Good governance is sectoral, not geographic: Domestic institutions, professionalization and compliance

Mark Aspinwall

Professor of International Relations, Centro de Investigación y Docencia Económicas, Mexico City

Professor of Politics, University of Edinburgh, Scotland

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Abstract
A series of recent studies have highlighted how legal mobilization by civil society actors have created new rights or strengthened existing rights, especially in Latin American countries emerging from periods of authoritarian rule. With the strengthening of domestic institutions, especially courts, but also executive agencies and independent transparency and accountability institutions, new opportunities to mobilize have been created, and new pressures imposed on often recalcitrant authorities. This paper seeks to fill two lacunae in these studies. First it focuses on compliance as the outcome variable, rather than individual rights. Extant studies have been less concerned with mobilization which seeks to promote or defend diffuse, general, public goods, such as rule of law. Second, it “goes international” by considering the important legal opportunities created by a new regional organization beginning in 1994. The empirical cases focus on the Mexican environmental and labor sectors, taking the creation of the NAFTA side agreements as a starting point from which to compare changing attitudes to compliance among Mexican regulators and administrators. The paper shows that domestic institutional structure and levels of technical professionalization account for much of the difference between the acceptance of pro compliance norms.
An active civil society is essential for any system in which governments are held accountable, and where they behave in accordance with the rules they are employed to enforce. The best transparency system in the world is useless if civil society cannot or will not use it (cf. Bauhr and Grimes 2014). Horizontal accountability institutions can help, if they are independent and have legal authority, information, and resources. But civil society groups are the challengers and the communicators in a system which permits government to be challenged. They force governance issues into the open. They are the bearers of information on corruption, laziness, ignorance and other compliance sins and therefore they can help force the link between transparency and accountability (Zyl 2014). But civil society can easily be thwarted by regulators, administrators, and others who are intent on preserving privileges or skewing priorities away from rule of law. Civil society needs certain corresponding elements to be in place in order to be fully effective (Grimes 2012).

In this essay I examine the effects of two new opportunity structures on the capacity of civil society to hold the Mexican government to account. The opportunity structures are the so-called “side agreements” of the North American Free Trade Agreement (NAFTA), which entered into force in 1994.¹ The institutions created by these side agreements were minimalist but their purpose was very clear – to require member states to comply with their own environmental and labor laws. They each established a review body mechanism by which civil society could bring complaints when they felt their government was not complying with relevant law.

The NAFTA side agreements provide an interesting natural experiment. They began on the same date and for the same reason – perceived compliance failures in Mexico. And neither the environmental nor the labor agencies in Mexico were happy with these new external bodies, seeing them as an infringement on their sovereignty. They also shared an original (pre-NAFTA) preference for co-opted civil society groups over independent and critical groups. The federal government wanted to retain discretionary powers to apply the law in

¹ The formal names of the side agreements are the North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC).
an arbitrary manner, free from interference by civil society, courts, and other domestic agencies.

Moreover, because we are looking within Mexico alone, certain variables can be controlled, such as the strengthening of the courts in the mid-1990s and the creation of the access to information regime in the early 2000s. From 1994 the Supreme Court gained greater independence through the appointment process, and also greater budgetary autonomy. It was granted powers to review the constitutionality of legislation upon request by state or federal legislatures (Domingo 2005; Magaloni 2008: 199ff; Ansolabehere 2010). The information agency IFAI made information available in both environmental and labor politics on issues such as pollution levels, control of permits, environmental impact assessments, union contracts, and decision processes. For example, IFAI has forced labor authorities to justify decisions, making it harder to shield corrupt, arbitrary practices from scrutiny (Giménez 2007: 32; interview with Mexico NAO, 2010).

In short, Mexican labor and environmental authorities were exposed to virtually identical institutional changes in their operating environments, and they reacted negatively in both cases. In addition, Mexican environmental and labor civil society groups were approached by better funded and more experienced counterparts from the US, Canada, Europe, and other countries. These external groups brought money, legal expertise, communication and organizational skills, and other resources (Aspinwall 2013). Mexican environmental and labor groups tapped into global resources, allowing them to mobilize effectively. They began to develop legal capacity for the first time.

Hence, the side agreements provided Mexican civil society with a new opportunity structure. Powers of scrutiny were handed to new institutions. They provided an innovative political space for groups to bring complaints, and Mexican civil society very quickly took advantage of them by mobilizing legal challenges against the Mexican government for noncompliance. Mexican civil society connected to powerful NGOs in other countries to

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2 Brazil showed a similar trend. See Kathryn Hochstetler and Margaret Keck (2007) Greening Brazil: Environmental Activism in State and Society (Durham, NC: Duke University Press).
help mobilize challenges (cf. Keck and Sikkink 1998). They built legal capacity and other
resources through new connections to outside NGOs, became legally-savvy, learned how to
use the channels available to them, and to present viable cases which confronted their
government’s compliance record. They communicated grievances with government
officials and with side agreement review bodies.

The puzzle is why these opportunity structures and subsequent civil society legal
mobilization strategies produced different compliance results. My argument is that while
legal mobilization by civil society was essential to the functioning of this new compliance
system, its effectiveness was predicated on the willingness of domestic agents (often at
quite a remove) to implement fact-finding reports issued by these external bodies.

Legal mobilization refers to action taken by nonstate actors (usually social movements,
NGOs and other civil society groups) within formal institutions with the aim of forcing
governments to abide by their previous legal or normative commitments or expand
commitments to new groups (McCann 1994; Vanhala 2011, 2012; Andersen 2005). Legal
mobilization is affected by the structure of opportunity (political or legal) and the resources
or capacities of challenging groups (Epp 1998: 2ff; Ansolabehere, 2010: 80-1). The
opportunity structure in turn is affected by the creation or strengthening of institutions such
as courts or administrative review bodies, and widening access or standing to bring claims.
On the other hand, new financial resources, increased presence of lawyers, better
organization and communication can improve the ‘software’ of legal mobilization, or what
Epp refers to as a ‘support structure’ for rights advocacy. Favorable opportunity structures
and supporting resources can prompt legal mobilization, and permit individuals and groups
with little power to challenge unjust practices and rights wrongs.

