Agriculture, National Goods, Health,


There are also public services with environmental competence, which are: “Among the main institutions involved in environmental management, we can cite the following: Ministry of the Interior (ONEMI), Ministry of Foreign Affairs (Directorate of the Environment, IChA), Ministry of Economy (Undersecretariat of Fisheries, Sernap, CORFO, National Irrigation Commission, Infor, Inipb, Pontee, Siren, Seratur), Ministry of Education (Conicyt, Council of National Monuments), Ministry of National Defence (Directemar, SHOA), Ministry of Public Works (Directorate of Irrigation, DGA, SISS), Ministry of Agriculture (SAO, CONAF), Ministry National Assets, Ministry of Health (Sesma, Health Service, ISP), Ministry of Mining (Cochilco, Sernageomin, Chilean Nuclear Energy Commission, National Energy Commission), Ministry of Transport and Telecommunications (Under-Secretary of Transport), Ministry of Housing and Urbanism (Under-Secretary of Housing and Urbanism). (Fernández, 1998:39)

Finally, there are two bodies that complete the design of environmental institutions, on the one hand, the State Defence Council is responsible for supervising acts that threaten the State in these environmental matters, and on the other hand there are the more than 300 municipalities in the country that operate in decentralised environmental management work at the micro-local level.

Designed all this institutional architecture in 1994, a period of white running began from voluntary subjections that companies could request to evaluate their projects or productive activities environmentally. During the first years of operation of the institutional and environmental law testing, it is necessary to regulate the environmental assessment process, which is the main management tool. In 1997, this regulation was issued.

One of the main criticisms of CONAMA in these first years and beyond is that it did not create an environmental policy that was its responsibility (Fernández 1998). Thus, “the institutionality created is inadequate to fulfill the legal task of proposing to the President of the Republic, and consequently to all ministries, a National Environmental Policy, while, on the contrary, its role is reduced to a coordinating body for sectoral policies, responsible for the System of Environmental Impact Assessment. (Fernández, 1998:39).
Thus, the regulation of the environmental assessment system (RSEIA), promulgated in March 1997, will begin to operationalise in detail the requirements, requirements, requirements and conditions that individual projects or activities must comply with in order to be approved to implement such projects. It is understood that this type of documents exerts a conducción of the population’s behaviours, through the discursive practices they generate. To this end, a series of statements are made that respond to a reformulation of environmental issues contained in previous speeches and documents (laws, conventions, treaties, etc.) and that proliferate in contexts of temporary and spatial updating depending on each project that is located in a given territory.

As for these discursive practices, this environmental assessment regulation is divided into 7 main titles. Each one represents a fundamental section to understand how the environmental issue is approached from the paradigm of the capitalisation of nature and the nuclei of the neoliberal rationalities of the treatment of the environmental issue.

The first section of this regulation sets out in general terms the basic notions and definitions for the treatment of environmental assessment. It establishes how the system governs, who should be evaluated, what should be evaluated and what should not, who are responsible for carrying out these tasks and what are the modalities of this evaluation. (RSEIA, 1997)

In the second title or section, the regulation states which “relevant” is the submission of an environmental assessment declaration or study. These are the 2 types of submission to the system, where the declaration is when the project is to smaller activities, and therefore of less probability of environmental impact, and the study is when they are projects or activities of greater impact. This section emphasises that impacts will be assessed in terms of the impact on the quantity and quality of renewable natural resources; water, air and soil. (RSEIA, 1997). Furthermore, it states that environmental impacts must also consider the “resettlement of human communities or significant alteration of the life systems and customs of human groups.” (RSEIA, art. 9:1997) In order to assess this significant alteration, we must consider at least the geographical, demographic, anthropological, socioeconomic, social welfare, proximity, landscape or tourist value and anthropological/archaeological/historical/cultural heritage “dimensions”.

In the third section, the contents that a declaration and an environmental impact study have to present are set out. Here it is made explicit that the studies must contain a “baseline”, which is a kind of diagnosis of what exists to evaluate the potential environmental impacts. This baseline should contain the diagnosis on different “means”, physical, biotic, human, constructed, land use planning instruments, landscape and contingency areas. In addition, environmental assessment studies (EIAs) should consider an environmental impact assessment and prediction, mitigation action plan, remediation and/or compensation if applicable in the case of environmental impacts.

In the fourth section, the RSEIA sets out the procedures and responsibilities for carrying out such an assessment. Everything starts when the company performs the EIA or DIA, then different state agencies with environmental competence will evaluate the EIA or DIA. In case of doubts, the company is presented with a document called ICSARA (Consolidated Report of Requests, Clarifications, Rectifications and Extensions) all the statements of the parties involved. After this, the company responds by means of a document called ADENDA each of the state pronouncements. If the doubts are considered resolved, the consolidated evaluation report (ICE) is published among COREMA and its approval or rejection is voted in a session for this purpose. In any case, the evaluation is finalised with an Environmental Qualification Resolution (ECR), document in which all the previous steps are detailed, and where in addition citizen observations are “weighted”. In addition, the CAR establishes the conditions and requirements that the project must perform if it has been approved.
The fifth section or title of the RSEIA establishes the forms of “citizen participation” that natural persons and social organisations have to get involved in the environmental evaluation of a project or activity. These forms will be defined by the COREMAS or CONAMA national depending on the project itself. To this end, a series of dissemination of information on projects is established through official periodic media and the environmental assessment study is made public through the provision of a physical copy in some state delegation of COREMA and in the respective municipalities. Once the study has been reviewed by the public, it must make its observations within 60 days to the respective Environmental Assessment Service administratively (project site or activity).

