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INTERNATIONAL ORGANIZATIONS, FREE TRADE AND ENVIRONMENTAL CITIZENSHIP: MEXICO AND CHILE IN COMPARATIVE PERSPECTIVE

Sherrie L. Baver

Abstract

This paper focuses on the potential of Free Trade Agreements (FTAs) and specific International Organizations (IOs) to promote democratic and effective environmental governance. FTAs are often cited in the political science literature for their negative impacts; yet, they are central to the present stage of economic globalization. Given that U.S. FTAs have environmental requirements

as do accession agreements to developed country IOs (e.g. OECD), they remain underexplored institutions providing space for activists to expand environmental citizenship. The specific research question explored here is how might activists use these institutions to promote procedural environmental rights to information, participation, and justice, collectively known as “environmental democracy?” Data come from two Latin American cases—Mexico and Chile. These countries share cultural and economic similarities but at the same time pose a puzzle. Environmental democracy is related to overall quality of democracy, and Mexico rates low on “quality of democracy” scores. Yet within the region, Mexico has been an early adopter of environmental democracy laws. In contrast, Chile, with high overall “quality of democracy” scores, has been a relatively late adopter of modern environmental governance norms. At least some of the explanation relies on the positive incentive for nations’ to access FTAs and high prestige IOs.

Key Words

Free Trade Agreements, OECD, Mexico, Chile, environmental democracy

1. Introduction

For the past several years, my main research question has been: “Why do countries, especially countries in Latin America, adopt and implement environmental access rights, also known as environmental democracy?” The answer lies at the nexus of comparative and International Relations literature and is similar to the question of why countries adopt human rights norms and legislation. The answer lies in combining factors at both the domestic and international levels. For domestic variables, I am looking at the relative weights of business and civil society “rights” activists; at the international level, I examine the role of the incentive of joining prestigious IOs such as the European Union (EU) or Organization for Economic Cooperation and Development (OECD). It has been standard in Central and Eastern Europe to join UNECE’s 1998 Aarhus Convention with accession to the (EU).ⁱ Another somewhat surprising lever may be free trade agreements (FTAs). I am well aware of the negative economic impacts of FTAs.ⁱⁱ Nevertheless, they are central to the present stage of neoliberal globalization. Therefore, given that these economic agreements (at least in the U.S. case), ave environmental provisions, they remain an underexplored institution with potential to provide an avenue to promote a greater degree of environmental citizenship.

My paper is region-specific and examines the puzzle presented by the cases of Mexico and Chile. The two countries share a similar Latin American culture, similar level of economic development, and a relatively recent transition to democracy.ⁱⁱⁱ Both have free-trade agreements with the United States (Mexico 1994, Chile 2004) and both are members of the OECD. Still, there are large differences between the two cases, as supported by recent studies. On Freedom House measures of civil and political liberties, for example, not only does Chile score significantly better than Mexico, but Mexico’s trend arrow is turning down (www.freedomhouse.org/2010). Or, Transparency International’s 2010 Corruption Perception Index of 178 nations, Chile received a 7.2 (10 means most transparent), and ranked the 21st least corrupt country in the world. In contrast, Mexico received a score of 3.1 in terms of transparency and ranked 98th least corrupt country in the world (www.transparency.org/2010). At its simplest,

then, the puzzle is why is Mexico a Latin American leader in modern environmental governance norms, which are associated with overall good governance, while Chile has been a laggard?

2. Background

Perhaps the most basic feature of creating a modern environmental governance structure is establishing an environmental ministry. Mexico created SEMARNAT in 2000 although it had imported ‘imported’ an environmental policy architecture modeled along U.S. lines, starting with its 1988 General Law for Ecological Balance and environmental Protection (*LGEEPA*).^{iv} In contrast, Chile began building its modern environmental architecture with redemocratization in 1990,^v but only creating its ministry in 2008 with implementation in 2010.