Fact-findings investigations, reporting, and publicity rebounded back into the Mexican
regulatory milieu with powerful pro-compliance shaming pressures. Fact-finders were often
(but not always) willing to find fault and recognize claims. In the face of often obstructive
and negative Mexican agencies, the side agreement review bodies showed themselves to be
active participants in the process of legal review and reporting (cf. Gonzalez 2014;
Guarnieri 2003). But the implementing authorities at domestic level were not always willing to accept them. Environmental regulators became early champions of compliance, while labor regulators continued to resist. The impact of the new opportunity structures, in other words, was affected by the willingness of the implementing authorities to make good on compliance, and this willingness in turn was structured by domestic institutions and practices.

In brief, labor politics is deeply entrenched in longstanding institutions which provide rents for co-opted labor confederations. The positions of the confederations coincided closely with the governments’ positions. They resisted investigations of labor practices because they were often deeply implicated in the unfair practices which had prompted the investigations in the first place. State and federal labor boards were staffed by political appointees who rejected overtures by independent unions seeking to improve workers’ rights. Labor boards and co-opted unions were poorly-trained, and perpetually at odds with rules-promoting independent unions. Relations were highly-politicized. In contrast, a new set of environmental institutions and laws drew in legions of well-trained advocates, scientists, lawyers and others, whose interaction with NGOs was far more positive. An epistemic community formed, based around common technical understandings. The interaction was far less politicized. Governance, in other words, varied according to sector.

This finding contradicts much of the received wisdom on norm diffusion, in which ‘cultural fit’ (or resonance) between the norm promoter and the norm receiver conditions the likelihood of norms being socialized in the target country. Börzel and van Hüllen (2014) claim that ‘the legitimacy of the specific norms promoted by external actors among local actors is crucial for their success in strengthening state capacities. International efforts need to resonate with prevalent social norms.’ Cortell and Davis state that the success of norm diffusion depends on the resonance or salience of the norm in the domestic context, and the context domestically in which the norm is considered (Cortell and Davis 2000: 66).

Checkel argues that domestic discourse, legal systems, and bureaucratic agencies influence the acceptance of a norm – to the extent there is congruence between the transnational norm
and the domestic structures and practices, norms will diffuse more easily. ‘Historically constructed domestic identity norms,’ often prove resistant to change (Checkel 2001: 565). Domestic patterns of social behavior, measured in both bureaucratic terms (norms embedded in organizations) and legal terms (norms incorporated into judicial codes, laws, and constitutions) have what he calls ‘staying power.’ Pre-existing norms (cognitive priors) interfere with processes of learning and persuasion.

Because much of this empirical research focuses on human rights, the (often unstated) assumption is that cultural fit is a national phenomenon. It doesn’t vary by sector. Of course one might claim that cultural fit could be sectoral, but that simply restates the question – what are the characteristics which make “culture” more or less accepting of new norms from outside? At worst, the argument is tautological – we would know that the cultural fit was right only when we see norms being accepted. I argue that a more convincing explanation focuses on institutional structure and professionalization because these are not endogenous to the pressures of norm diffusion. Certain characteristics of domestic institutions facilitate acceptance of external norms; likewise certain characteristics of regulators and administrators makes them more prone to agreeing to inculcate external norms.

Pro-compliance attitudes mean that agencies have internalized (or socialized) a norm that the law should be respected and followed (cf. Checkel 2005: 804). Officials believe in non-arbitrary application of the law. Due process is respected, appeals are available, legal procedures are followed. Evidence of normative acceptance of compliance (the dependent variable) comes from several sources, mainly within Mexico, including more than 60 interviews with environmental and labor agency officials at the federal and state level, officials of the side agreement institutions, NGOs, academics, and independent analysts.

A pro-compliance attitude does not mean there is no longer compliance failure. Corruption in enforcement is a widespread problem, especially among local officials (and not simply corruption – incompetence and laziness also plague compliance). Moreover, governments often have priorities toward growth and employment which trump compliance with
environmental and labor laws. But attitude change is an early sign that authorities are moving toward good governance. Where problems were uncovered through complaints and investigations, environmental agencies offered explanations and plans for improvement, signs that it was beginning to take seriously its commitment to respect the rule of law (Risse and Sikkink 1999). Labor agencies denied the existence of problems and accused investigators of interference in national sovereignty.

Civil society groups also have access to domestic redress institutions if they feel that legal standards have not been respected, and in fact these routes need to be exhausted before the review bodies of the side agreements will consider a case. On the environmental side the main institution is known as Profepa (Procuraduría Federal de Protección al Ambiente, essentially an environmental Attorney General). Profepa is a federal agency, with offices in various states. On the labor side there are Conciliation and Arbitration Boards at both state and federal levels which resolve disputes over freedom of association and other rights. There were (and are) many instances in which civil society groups took complaints to these organizations but found the response unsatisfactory. The NAFTA environmental and labor review bodies therefore provided a new forum to which they could mobilize, enabling them to press a compliance agenda which Mexico had ignored for years.

