

Preface

IN SEPTEMBER 2008, THE MEXICAN CENTER FOR ENVIRONMENTAL LAW (CEMDA), a nongovernmental organization, celebrated its fifteenth anniversary in Mexico City with a gathering of several hundred activists, supporters, politicians, and civil servants. The keynote speaker was Juan Elvira, secretary of the environmental ministry, SEMARNAT. Elvira's presence was a sign of how far environmental politics had moved. Twelve years earlier, CEMDA had filed a landmark complaint about Mexico's failure to respect its own environmental law, which infuriated SEMARNAT. The ministry broke off all interaction with the fledgling NGO, calling it anti-Mexican. Now, twelve years later, CEMDA was a central pillar in Mexican environmental governance.

Non-co-opted labor leaders in Mexico can only dream of the success that environmentalists achieved by 2008. For them, it's hard to imagine that the secretary of the labor ministry would be an honored guest (or accept an invitation) to a gathering of independent labor activists. Whereas environmental authorities listened to—indeed, eventually welcomed—those who were seen initially as dissident and troublesome, the same collaborative scenario does not appear to be possible for labor. In labor, corrupted institutions leave many feeling that politics remains a question (to paraphrase Harold Lasswell) of who steals what, when, and how.

This is a story about governance in Mexico. On January 1, 1994, two spotlights were switched on simultaneously, one shining on Mexico's environmental authorities, the other on its labor authorities. The spotlights (which also

shone on Canada and the United States) came from the labor and environmental accords that accompanied the NAFTA treaty. These so-called side agreements—with their requirements to respect the rule of law—provide a natural experiment because in important ways they are very similar. They offer a valuable opportunity to compare their respective effects on two different sectors, each with its own constellation of domestic agencies and interests. This comparison takes us beyond traditional international relations studies of governance and into the very heart of domestic agencies. Most studies treat the state as a unit, buffeted by demands from global organizations and networks of activists. Here we get a far clearer understanding of what works and what doesn't in terms of how external incentives can lead to improvements in governance.

Across the world, developing countries are finding that the transnational regimes they join—whatever their original purpose—ratchet up the pressure on their systems of regulation, governance, and norms. Trade and investment agreements affect regulatory standards (such as environmental, safety, labor, and consumer), modes of governance (accountability, transparency, participation, rule of law), and behavioral norms (over individual and group rights, for example). But external-origin pressures are not always transmitted formally through international organizations, transnational integration agreements, or partner states. They can be felt informally, too, through transnational advocacy networks and ad hoc bilateral or multilateral pressure.

How exactly are these pressures received by the agencies of the target country? Why do some agencies in a given state accept that the old ways of doing things need to change before other agencies in the same state? I began this project by focusing on rule of law because the NAFTA side agreements stipulate that member states enforce their own laws and because that was the original rationale of the accords. But I quickly found that the picture was more complicated, and, like many books, the end was different from what I imagined at the outset. The picture was complicated because compliance and law enforcement showed both good news and (plenty of) bad news. In many cases, compliance remained poor, corruption was rampant, and officials prioritized development over rule of law. But it was also complicated because rule of law turned out to be as much about *attitudes* as results. Attitudes had begun to shift in the federal environmental agencies, but much less so in the labor agencies.

And it was not simply rule of law but also policies, institutions, procedures, and practices where results mattered. Something new was happening. Spurred

on in large part by the NAFTA side agreements, Mexico was strengthening impact assessment and permitting processes, and it was improving workers' rights. New laws were brought into effect. Disruptive, non-co-opted interests were consulted. Public meetings created new opportunities for citizen participation. In some cases, institutions themselves were changing. Communication with agency officials in the United States (and, to a lesser extent, Canada) shot up. Officials were trained in new procedures. In short, capacity and oversight were strengthened. True, in many cases these changes were limited and strategically designed to satisfy external "auditors." And not all change was NAFTA-inspired. The courts and independent domestic agencies played a role of their own. But a real process of change had begun—a regional agreement designed to liberalize trade now had another effect, this time on governance.

The highlight of the story is the strengthening of civil society. Starting from a strong preference for co-opted, compliant interests, federal environmental agencies now welcome dissident voices. They hire professionals from NGOs to fill civil service positions, and they draw civil society groups into wider discussions about environmental governance. For their part, environmental NGOs have learned how to be players in the system: they make fewer unrealistic requests, and they do not take to the streets when they don't get everything they want. They have advanced degrees in law, sciences, and administration. They have become professionals.

Capacity was built among labor interests, too, because independent (non-co-opted) unions, research organizations, lawyers, and NGOs created links with like-minded groups in the United States and Canada, filed complaints together under the labor side agreement, and forged new understandings, new expertise, and new opportunities. But labor agencies and traditional union confederations continue to resist incursion from independent unions and activists. Labor suffers from a *triángulo de hierro* of rent-seeking interests and bureaucrats. Many have little knowledge of labor law, less interest in due process, and fat bank accounts. Not surprisingly, the course of justice is regularly perverted.

So this project was a process of discovery. I found that certain features of the NAFTA institutions and particular characteristics of domestic politics were more conducive to improvements in governance. The Commission for Environmental Cooperation, the trinational environmental institution created by NAFTA, was relatively independent of member state control, had the power to inspect and report, and included civil society groups directly within

its institutional structure in an advisory capacity. This institution was better equipped to exert pro-rule of law and good governance pressures on Mexico. Likewise, where domestic agency and NGO officials were trained to high professional standards, governance was better. Domestic NGOs were critical to improving governance because they communicate directly between the trilateral institutions and the domestic agencies, raise red flags when things go wrong, and participate in decision making and agenda setting at both levels. They were the capillaries of good governance.

In making these discoveries, I am indebted to a host of individuals and organizations. Several dozen interviewees generously gave their time. They came from the trilateral regional institutions (the Commission for Environmental Cooperation and the Commission for Labor Cooperation), the bilateral Border Environment Cooperation Commission, Mexican and American federal agencies, Mexican state agencies, and civil society groups in the environmental and labor sectors in both Mexico and the United States. Most spoke openly, and no problem or shortcoming or institutional failing was too ugly to be discussed with great candor. To my good fortune, several of them agreed to be interviewed repeatedly—none more than Gustavo Alanís, president of CEMDA.

I am very grateful to have been awarded a Visiting Scholar position at the *Instituto Tecnológico Autónomo de México* (ITAM) for Fall 2008. From the conversations with Jim Robinson and Erika Ruiz to the research assistance of Ursula Ramírez to the general hospitality and cheerful question answering of Andrea Herrera, ITAM provided support in many ways. I tip my hat to a group of real professionals. My colleagues at the University of Edinburgh heard various versions of this research over the years and made very valuable comments. I would single out especially Iain Hardie, David Howarth, and Moritz Liebe for a careful reading of—and probing comments on—key arguments in the book.

Sometimes small is better, and small but effective grants from the Royal Society of Edinburgh, the Carnegie Endowment, and the University of Edinburgh made the fieldwork possible. My thanks to them. Other times, big is better, and one of the biggest names in the business must be Stanford University Press. I feel very fortunate indeed to be counted among their authors. The manuscript was reviewed thoroughly and positively by two readers, and their comments have strengthened my arguments considerably. Stacy Wagner and Jessica Walsh from Stanford have been extremely supportive and positive,

have drawn the best from the manuscript, and pushed me to make it better. My heartfelt thanks go out to them.

Finally, the most important discoveries come from within, and so my thanks and love go to four very special people: to my son and daughters, Harry, Bonnie, and Lila, and to my wife, Leticia, who opened the door to an incredible country.