In the sixth title or section, it is stated that assessments should contain mitigation action plans, repair and restoration plans and compensation plans, where they exist or are necessary, (RSEIA, 1997). The studies and declarations must also include risk prevention measures and an environmental monitoring plan for such plans once the project has begun. For this monitoring plan, consideration should be given to everything provided for in the respective CAR, which will operate as a parameter for compliance with the environmental obligations of the company or operator in question.

The seventh title defines the sectorial environmental permits that each public administration body with environmental competence must process depending on the project or activity in question. These permits are processed according to different national and international legal regulations, depending on the sector, i.e., they refer to precedent regulations from different decades. Among those enunciated in the RSEIA are norms such as international conventions to prevent contamination from ships (1972), Law N° 18.892 General Fisheries Law (1972) to 1992, Law N° 17.288, on National Monuments, Law N° 18.302, Nuclear Risk Safety Law, Law N° 18.248, Mining Code, Law 11.402, Sanitary Code, among many others (RSEIA, 1997).

In the eighth title of the RSEIA it is stated the ways of contracting an environmental risk insurance, which allows to have some support in case of environmental affection, which must be in the name of CONAMA, and must specify the goods to be insured. This would allow provisional authorizations to be issued.

Thus, the RSEIA ends with the administrative procedures to present all these formal procedures and defining who must carry out these actions to account for an activity that complies with the environmental protection standards stipulated by law.

5 CONCLUSIONS

With respect to the research question regarding the state treatment of the environmental issue in Chile, it is possible to affirm that the Chilean environmental institutionality originally founded in 1994 reformulates in its discursive practices a series of discursive objects proper to the neo-liberal state founded in previous decades during the dictatorship of Augusto Pinochet. Among the main discursive objects reformulated by the environmental institutionality are the notion of a State and institutionality that guarantees the entrepreneurial freedoms of the individual, the free market and private property.

The environmental institutionality founded on the basis of the 1980 constitution is based on the object "environment" understood as nature susceptible to be capitalized (paradigm of capitalization of nature), which translates into understanding the environment as "the natural" (glaciers, lakes, rivers, air, among others) as a resource for the productive process of a society. This productive process is framed in a neoliberal economic and political model that requires a strategically deployed type of State that allows the free market as the most efficient form of social organization.
Thus, the General Environmental Law 19:300 establishes the legal framework within which the population's environmental practices will be conducted, promulgating the basic principles for the conduct of the population in these matters, through the deployment of discursive practices based on the "rational use of natural resources", the "polluter pays" principle, "citizen participation" and "efficient management" of the environment.

The principle of citizen participation is fundamental in that it generates a whole device through which it will define who can participate and how to do so. Through these procedures it suggests what kind of organizations and how they should make their observations, which unfolds a field of exercises of power "whose formal rules should only guarantee the free play of competition daughter of individual freedom operate in that sense as the rules of a game that the players must play abiding by them in such a way that they guarantee the free market and therefore private property foundation of Freedom" (Murillo, 2016:25).

From that law and the subsequent Regulation of environmental impact assessment, the discursive practices that will guide the behaviors of the population with respect to the environmental issue are enunciated. Specifically, the regulation establishes how to decide the "environmental impact", by means of a series of procedures, studies, analysis and decision making designed to comply with the neoliberal treatment of the environmental issue and the economic model alluded to.

The period in which the LGBMA was promulgated (1994) coincides with the consolidation stage proposed by Pinochet, where civil society must take charge of creating "the legal-institutional instruments that - in each of the stages - must be created or employed" (Pinochet, 1977:14). Thus the environmental institutionality is adapted to the "New Democracy" proposed by Pinochet, where "the duty to walk along the path of Law, always harmonizing flexibility in social evolution with the certainty of an objective and impersonal juridical rule, which obliges equally those who govern and those who are governed. In this perspective, we clearly see that our duty is to give shape to a new democracy which is authoritarian, protected, integral, technified and of authentic social participation" (Pinochet, 1977:13).

In this way, the environmental institutionality deploys a series of discursive practices, oriented to exercise power through the conduct of the population. Leaving the State, through its environmental institutionality, as a strategic actor in the "neoliberal governmentality" (Murillo, 2011). Through the exercises of power deployed by the processes of environmental assessment, the installation of projects and productive activities of the owners is encouraged, and the interference of citizen organizations is kept at a distance.

The results obtained in this research can help society to understand the progression and deepening of the neoliberal model from the discursive practices deployed in the establishment and consolidation of state institutionality. For the case in question, it allows understanding the difficulties of the treatment of the environmental issue through the operationalization of a series of institutions, procedures and knowledge framed in the neoliberal political economy, especially due to the limitations evidenced in the growing deterioration of national and international ecosystems.

From an academic point of view, it allows the use of new theoretical/methodological approaches for the understanding of state institutionality in neoliberal capitalism, and specifically in environmental issues from the point of view of political sociology with a historical and discursive approach. However, the main limitations of the study are evident in the composition of the corpus of analysis, especially due to the extent of the deployment of discursive practices in different documentary fields: legislation, regulations, public policies, ordinances, media, minutes, among others.

As recommendations for future works, it is proposed to continue the documentary archeology from the genesis of these discourses and discursive practices, up to the present day;
in order to evidence updated data of the genealogy of the discursive practices of the state treatment of the environmental issue by the Chilean institutionality.
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