In the environmental realm, the main issue related to development projects in which approval processes were not conducted properly, or regulatory standards were sidestepped. Impact assessments were not carried out or were ignored. Emissions levels were higher than permitted and regulators took no steps to bring polluters to account. A total of 41 cases were brought against Mexico by the end of 2014, on which 11 factual records were published (cf. Pacheco-Vega 2013). If the environmental review body (known as the Commission for Environmental Cooperation, or CEC) accepts the merits of a submission, it must gain the approval of the member states to create and also to publish a factual record. The factual record does not assign blame per se, but simply compares the legal requirements to the facts of a given case.
Labor groups brought challenges too, on freedom of association and other rights. From 1994 to 2011 a total of 12 cases were accepted by the US National Administrative Office (NAO; an agency of the Department of Labor) against Mexico for failing to comply with its domestic labor law. One remains under review but so-called ‘public communications’ were issued on the other 11 cases. The Canadian NAO also issued public communications on two of these cases. The formal process entails filing a complaint in a member state different from the one in which the compliance problem exists. There is no trilateral authority as there is on the environmental side. The receiving NAO then decides whether to accept the case and once it conducts its investigation it can issue a public communication and call for ministerial consultations to address the problems uncovered (among other potential remedies. For more information see Kay 2011; Nolan 2011).

Comparing the side agreement cases clarifies how the environmental and labor agencies 1) initially reacted to allegations of wrongdoing; 2) whether they eventually admitted or rejected the existence of problems in a given case; 3) how they later reacted in practice (by changing policy or practice; taking action to rectify a wrong, and so forth). The first complaint under the environmental side agreement was greeted with anger by Mexican officials, who accused the CEC Secretariat of interference in internal Mexican affairs and violation of national sovereignty. They denounced CEMDA (the Mexican Center for Environmental Law, one of the NGOs that brought the case) as anti-Mexican (Alanís interview 2010). In other words, they acted as Mexican authorities had always acted: civil society was influential when it was co-opted and supportive. If it became critical it was pushed out. Nonetheless, attitudes clearly shifted. Tables 1 and 2 below show how the reaction of the Mexican environmental agency (SEMARNAT) to the fact-finding reports of the CEC became far more positive. SEMARNAT acknowledged shortcomings in enforcement, and often gave explanations (SEMARNAT, 2007: 99-100; Garver 2001). The case represented a turning point for transparency, law enforcement, and strengthening of rules (Castillo interview, 2008; Martin interview 2008).

Tables 1 and 2 about here
Studies by respected analysts outside the environmental agencies point to clear and early signs of socialization (Torres 2002; Block 2003). A legal officer in the CEC corroborated the views of the analysts, and particularly that the quality of application of environmental law has improved and that environmental impact assessments are taken more seriously (Solano interview 2008). As early as 2000, a report by the federal environmental ministry SEMARNAT listed its experience with CEC citizen submissions as an achievement, even though it had been embarrassed by them, and even though it had argued against the initial submission only four years earlier (SEMARNAT 2000: 359).

The CEC was ‘an important catalyst for developing a more transparent regulatory process and ensuring a more consistent application of environmental laws in Mexico’ (GAO 1997: 22). SEMARNAT stated that the side agreement ‘has contributed to the environmental regulatory framework, compliance on the part of producers, and has also encouraged social participation in decision-making’ (SEMARNAT, 2007 135; INE 2000: 110). It improved environmental impact assessments because greater pressure was exerted by NGOs (Gallagher 2004: 77; also Vaughan, 2003: 66; Blanca Torres, cited in Fox, 2004: 267).

The CEC’s access to information policies, decision making records, citizen submission process, and public Council sessions have helped shape Mexican citizens’ expectations for the conduct of government business for national agencies and public institutions. That [SEMARNAT] is regarded as one of the more open and transparent Mexican government agencies is in a small, but not inconsequential way, due to its intense interaction with the CEC and civil society (Block 2003: 516; see also Herrera 2008).

A reasonable conclusion of the analysis of numerous independent expert observers is that environmental agency officials came to accept that compliance with environmental rules was a good thing for Mexico, and the scrutiny by both domestic NGOs and international organizations came to be tolerated (at least), and often welcomed.
On the other hand, labor politics has been virtually impervious to a socialization of compliance norms. Evidence from first-hand accounts, from investigations by US and Canadian authorities under the side agreement procedures (see for example US NAO 2007), and from academics, independent analysts, and NGO officials confirm this view. Fact-finding reports made clear that labor authorities were complicit in persistent failures to ensure justice, especially freedom of association (Nolan 2011; Alcalde 2006: 168; Aspinwall 2013). In contrast to SEMARNAT, which admitted problems and sought to explain how they would be rectified, officials in the Mexican labor ministry are adamant that outside pressures have resulted in no change. The role of that office is to ‘explain’ Mexican labor law and practice, because its law is advanced and there is no need for intrusive action (Mexican NAO interviews, 2007; 2009).

When the message hits home

When criticisms of poor compliance emerged from the fact-finding and reporting bodies they hit home in Mexico in quite different institutional and cultural contexts, falling on more fertile soil among environmental regulators than labor regulators. Two factors conditioned acceptance of compliance norms: 1) institutional structure and 2) levels of technical professionalism. Historical legacies of corporatism, social control, and authoritarianism in labor governance meant that labor bureaucrats were politicized and constrained. Strong vested interests ensured path dependence in governance. Highly influential and partial trade union confederations blocked application of the law where it conflicted with their interests.

In the environmental agencies, a legacy of control of civil society and rejection of outside scrutiny quickly gave way to a more open attitude to law enforcement and an acceptance that critical civil society was in its interest. Writing prior to NAFTA’s entry into force, the respected environmental analyst Stephen Mumme argued that the strategy of the

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3 But see Nolan 2011 for evidence of how technical capacity was built in labor agencies.
4 Only the head of the labor ministry’s NAO office would agree to be interviewed, and only off the record. Four interviews were conducted with him, but no other official would speak, on or off the record, despite repeated requests. In contrast, I interviewed fifteen current or former employees across the various environmental agencies, all on the record. They include a former minister, the former heads of three other environment agencies (Profepa, INE, and the Border Environment Cooperation Commission), the former number two at SEMARNAT, and others.
environmental authorities was to ‘contain and manage environmental criticism and dissent, channelling it through official consultative forums of a corporative nature by which environmental criticism can be filtered and softened’ (Mumme 1992: 137-8). But things changed, and a story from 2008 illustrates the path travelled by environmental regulators. In September of that year the environmental NGO CEMDA was celebrating its 15th anniversary with a gala party, at which the keynote speaker was Juan Elvira, Secretary of SEMARNAT. It was a remarkable change for a ministry which only 12 years earlier had broken off all contact with the fledging legal defense organization. CEMDA had led the first legal challenge to Mexican environmental compliance under the NAFTA environmental rules in the so-called Cozumel case. Now they were on good terms again. The organization that changed was SEMARNAT, not CEMDA, which remained defiant and determined to mobilize in defense of environmental compliance.