Another hallmark of modern environmental governance and the primary concern of this essay adopting a package of procedural environmental norms known as “environmental democracy.” Environmental democracy, which refers to citizen access to information, participation, and justice in environmental matters was pioneered in the United States, although not as one conscious package. In 1992 at the UNCED, these rights were bundled for the first time as Principle 10 of the Rio Declaration; and in 1998, the UNECE formally adopted these principles for Europe in its Aarhus Convention.^{vi}

For the first procedural environmental right, **easy access to environmental information**, to be fully operational, countries need laws and regulations to access public information. For this, countries need a transparency or freedom of information (FOI) law. Approximately ninety-five nations have enacted or will enact a law by the end of 2011.^{vii} To assess the robustness of FOI laws, some questions are: how timely is information delivery? Can it be accessed through the internet? Do governments publish “State of the Environment” Reports, and are these reports disseminated widely?^{viii} Another environmental information responsibility of governments is notifying citizens adequately during environmental emergencies (e.g. Seveso, Bhopal, Chernobyl, Fukushima Daiichi).^{ix} Indeed the notion of access to environmental information stems from a history of governmental mishandling of industrial and nuclear plant accidents by inadequately apprising citizens of major risks. A third basic component of access to environmental information is by governments creating Pollutant Release and Transfer Registries (PRTRs). PRTRs exist in the United States and Europe and are beginning to spread around the world.^x Typically, PRTRs are annual reports of pollutants that both public and private industrial entities release into the air and water of surrounding communities. Some countries have voluntary PRTRs but the goal of environmental activists is to make them mandatory around the world.

The second procedural environmental right is **access to participation in environmental decisionmaking**. Citizen participation not only makes politics more democratic^{xi} but also numerous studies in environmental decisionmaking show that citizen input makes for more effective, sustainable policies that have citizen support.^{xii} At a minimum, governments must allow citizens to participate in Environmental Impact Assessments (EIAs). For most civil society activists, however, environmental participation requirements go well beyond this. Participation access requires giving citizens early notification of changes in laws, policies, programs, and projects, plus the right to comment with reasonable time frames. Some stakeholders (e.g. the private sector) may not have privileged access to draft documents. Officials must establish mechanisms for participation at various levels of decisionmaking and must institute channels for the results of deliberations to reach the highest relevant official body for review. Finally, citizens should have the right to propose new legislation or policies.

Third, citizens need **access to justice in environmental matters**. This requires that a wide range of individuals and groups have legal standing before the courts in order to participate formally in environmental cases. Furthermore, citizens who have not received an adequate response to their requests for environmental information or have felt their participation in decisionmaking has been circumscribed or denied must have access to an administrative (e.g. ombudsman) or judicial review procedure. This procedure must be speedy and efficient. Finally governments must provide access to environmental justice at a reasonable cost; there should not be financial barriers to litigation. Globally, “access to justice” reforms have proved more difficult to implement than information or participation requirements.^{xiii} One institutional trend gaining global traction in this regard is the establishment of “green courts or tribunals.”^{xiv}

3. Research Findings to Date

The key question addressed in this paper is: what are the external drivers pushing two Latin American nations to adopt access norms, rights, and institutions to protect the environment. Still this discussion represents only part of a larger research effort on environmental democracy. To explore this concept fully, further questions being interrogated are: how do domestic actors promote or impede adoption or put another way, what is the balance between external and internal variables? Why has Mexico been a faster adopter than Chile? What do these access rights mean for the quality of the environment; and, finally, what do these rights mean for the overall quality of democracy in these two countries?

In the case of Mexico, numerous scholars have shown that the Mexican government’s desire to enter NAFTA in the late 1980s, coupled with the work of domestic Mexican and transnational activist networks, and finally the Mexican democratic transition in 2000 all pushed the state towards adopting these modern environmental governance norms.^{xv} Mexico passed its first comprehensive modern environmental law in 1982, but the law lacked teeth until passage of the 1988 LGEEPA. This law enhanced the national environmental agency’s authority giving it greater coordinating power as well as greater powers of enforcement. It also mandated EIAs for all federal public works projects as well as various private sector projects involving potentially polluting industries, mining operations and tourism developments. A federal prosecutor for the environment (PROFEPA) was established in 1992 to prosecute environmental crimes and Mexico’s PRTR was first established as a voluntary information report in the late 1990s but by mid 2000 PRTR reporting was made mandatory. While Mexico’s deservedly praised Transparency and Access to Information Law (LFTIAIPG) was enacted in 2002 as a promise of the newly democratically elected Mexican President Vicente Fox, it was a key demand of environmental activists along with other activists throughout the 1990s.

