

Preface

THIS BOOK IS ABOUT Brazilian prosecutors who function much like public interest environmental lawyers in other countries. They sue polluters and the government to enforce environmental laws. They accuse environmental agencies of shirking their duties because of political pressure. They form alliances with local environmental groups and the media. They attend professional meetings to share strategies about how to be more effective environmental advocates. Several of the country's most recognized experts on Brazilian environmental law come from their ranks. As I argue in these pages, the work of these prosecutors is making environmental law matter in Brazil.

A story about prosecutors who act like environmental advocates—and who do a decent job of it—seems unlikely. Yet, while it has not been my goal or approach, I am confident that a public choice theorist could explain the behavior of Brazilian environmental prosecutors. As individuals and as an institution, prosecutors receive substantial public attention and acclaim for their environmental work. Headline enforcement cases, particularly those against the government, reinforce the notion that prosecutors are politically independent from the government and that they play a vital role in representing public interests. This redounds to the institution in the form of public legitimacy and, ultimately, the preservation of its substantial powers. Also, prosecutors are paid very well and new positions are filled through competitive civil service exams that attract many of the best young lawyers in the country. While corruption is always a possibility, prosecutors may be more resistant than many other governmental employees because of their favorable working conditions and status in the legal profession.

The incentives of Brazilian prosecutors are structured such that they tend to take environmental law seriously and act in ways that make environmental law have an impact in society. Many of the advances in environmental law implementation and enforcement in the past two decades can be directly linked to the work of Brazilian prosecutors. Considering the weakness of capacity in environmental policy in most developing countries, this is something that deserves to be studied and replicated if possible.

NOT ENOUGH SCHOLARLY ATTENTION has been paid to environmental law in developing countries. For many years, the prevailing idea was that countries would get environmental law after they get economic development. We are all on a similar course of development, it was assumed, and developing countries were not developmentally ready for environmental law. When they became ready, developing countries would simply learn from developed countries that had already passed through that phase of development.

This viewpoint is no longer tenable. There is no uniform course of development—no six stages, no linear progression, no universal road map to the economic and environmental good life. Moreover, there is a need for effective environmental laws in developing countries immediately, not just sometime in the future. Regardless of economic development, environmental quality matters to people's health and people's lives. Moreover, environmental problems increasingly transcend national borders, and their solutions will require that environmental laws be capable of being implemented and enforced in developing countries as well as developed countries. The question of how well environmental protection works in developing countries is one of considerable practical and scholarly importance.

The Brazilian case shows that involvement of legal institutions is a route toward enhancing the effectiveness of environmental law. What is special about legal institutions? Why should they be involved in environmental protection? Legal institutions can operate in ways that make societal actors both know the law and follow the law. When a prosecutor files a headline environmental case, the public as well as the defendant learn more about what the law requires of them. When the judge decides an environmental case, the law is interpreted to clarify its meaning and applicability. Prosecutions and court decisions also compel compliance with the law. The legal system is harnessed to bring force to environmental laws.

Environmental protection in developing countries can benefit from the

involvement of legal institutions. Legal institutions have not generally been players in environmental protection, but there are many reasons they could and should be. In many countries, as in Brazil, courts and prosecutors are relatively strong institutions. Moreover, in many countries, legal reforms have occurred to improve the legal system's capacity to resolve cases quickly and efficiently, often through specialized or alternative courts or through compromise and settlement. Legal institutions may have greater capacity in the area of enforcing laws than the executive branch. Environmental protection in developing countries stands to benefit from tapping into this capacity.

Legal institutions in developing countries should become involved in environmental protection because impunity for offending environmental laws visibly erodes the rule of law. The rule of law suffers when environmental laws are flouted, and making environmental law matter is part of constructing the rule of law. Legal institutions also stand to gain by increasing their involvement in environmental law enforcement. Environmental problems garner national and international attention, and when legal actors force the executive branch to improve environmental protection, they can send a strong signal of their political independence (see Farber 2002).

Brazil stands out as a country where legal institutions have forged a path toward environmental rule of law. Prosecutorial institutions have prioritized environmental protection and have developed ways to resolve cases flexibly through negotiation and settlement. Many judges have also become receptive to environmental cases, and prosecutors advocating for environmental protection in the courts often prevail. Environmental protection became a legal issue of consequence, and the consequences of environmental law were strengthened.

THIS BOOK IS BASED primarily on fieldwork conducted in Brazil from October 2001 through May 2002. I spent four months in the state of São Paulo and two months in the state of Pará. In each state, I became a participant observer in the *Ministério Público* and environmental agencies through internships that provided access to the internal workings of these institutions and the views of their members (Wolcott 1995; Bernard 1995). My role as a participant-observer also allowed me to obtain a variety of quantitative data that were produced for internal use regarding organizational characteristics and enforcement activities.

In each state, research consisted of the observational and informal conversational methods of participant observation, the development of key informant relationships, archival research in institutional and university libraries,

and over a hundred semistructured interviews (Fetterman 1998; Emerson, Fretz, and Shaw 1995; Spradley 1979). In addition to prosecutors and agency officials, I interviewed scholars, leaders of environmental groups, environmental lawyers, and business and political leaders knowledgeable about or involved in Brazilian environmental law and politics.

My first internship was in the São Paulo Ministério Público's Environmental Prosecution Support Center from October through December 2001. I was able to share an office with the director and his two assistant prosecutors, and this arrangement led to frequent lunch invitations and opportunities to observe their interaction with prosecutors who called or visited for advice on particular cases. I also had extensive contact with the five environmental prosecutors responsible for the city of São Paulo, whose offices were in the same building. As an intern in the support center, I was also able to attend the four-day environmental conference of the São Paulo Ministério Público in November 2001, generally open only to prosecutors and invited guests and speakers. In addition to providing information on how environmental prosecutors exchange and generate knowledge, attendance at this conference afforded many opportunities to informally talk with other state and federal prosecutors active in environmental enforcement.

My second internship was in the São Paulo pollution control agency, CETESB, from early January through February 2002. I divided my time between two agency divisions, the enforcement division and the legal division. As described in Chapter 2, CETESB is headquartered in the city of São Paulo and has thirty-four enforcement field offices throughout the state. By spending a week in a field office located in the São Paulo metropolitan area, I was able to accompany field inspectors on visits, review enforcement case files, and have formal conversations with the field office staff. After this experience, I returned to the agency headquarters office to gather additional information from the enforcement officials there and to begin my internship in the legal division of the agency. There I shared an office with the attorney in charge of litigation and, from this vantage point, was able to observe conversations and meetings with agency staff that sought the attorney's advice on particular cases and situations. As an intern in CETESB, I was also able to make a significant number of contacts in São Paulo's Secretariat of the Environment, of which CETESB forms part and which is housed in the same building.

In the state of Pará, I was an intern in the environmental center of the Pará State Ministério Público from mid-April through mid-May 2002. As an intern,

I was invited to attend a variety of meetings that also included agency officials, thus providing an opportunity to understand the interactions between state prosecutors and agency officials. While I was not able to set up an internship in the Pará state environmental agency, several formal interviews and informal discussions with agency officials provided an understanding of the institution and access to internal enforcement data. In the latter half of May 2002, my research focused on the Federal Ministério Público in Pará and the federal environmental agency, IBAMA, in Pará. Information was gathered through interviews as well as research in the administrative files of each institution.

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