Institutional structure
Regulatory compliance varied because of historically-rooted differences in institutions and practices. Mexican environmental governance changed dramatically beginning in 1988, when a comprehensive environmental law was passed. The change was a reaction to several ongoing developments, including Mexico’s desire to present itself as a responsible partner, the rise of environmental concerns internationally following the Rio summit in 1992, Mexico’s internal democratization and efforts to modernize, and environmental problems domestically (Azuela 2006).

Institutional responsibility for the environment evolved from a minor under-secretariat with roughly 1000 employees in 1990 to a full Cabinet-level ministry in 1994.5 By 2007 it had about 30,000 employees. A new enforcement agency and specialized agencies on biodiversity, protected areas, and forests, among others, were established (Gil 2007; Gilbreath, 2003). This very expansion meant that it was more open (to ideas, to employees, to the outside world) than the labor agencies. New rules, new agencies and new officials were unconstrained by the longstanding legacies of vested interest influence so apparent in

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5 The main federal environmental agency was known as SEMARNAP from its creation in 1994 to 2000, when the name was changed to SEMARNAT.
labor governance. It was not hampered by the path dependency of hidebound and sclerotic rent-seeking interests. After a rocky start in which environmental agencies also excluded critical interests, they opened up and accepted civil society participation, even when it was critical.

On the other hand the organization of labor institutions was largely complete by 1941, and labor politics is deeply rooted in Revolutionary ideals. The Constitution afforded highly detailed and very strong protections to workers, but labor has always been harnessed and controlled. Workers were organized into co-opted unions and confederations which, in addition to helping manage the system of labor rights, also ensured the social control that was an important objective of each government. Wages and social benefits were guaranteed for unionized workers, but employee demands for more choice in how they were organized and who represented them were always repressed. A ‘triángulo de hierro’ was created between employers, who want to control costs; the state, which wants to attract investment (and therefore control strikes and unwarranted demands); and union leaders, who purport to represent workers but who help to maintain this delicate balance in exchange for public offices, concessions and other privileges (Giménez 2007; Alcalde 2006; de Buen Unna 2002: 410ff).

Labor politics had decades to entrench itself as a highly politicized system in which deeply-vested interests ensured that their own welfare came before the rule of law (for excellent discussions, see Bensusán 2006a, 2006b; Bouzas 2006). Labor law was routinely flouted in order to preserve stability in workplaces and to encourage investment. Non-co-opted interests, such as independent pro-labor rights unions, had no opportunity to complain about compliance. Regulatory compliance was not the objective, and those arguing in favor of it had no access whatsoever to those in power, either in the agencies or in the co-opted confederations.
The principal labor umbrella organization, CTM (Confederation of Mexican Workers), is especially powerful in the state sector and large firms. But since its member unions stifle productivity growth and innovation, they are avoided by smaller companies and inward investors, who opt for ‘ghost unions.’ Ghost union leaders – who may be nothing more than racketeers – offer firms a protection contract whose central purpose is to maintain labor peace and keep other unions at bay (Bouzas 2006: 115). Government approval of these ‘unions’ gives them legal legitimacy, even though workers are marginalized, do not have a say in electing the leadership, have no access to the accounts or to the management of the union, and often have no idea that they are even represented.

The key institutional components of this system are the federal labor ministry (STPS), established in 1941, and the federal and state Conciliation and Arbitration Boards (CABs). At state level, the CABs register unions and serve as tribunals, addressing disputes between workers and employers. At the federal level, unions are registered with the STPS but disputes are resolved in the federal CABs. CABs are governed by three representatives – one from the relevant state or federal government, one from business, and one from labor.

Unions wishing to represent workers in a given workplace must first register with the relevant authorities, at which point they are eligible to compete in a recuento, or vote, for representation rights in the workplace. Independent unions do exist (ie, those not affiliated with co-opted confederations, and which seek to promote genuine workers’ rights under the law), but the reason they find it so difficult to register or to gain representation in a workplace is that none of the official CAB representatives wants independent labor to be granted recognition or collective bargaining rights. In fact, the labor representative on the CABs invariably comes from one of the major co-opted union confederations such as the CTM. Ironically, it is these confederations that are some of the fiercest opponents of labor rights. Thus, the historical legacy in which co-opted state-linked labor confederations play a

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6 According to the transparency agency IFAI, there are four million union members in Mexico (Giménez 2007: 25; see also de la Garza 2006: 308). Citing Michael Boyle, writing in 2002 in the magazine Business Mexico, Nolan (2011) indicates that almost 90% of the unionized labor force was represented by unions affiliated with the CTM.

7 IFAI estimated that more than 90% of the collective contracts throughout the country (more than 700,000) are protection contracts (Giménez 2007: 42).

8 Unions in certain sectors are registered at the federal level. All others are registered in the state-level CABs.
key role in decisions on worker representation is important because it enabled them to block changes in representation, even when that was contrary to the law. And among the traditional co-opted unions and captured public officials, conflict of interest, abuse of power, corruption, and discretionary application of laws is rampant, tolerated, and facilitated by institutional design (Giménez 2007: 22; Bensusán 2006b: 330ff).