Thus, NAFTA must be seen as at least partially responsible for promoting environmental reforms in Mexico. Further, the NAFTA agreement provided a historic environmental template that, while not living up to its promise at present, may provide future activists with a foundation to build on. NAFTA contains an environmental side agreement and all U.S. FTAs since that time, contain an environmental chapter within the document itself. NAFTA contains a special Border Environmental Cooperation Commission, a North American Development Bank to fund border infrastructure projects, and its most well known feature, the Commission on Environmental Cooperation (CEC). The CEC allows for citizen participation, legal complaints, and oversees harmonization of the Mexican, U.S., and Canadian PRTRs. Importantly, the CEC oversees the Article 14-15 submission process of NAFTA which allows for citizen complaints for environmental infractions in any of the three member countries. This process was especially

successful in the 1996-1997 Cozumel case when activists managed to downsize mega-resort project planned for that city. As a result of that success, however, scholars generally agree that all three governments tightened up on citizens' ability to sue.^{xvi}

The argument presented here is not that NAFTA's side agreement has been a rousing success but that the potential remains for a more robust use of this mechanism to provide citizen access to information, participation, and justice in environmental matters. The NAFTA template has been used in later U.S. FTAs. Indeed with passage of the Trade Act of 2002, the U.S. government pledged that all future FTAs would have to have environmental reviews and a public comment period prior to passage. This act also contained the notion that sanctions were an option for countries violating environmental instead of limiting punishment to merely fees.^{xvii} More recent U.S. FTAs such as CAFTA-DR 2004 create joint programs between U.S. EPA and developing countries advice on air and water pollution issues, solid waste and safe chemicals management. There has also been increased concern with bolstering compliance for relevant Multilateral Environmental Agreements (MEAs) so that by 2009 when the U.S. and Peru signed their FTA, that environmental chapter gave strong enforcement authority to protect Peru's mahogany forests, which were being inadequately protected under Peru's 1973 accession to the Convention on International Trade in Endangered Species (CITES).^{xviii} The point is simply that given that Free Trade Agreements exist and their numbers are growing, they may provide one more tool for activists to exert their environmental citizenship.

In the contrasting case of Chile, their FTA with the United States, in force since 2004, was not much of a lever propelling it to adopt modernize their environmental governance. One domestic factor retarding Chilean adoption was that the business sector in Chile holds significantly more power than its counterpart in Mexico. Still, another external lever, its accession to the Organization for Economic Cooperation and Development (OECD) in 2010, was crucial in pushing the Chilean government ultimately to adopt.^{xix} As part of its OECD bid, Chile passed its *Ley de Transparencia* in 2009. Its cabinet-level Environmental Ministry was signed into law by President Bachelet in 2008 and began operation in March 2010. Finally, Chile, in a highly unusual step, has recently created a Green Tribunal. While the court was created as a compromise with the private sector for its support of the new Environmental Ministry, it also has the potential for Chilean activists to assert their right to access to justice in environmental matters.

4. Conclusion

While supranational incentives such as accession to FTAs or IOs cannot alone cause states to adopt modern environmental governance norms, these incentives do provide leverage for civil society groups to push governments in that direction. This seemed an especially surprisingly finding given that FTAs, at least in the political science literature, are often criticized for their potential to create environmental harm. In the future, activists will need to engage with a variety of institutions of global governance, even seemingly unlikely ones, to carve out novel strategies to promote environmental citizenship.

NOTES

ⁱ See, for example, Liliana B. Andonova, *Transnational Politics of the Environment: EU Integration and Environmental Policy in Central and Eastern Europe* (Cambridge, MA: MIT Press, 2004).

ⁱⁱ For a typical critique of neoliberal globalization in Latin America, including the harm caused by FTAs, see Greg Grandin, *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism* (New York: Henry Holt, 2010); Robert Paehlke, *Democracy's Dilemmas*

(Cambridge, MA: MIT Press, 2003). Also, Peter Newell, 'Contesting Trade Policy in the Americas: The Politics of Environmental Justice', in *Environmental Justice in Latin America*, ed. David V. Carruthers (Cambridge, MA: MIT Press, 2008), 49-73.

ⁱⁱⁱ Francisco E. González, *Dual Transitions from Authoritarian Rule: Institutionalized Regimes in Chile and Mexico, 1970-2000* (Baltimore: Johns Hopkins University Press, 2008). Also, Marcus Kurtz, *Free Market Democracy and the Chilean and Mexican Countryside* (New York: Cambridge University Press, 2004).

^{iv} David V. Carruthers, 'Environmental Justice and the Politics of Energy on the U.S.-Mexican Border'. *Environmental Politics* 16 (2007): 394-413.