The very different attitudes to transparency illustrate these differences. Officials at SEMARNAT are upbeat about citizen petitions for access to information, despite the fact that SEMARNAT was so poorly organized that it initially had no idea what information it actually had, nor how to locate it. It rejected information requests for fear it would be punished. IFAI and the transparency law helped SEMARNAT organize its information systems professionally. SEMARNAT reversed its opposition and now actively supports access to information. In 2003, it signed an accord on access to information and transparency with four civil society organizations, committing itself to open and transparent decision-making, inclusion of civil society groups, and access to information. The purpose was to promote ‘Principle 10’ issues stemming from the Rio declaration on the environment and development, which advocated citizen access to information, participation in decision-making, capacity-building, and access to justice.⁹

SEMARNAT claimed that access to information is important: 1) for purposes of scrutiny and oversight by the public, including reducing corruption, strengthening the rule of law, and improving accountability; 2) to help change the culture of secrecy and bring greater democratic maturity, which would increase public confidence in institutions, and strengthen freedom of expression; and 3) limit the arbitrariness and discretion of authorities, in turn improving the decision-making environment (SEMARNAT, 2004: 13-4). Officials are positive about the effect of the transparency law. ‘It’s a weapon. It changed everything,’ explained Oscar Callejo, Deputy Director General for Research at SEMARNAT. There is less corruption when officials know they are being watched. Local issues are accessible to

⁹ The four groups were CEMDA; Environmental Education and Communication; Mexican Citizen Presence; and Ecology Culture. See World Resources Institute, www.wri.org/project/principle-10.
citizens, who can check whether permitting, enforcement, authorizations, and other processes are done correctly.

In comparison with the environment, there is no evidence that STPS or most CABs internalized transparency norms, at least until very recently. IFAI (along with reports from the US NAO’s investigations) prompted STPS to create a database of unions so workers can check to see whether they are represented. But the reaction was reluctant and piecemeal. STPS dragged its feet for years. Moreover, the database lacked important information, making it practically useless to workers seeking to find out whether they were represented by a union, and if so, which union it was.

*Technical professionalism*

In addition to these institutional differences, environmental groups were more successful at communicating with and convincing environmental regulators than their labor counterparts were with labor regulators. Their interaction was more technical and less political. Their common training, interaction, and job-hopping socialized regulators into pro-compliance behavior. High-level NGO personnel and agency officials came to their positions with graduate degrees in natural sciences, law, and other technical areas. Thus, legal mobilization resulted in more successful compliance socialization in the environmental area in part because of common experiences of capacity and training, which facilitated technical communication.

A culture favoring scientific and legal capacity in environmental governance was apparent from the early 1990s in a series of consulting reports by Booz Allen & Hamilton, which spelled out the scientific and technical capacities required in the National Ecology Institute (one of Mexico’s federal environmental institutions), including the levels of education for certain positions and the types of degree that should be attained by managers (Booz, Allen & Hamilton 1991). The report called for stronger scientific and technical capacity in the agency to improve governance. The underlying logic for professionalizing the agencies was the need to base regulatory standards on best available scientific evidence. In the period 1992-94 the Undersecretariat of Ecology planned to triple the number of regulatory
standards (Booz, Allen & Hamilton 1991). Professionalization was also promoted by the capacity-building programs of the CEC, especially the Pollutant Release and Transfer Registry (PRTR) (SEMARNAT 2000: 358-9). The PRTR dates from 1994, and is a program in which firms report emissions and movements of specified chemical substances.

Environmental NGOs also became more professionalized as SEMARNAP reached beyond the scientific elite and opened up to civil society (Martin interview 2008; Reyes interview 2008). Regional councils were formed to foster communication between the environmental authorities and civil society groups. As NGOs were drawn into the regional councils, they became acquainted with other environmental groups (and business groups as well). Through meetings and discussions, environmental interests began to change the way they conducted themselves, negotiating and presenting realistic alternatives, not simply making demands. They looked for alliances; mutual respect grew. NGOs learned to present policy alternatives that solved problems (de Buen interview 2009; Martin interview 2008). The experience of the regional councils strengthened environmental interests not only because they received a great deal of government information – and served as a conduit for this information – but also because a consensus logic required council members from different sectors to communicate with each other and work out problems. Understanding among environmental interests improved; they became sensitive to the positions of other interests, and better informed about the limits of government capabilities.

Numerous independent experts and respected analysts consistently and credibly testify to the professionalization of environmental NGO staff. CEMDA’s litigation has been part of the process of capacity-building across many NGOs (Villegas interview, 2008). CEMDA gives training workshops, creates manuals on environmental law, and collaborates with the Center for Juridical and Environmental Studies in an environmental law course at the National Autonomous University of Mexico. CEMDA also created regional offices, including a network in the Northwest, and recruited new lawyers.

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10 See the SEMARNAT website, [http://app1.semarnat.gob.mx/retc/tema/anteced.html](http://app1.semarnat.gob.mx/retc/tema/anteced.html).
11 Cristina Martin, an official at the Mexico City office of the UN Development Program, worked in SEMARNAP on citizen participation issues in the 1990s and became president of the central regional consultative council.
The conservation group Pronatura also acts as seed bed for talent and capacity-building. It has trained and educated more than 6000 rural farm workers, civil society representatives and local and state officials (Salazar interview 2008; Pronatura 2007). Its personnel include biologists, oceanographers, lawyers, and specialists in environmental education. The director (since 2006) is a lawyer. Former employees have moved to senior positions in government agencies. Ex-employees have also gone to other NGOs. Pronatura has sought to establish a more consistent and contractual relationship with its traditionally independent regional offices, in order to professionalize them and ensure consistency in financial administration, media messages, and image.

Professionalization occurred in CEMDA and Pronatura partly because they learned to communicate in sophisticated ways by compiling data, developing mailing lists, communicating with the press and public, using the internet to build international links, and improving their leadership, management, fund-raising and personnel resources (Puentes interview 2008). The most important environmental groups are led by individuals with master’s degrees, law degrees, or PhDs. Ernesto Enkerlin, the head of Conap (the commission on natural protected areas), holds a PhD from Texas A&M. Gustavo Alanís, president of CEMDA, gained a Masters in International Law from American University. This makes them candidates to take professional positions in the federal agencies and to communicate effectively. Mexico has a growing number of graduate degrees on environmental studies, and higher education institutions have created new environmental law centers which provide legal advice and train lawyers, and therefore contribute to better understanding and enforcement (Herrera 2008).

In addition, mobility is widespread between federal environmental agencies, environmental NGOs, and the CEC. Victor Lichtinger moved from being head of the CEC to head of SEMARNAT when the Fox administration took office in 2000. Javier Cabrera worked in Profepa from 1994 to 1997, then was head of the border environmental agency from 1997 to 2005. Ernesto Enkerlin was an official of Pronatura and other NGOs prior to moving to the federal agency for protected areas. Gustavo Alanís is a three-time member of the CEC’s
civil society advisory board. Hernando Guerrero worked in the Mexico City office of the CEC and then as its head of capacity development before becoming chief advisor to the Secretary of SEMARNAT and later head of Proefpea. Social and professional interaction has brought NGO officials and government officials very close to a meeting-of-the-minds on rule of law norms.¹²

The result of this professionalization is that NGOs and bureaucrats alike are more comfortable with the law; and this has an impact on compliance. CEMDA’s director noted that ‘the law is being used more and more by environmental NGOs in Mexico, and this strengthens NGOs in front of institutions. Technical, scientific and legal arguments are replacing direct action’ (Alanís interview 2008). Legal challenges force public authorities to respond with legal arguments, increasing the likelihood that the rule of law will be observed since they can later be held to account for legal positions they previously adopted. SEMARNAT welcomed the voices of critical groups and the challenge of improving compliance. The Chief Advisor to the Secretary of SEMARNAT said ‘thank god we have NGOs with the technical capacity to discuss issues. Capacity-building for Mexican society is very important’ (Guerrero interview 2007).

In contrast to the scientific and legal culture taking root in environmental governance, Mexican labor politics remains a murky world of institutionalized conflict of interest and influence-peddling. A community of like-minded officials has not formed among labor bureaucrats and NGOs as it has in the environmental area. Labor agency officials do not welcome critical voices from civil society or external scrutiny. Labor politics remains deeply influenced by the large co-opted confederations which retain a stranglehold on representation. Trained, professional labor lawyers and NGO officials advocating due process faced narrow interests and captured, rent-seeking bureaucrats which operated according to a different logic – one in which investment was to be encouraged above all else, and the profits shared among those who turned a blind eye to legal infringements. The transnational network of trained labor NGO activists (which includes Mexicans), has no

¹² Numerous high-ranking NGO and agency officials confirm this point. They include Hernando Guerrero, former Chief Secretary to the Minister, and Gustavo Alanís, President of CEMDA.
influence over labor bureaucrats, especially within the local labor boards. They are excluded from the institutions in which decisions are made regarding the application of law (Martínez interview 2010). This undermines the formation of common views, and retards the process of compliance socialization.

It would be untrue to say that there is no professionalization or technical capacity – indeed in certain respects it has increased – but when it comes to legal challenges, those who pose the challenges are met with a solid wall of obstruction. No amount of training overcame the corrupted vested interests, though independent trade unions, labor lawyers, research organizations, and networks of labor activists have certainly tried. Legal training and collaboration with NGOs and unions from other countries has been part of the legalization strategy since the start of NAFTA. For example, in the complaint process, independent labor groups were required to work with partners outside Mexico – with support from American and Canadian sources, they gained experience and knowledge in these campaigns (Bensusán 2006a: 262; de Buen Unna 1999: 2; also Compa 1999; Díaz, 2004; Fox 2004).

The cases require that the partners coordinate their positions in order to bring them forward (Compa 1999: 95; Kay 2011; Graubart 2005). Unions jointly develop work strategies, agree and draft complaints and testimony, decide on media and public relations strategies, organize demonstrations, and participate in capacity-building activities. Committing to file a complaint means working together on practical issues. Working relationships are formed and developed, and there is now a trinational community who have a history of working together and who frequently pick up the phone to consult with each other (Davis interview, 2009).

But if some civil society groups were professionalizing, why was so little progress made in changing attitudes regarding labor administration and justice? Labor and business representatives on the CABs had much to lose if new unions were allowed to register and represent workers, and they were steadfastly opposed to recognition of new unions and organization of workers by those unions. Representation by pro-worker unions was blocked by vested interests. The CABs were not open to influence from outside. Unlike in
environmental agencies there was no movement of personnel who carried pro-compliance norms. Positions on labor boards were politicized, not technocratic.

An all too common example of this occurred in the early 1990s, when STIMAHCS (an independent union known for protecting workers’ rights) tried to gain representation of workers at a Honeywell plant in the state of Chihuahua. Participants alleged political interference in the process of registration, and had great difficulty in arguing their case before the local CAB and the governor (Martínez interview 2010). According to accounts, STIMAHCS took a petition to the local CAB three times on the same day, trying to gain recognition. The first two times the petition was rejected on very technical grounds. Each time, the union corrected the application. Finally, the CAB explained that the governor did not want them to be allowed to organize. STIMAHCS representatives subsequently met with the governor, who explained that the company was opposed to STIMAHCS, and he (the governor) felt that if it were allowed in, their organizing would spread through the area, making businesses less competitive and threatening inward investment.13

Communication between unions supportive of workers’ rights and their counterparts in the labor agencies and state-linked union confederations is antagonistic, and exchange of personnel is practically non-existent. Independent labor NGO officials almost never move into the federal or state agencies to work. But the problem was deeper than corrupted special interests. Levels of professionalization were low. In a report on foreign labor trends, the US Department of Labor and US Embassy in Mexico showed that very few labor leaders at national or state level had achieved as much as an undergraduate degree. As repeated fact-finding investigations made clear, local CAB officials often have a weak understanding of the law they were supposed to be upholding. Moreover, they have little incentive to professionalize, since what matters for them are connections. Rather than acting as neutral arbiters, many respond directly to state government officials who wish to promote inward investment (as in the Honeywell case just cited).