^v Eduardo Silva, 'Conservation, Sustainable Development and the Politics of Native Forest Policy in Chile', in *Latin American Environmental Policy in International Perspective*, eds. Gordon MacDonald, Daniel Nielson, and Marc A. Stern (Boulder, CO: Westview, 1997): 60-87.

^{vi} Former United Nations Secretary General Kofi Annan called the 1998 Aarhus Convention, based on Principle 10 of the 1992 Rio Declaration, 'the most ambitious venture in environmental democracy undertaken under the auspices of the U.N.'
[Http://aarhusclearinghouse.unece.org/about.cfm](http://aarhusclearinghouse.unece.org/about.cfm).

^{vii} Greg Michener, 'FOI Laws around the World'. *Journal of Democracy* 22 (April 2011), 145. It is the task of scholars to assess which FOIAs are robust and which serve more as "window dressing."

^{viii} Jonathan Fox, et al. eds., *Mexico's Right-to-Know Reforms: Civil Society Perspectives* (Washington, D.C.: Woodrow Wilson Center Press, 2007).

^{ix} Joseph Foti, *Voice and Choice: Opening the Door to Environmental Democracy* (Washington, D.C.: World Resources Institute, 2008), 9.

^x The United States created its PRTR (Toxic Release Inventory) under the Superfund Amendments and Reauthorization Act of 1986; the EU required PRTRs under the 2003 Kiev Protocol to the Aarhus Convention.

^{xi} James Meadowcroft, 'Deliberative Democracy', in *Environmental Governance Reconsidered: Challenges and Opportunities*, eds. Robert F. Durant, Daniel J. Fiorino, and Rosemary O'Leary (Cambridge, MA: MIT Press, 2004), 183-217

^{xii} Thomas Beierle and Jerry Cayford, *Democracy in Practice: Public Participation in Environmental Decisions* (Washington, D.C.: Resources for the Future, 2002).

^{xiii} Susan Rose-Ackerman and Achim Halpaap, 'The Aarhus Convention and the Politics of Process: The Political Economy of Procedural Environmental Rights'. Draft Paper for *The Law and Economics of Environmental Policy: A Symposium*, Faculty of Laws, University College London, Sept. 5-7, 2001.

^{xiv} George Pring and Catherine Pring, *Greening Justice: Creating and Improving Environmental Courts and Tribunals* (Washington, D.C.: The Access Initiative, World Resources Institute, 2009).

^{xv} For example, Gustavo Alanis Ortiz, 'Public Participation within NAFTA's Environmental Agreement: The Mexican Experience', in *Linking Trade, Environment, and Social Cohesion*, eds. John Kirton and Virginia MacLaren (Burlington, VT: Ashgate, 2002), 183-190; David V. Carruthers, 'Where Local Meets Global: Environmental Justice on the U.S.-Mexico Border', in *Environmental Justice in Latin America: Problems, Promise, and Practice*, David V. Carruthers, ed. (Cambridge, MA: MIT Press, 2008), 137-160; Jonathan Graubart, *Legalizing Transnational Activism: The Struggle to Gain Social Change from NAFTA's Citizen Petitions* (University Park, PA: Penn State Press, 2008); Stephen P. Mumme and Donna Lybecker, 'The Commission for Environmental Cooperation in North America: Lessons for Export?' Paper presented at the Latin American Studies Association Annual Meeting, Montreal, September 5-8, 2008.

^{xvi} Carruthers, 'Environmental Justice and the Politics of Energy on the U.S.-Mexican Border', 394-413; Gerda Van Roozendaal, 'The Inclusion of Environmental Concerns in U.S. Trade Agreements', *Environmental Politics* 18 (2009): 431-438; James Gustave Speth and Peter Haas, *Global Environmental Governance* (Washington, D.C.: Island Press, 2006).

^{xvii} All U.S. FTAs starting with NAFTA contain similar side agreements or chapters on labor violations.

^{xviii} Sikinnah Jinnah, 'Enhancing Regime Effectiveness through Strategic Linkages: The Emerging Role of Bilateral Trade Agreements in MEA Implementation', paper presented at the International Studies Association Annual Convention, New Orleans, LA, February 17-20, 2010.

^{xix} Interview with U.N. Economic Commission for Latin America and the Caribbean (CEPAL) official, Santiago, Chile, August 2010. Also, OCDE, *Chile: Evaluaciones del desempeño ambiental*, Naciones Unidas CEPAL Santiago, Chile, 2005. Mexico and Chile are the only two Latin American members of the OECD.

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