Legal mobilization made little inroads in improving labor compliance. The epistemic understanding of the importance of good governance, based on professional training and movement of personnel, has not taken hold in the labor case because of the presence of co-opted unions with permanent interests opposed to such change and lack of legal training. The individuals in the CABs are less susceptible to inward or outward movement of technocrats carrying new norms. Cross-border cooperation among labor groups is confined to small independent unions and labor research NGOs, rather than the large union confederations. Traditional labor leaders do not value training – they value connections. Understandings of and commitment to legal standards is correspondingly low.

There is little sign that traditional co-opted unions have made any efforts to increase compliance training or professionalization among their own staff. Leaders are older and less mobile; public authorities (STPS and the CABs) mostly do not welcome independent labor leaders. The result is that norms of nationalism and clientelism have not been supplanted by a pro-compliance norm. In cases brought by NGOs to the US NAO, the investigating authorities found that the CABs were unprofessional and highly-politicized, making decisions that favored their own interests at the expense of impartiality. They also made procedural errors which delayed resolution of issues and caused confusion. The investigators often requested that improvements be made to transparency, communication, information, levels of training and education among local CABs specifically in order to increase compliance. The link between professionalization and compliance was made clear in a case filed at the US NAO in 1997:

The results of previous submissions and the Government of Mexico’s own efforts to strengthen the professionalism and capabilities of its CABs seem to substantiate the NAO’s basis for concern that the actions by the Tijuana CAB may be inconsistent with the [federal labor law]. Registration, which is supposed to be a routine administrative transaction, is sometimes withheld in a manner which grants the administrative authorities (CABs) control over the right of unions to exist. Union representation rights were initially awarded on the basis of criteria that were not impartial and transparent … (US NAO 1998: 20; emphasis added).
Interestingly, the difference between the environmental and labor areas seems to have much in common with the distinction between the high tech sectors of Silicon Valley and Route 128 (Saxenian 1994). Silicon Valley thrived where Route 128 stagnated, it is believed, because Silicon Valley embraced a culture of communication, skills, technical proficiency, and openness. Engineers socialized with one another, learned from one another, elevated job-hopping to a semi-religion, welcomed experimentation and risk-taking. Contacts were built and skills upgraded. Ideas diffused. Route 128 by contrast was wedded to corporate hierarchies and sharper boundaries between firms. Influenced by the military culture associated with its large defense contracts, firm cultures were conservative and welcomed stability and loyalty rather than mobility.

**Conclusion**

Compliance norms are adopted by domestic agencies at different rates. They do not spread evenly from external pressures across a polity, but depend on features which distinguish one agency from another. Where bureaucrats are professional and agencies are open, norm adoption is more likely. Bureaucrats who are trained and who communicate with domestic civil society and with counterparts elsewhere are more likely to accept internationally-agreed norms.14

Moreover, technical proficiency enhances the power and influence of NGOs within the relevant agencies (cf Haas 1992). It enables them to get their arguments across and be taken seriously. Common professional values helped facilitate attitude change in the environmental sector, despite the fact that NGOs and agency officials often disagree on outcomes. NGOs prioritize environmental protection. SEMARNAT issues permits and needs to balance environment and development objectives following established legal procedures. However, they do share interests in due process. Attitudes converged on governance issues such as compliance and the rule of law, rather than the ‘greenness’ of outcomes.

14 In an earlier study I reported on the intense cooperation between Mexican and American trade bureaucrats on NAFTA trade policy, founded on common understandings of legal processes (Aspinwall 2009).
Among environmental agencies, the very newness of many of them created a permeability which was filled by highly-trained individuals from NGOs who brought pro-compliance values with them. They took positions in the environmental agencies as the latter expanded. In contrast, labor actors are entrenched in historically-rooted institutions of governance dating back to the 1930s, in which co-opted labor confederations controlled their own workers. Long-standing agencies with well-established and fixed practices guaranteed institutionalized privileges for narrow economic interests, and proved impermeable to influence from outside. Officials in both the environment and labor agencies insisted in interviews that when professionals are integrated into public agencies, compliance norms are fostered.

The experience of Mexican civil society tells us much about what works and what doesn’t work when it comes to designing international rules that include opportunities to challenge governments. Domestic civil society played a critical role as carriers of norms and information between the NAFTA institutions and Mexican agencies. They are plugged in at both levels: they argue their cases, get involved in complaints, communicate with each other and with public officials, cajole and persuade, and hold behavior up to the light. Without them, communication between agencies inside and outside Mexico would be sterile. And they sharpen the divide within Mexico between those in favor of compliance, and those in favor of development and sovereignty. How environmental and labor officials reacted to this growing gulf tells us much about Mexican politics today. Environmental officials embraced troublesome NGOs and welcomed public participation, even when it was critical. Labor officials sought to keep independent civil society groups at bay.

Iterated mobilization provided benefits to litigants and to the public interest. Civil society groups built capacity and increased compliance pressure. But the pro-compliance effect was mitigated by domestic institutions and traditions. Some regulators and administrators were willing to take on new messages about compliance, others not. The most important policy lessons from this study are that efforts to improve norms of good governance should include 1) parallel horizontal accountability institutions at the national level such as
transparency authorities and independent judiciaries which reinforce external normative pressures; 2) education and training programs for civil society actors and bureaucrats; 3) opportunities for inward mobility into bureaucracies for trained NGO personnel; 4) more secure (depoliticized) career paths for senior civil servants to retain technical capacity within government.
References

Personal interviews

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- Davis, Ben (2009) AFL-CIO, Head of the Mexico City office
- de Buen, Carlos (2009) Independent labor lawyer
- Guerrero, Hernando (2007) Chief Advisor to the Secretary, SEMARNAT, Mexico City
- Martin, Cristina (2008) UNDP Mexico
- Martínez, Benedicto (2010) President of the Miner’s Union and Board member of the Authentic Workers’ Front, Mexico City
- Puentes, Astrid (2008) Co-Director, Interamerican Association for the Defense of the Environment
- Reyes, Sergio (2008) Former Director of National Ecology Institute
- Salazar, Alejandra (2008) Pronatura
- Solano, Paolo (2008) Legal Officer, Commission on Environmental Cooperation


<table>
<thead>
<tr>
<th>Case</th>
<th>Initial reaction to allegations</th>
<th>No. of months to approve factual record*</th>
<th>Admission of problem in enforcement?</th>
<th>Follow-up change to policy or practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cozumel</td>
<td>Rejected</td>
<td>2</td>
<td>No</td>
<td>Created natural reserve and limited development plans at the site.</td>
</tr>
<tr>
<td>Río Magdalena</td>
<td>Acknowledged wastewater treatment and discharge problems. Blamed budgetary shortfalls.</td>
<td>2</td>
<td>Yes. Accepted that the issue was a federal responsibility.</td>
<td>Within one year began construction (or completion) of wastewater treatment plants. Within two years began a bimonthly effluent testing program.</td>
</tr>
<tr>
<td>Aquanova</td>
<td>Indicated awareness of problems at site. Rejected some allegations.</td>
<td>15</td>
<td>Yes. Claimed it was using legal powers to address shortcomings.</td>
<td>N/A</td>
</tr>
<tr>
<td>Metales y Derivados</td>
<td>Accepted there were enforcement problems. Also indicated how it had made site visits, issued closure orders, and filed criminal charges.</td>
<td>2.5</td>
<td>Yes.</td>
<td>N/A</td>
</tr>
<tr>
<td>Molymex II</td>
<td>Rejected allegations saying that the company did comply with Environmental Impact requirement when it expanded in 1998.</td>
<td>5</td>
<td>No.</td>
<td>N/A</td>
</tr>
<tr>
<td>Tarahumara</td>
<td>Acknowledged problems. Indicated it had reported offenses to prosecutors. Indicated it had received denuncias from complainants.</td>
<td>8</td>
<td>Yes.</td>
<td>Meetings established between authorities and indigenous communities /NGOs beginning in 2000; created 'participatory surveillance committees' for the region. Pay levels raised for inspectors.</td>
</tr>
<tr>
<td>ALCA-Iztapalapa II</td>
<td>Acknowledged problems, explained its enforcement actions against company, including site visits, closure orders, and criminal charges.</td>
<td>10</td>
<td>No – complained that the CEC exceeded its scope in this case.</td>
<td>The case involved an individual company, which closed in 2005.</td>
</tr>
</tbody>
</table>

* NOTE: in three further cases the CEC requested that the Council approve creation of a factual record (one in 2007 and two in 2008), but at the time of writing the Council had not acted (December 2011). Data from CEC, figure compiled by author.
### Table 2. Government reaction to complaints about labor enforcement

<table>
<thead>
<tr>
<th>CASE</th>
<th>Initial reaction to allegations</th>
<th>Admission of problem in enforcement?</th>
<th>Follow-up change to policy or practice</th>
<th>US Administration in which case was considered.</th>
</tr>
</thead>
<tbody>
<tr>
<td>GE/ Honeywell</td>
<td>Rejected.</td>
<td>No.</td>
<td>US NAO said there was insufficient evidence to state that laws had not been enforced. Follow-up meetings between government representatives suggested changes to improve availability of information. Little real change if any.</td>
<td>Clinton</td>
</tr>
<tr>
<td>Sony</td>
<td>Rejected.</td>
<td>No.</td>
<td>Meetings again between governments to discuss workers’ rights and information.</td>
<td>Clinton</td>
</tr>
<tr>
<td>SUTSP</td>
<td>N/A</td>
<td>No.</td>
<td>N/A</td>
<td>Clinton</td>
</tr>
<tr>
<td>Gender</td>
<td>Rejected.</td>
<td>No.</td>
<td>Denial that problem of pregnancy screening was widespread.</td>
<td>Clinton</td>
</tr>
<tr>
<td>Han Young</td>
<td>N/A</td>
<td>N/A</td>
<td>Federal authorities pressured local CAB to correct mistakes. Claimed it would promote secret ballots, but did not.</td>
<td>Clinton</td>
</tr>
<tr>
<td>Itapsa</td>
<td>Rejected.</td>
<td>No.</td>
<td>Denial of irregularities and intimidation.</td>
<td>Clinton</td>
</tr>
<tr>
<td>TAESA</td>
<td>Withheld information from US NAO.</td>
<td>No.</td>
<td>N/A</td>
<td>Clinton</td>
</tr>
<tr>
<td>Auto Trim</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Clinton</td>
</tr>
<tr>
<td>Puebla</td>
<td>Withheld information from US NAO and access to individuals.</td>
<td>No.</td>
<td>Earlier guarantees to allow access to collective contracts had not been followed up.</td>
<td>Bush</td>
</tr>
<tr>
<td>Hidalgo</td>
<td>N/A</td>
<td>No.</td>
<td>Plant inspections by federal authorities followed the complaint.</td>
<td>Bush</td>
</tr>
</tbody>
</table>