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BOOK REVIEW

LAW AND MARKET SOCIETY IN MEXICO

G. M. ARMSTRONG, JR. PRAEGER, 1989. PP.158

Law and Market Society in Mexico undertakes to establish the "causes and consequences of etatization of the economy in Mexico."¹ Many Mexicans, and other analysts of Mexican development, will question whether Mexico is a state socialist economy, and view suspiciously its alleged causes. Professor Armstrong does not attempt to convince the reader to view Mexico as a state socialist economy, but rather he contributes a well-crafted elucidation of the tension between forces of collectivism and individualism in the colonial, independence, and revolutionary epochs of Mexico. This tension may partially account for the higher degree of parastatal ownership of production and distribution as well as price regulation of basic commodities. Notably however, if etatization is the fabric of modern Mexico, some threads have unravelled in 1989.

This reviewer's vision of Mexico differs from the author's suggestion that the "auguries indicate that etatization of the economy will increase."² The movement away from price controls, the privatization or bankruptcy of some Mexican sacred cows such as Aeromexico, participation in the General Agreement on Tariffs and Trade (GATT) and recent challenges to union power indicate, whatever the historical restraints have been to the achievement of a true market economy, Mexico is undergoing a transformation which is more similar to marketization than etatization. What Armstrong raises for thought is the idea that the pattern of Mexico's development has stronger roots in state socialism than in in-

1. See G. ARMSTRONG, *LAW AND MARKET SOCIETY IN MEXICO* ix (1989).

2. *Id.* at 115.

dividualism. Thus, according to his thesis, any current emphasis on developing a true market economy in Mexico may prove as transitory as nineteenth century liberalism during La Reforma (the Reform) and later in the Porfiriato. Neither of these digressions from corporativism could fully overcome an administered market that was more administered than market. If Armstrong's thesis is correct, Cuauhtémoc Cárdenas, Mexico's leading current state socialism proponent, may witness the nation achieve, by historical inertia, what he could not achieve in his unsuccessful campaign for the Presidency in 1988.

By far, the strength of *Law and Market Society in Mexico* for this reviewer is its discussion of the nearly one hundred years of Mexican independence, from the early 1820s to the revolutionary era. Chapter One, "Market Society in New Spain," traces some of the beginnings of the conflict over the ideology of land use and ownership in the colonial period. This chapter also describes the somewhat symbiotic imposition of Spanish legal traditions of communal landholding on Indian villages (which possessed communal traditions) in the New World.

Not all relationships, however, were symbiotic. The history of the Spanish systems of *encomienda* and *repartimiento* helped the mines and haciendas succeed, suppressing any imposition of market economy in landowning and labor. The landowner's focus on extracting wealth from the new land, to support "noble idleness,"³ is a marked difference between Spanish settlements in Latin American and Northern European settlements in North America.⁴ In this first chapter, Armstrong balances his development of etatization between land and commodities. In the next five chapters, his book concentrates on real property as the principal item of value in the struggle between the "[c]ommunitarian New Spain and the liberal state"⁵

In chapter 2, "Corporativism in the Period of Independence," the author's extensive research makes his book essential reading to understand how legal and social philosophy began to form the structure of an independent Mexico. New liberal reforms in Spain were merely part of that philosophy, rather than colonial mandates. Armstrong sees the beginnings of contemporary corporativ-

3. *Id.* at 8.

4. See generally C. RANGEL, *THE LATIN AMERICANS* (1976).

5. G. ARMSTRONG, *supra* note 1, at 16.

ism struggling for survival in the early turmoil of independence. Although Colonel Agustín de Iturbide's Plan of Iguala⁶ and its equality and individualism emerged as the official platform of the conservative and proclerical government, this initial struggle is evident.

To elucidate his theory, the author quotes José Luis Mora, the most prominent critic of corporativism in the first years of independence. Mora states that although "the fundamental law replaced 'empire' with 'republic,' . . . both terms were inadequate to connote a society that was really nothing but the viceroyalty of New Spain with some vague desires of becoming something else."⁷ The reading is rich as the author unfolds the successive decades of development. Mexico's search for its modern identity took a century to develop. There was a brief interlude of resurrected European monarchy under Maximilian,⁸ which was reflected by a division within the highly centralized domestic society. No one side had its territory, only its ideas. Although civil war and surrender terminated the social and political cleavages in the neighboring United States, in Mexico, civil war and constitutional compromise resolved the divisions. Elements of individualism and corporativism would share written and unwritten values to such an extent that they allow reasonable persons to differ regarding whether Mexico is or is not a contemporary example of state socialism.

Armstrong's discussion of nineteenth century Mexico shares a scholarly parallel with Henry Bamford Parkes' general history of the era.⁹ Armstrong adds for the jurist an overlay of legal developments which a general history cannot be expected to include. To be sure, the middle nineteenth century was a complex period in Mexico's development. This era included not only the ongoing conflict between social philosophies, but also the recurrent clashes with the Catholic church. The clashes with the Church were not suppressed in a single constitutional act as part of independence, rather the suppression would come piecemeal, often at times of considerable secular social tension.

This reviewer has some difficulty with the author's belief that

6. The Plan of Iguala was a proposal by Colonel Agustín de Iturbide that provided for an independent Mexico organized as a monarchy, an established Roman Catholic Church, toleration of no other religion and legal equality of all persons. *Id.* at 23.

7. *Id.* at 28.

8. See H. PARKES, A HISTORY OF MEXICO 259 (1933).

9. *Id.*

the reality of Mexican society was so distant from the ideals of the Reform,¹⁰ however, it is necessary to his premise that a market society has never transcended state socialism. The Reform sought democracy and development, both of which were pursued by Benito Juárez. The former however, was sacrificed by Porfirio Díaz and the infrastructure of a market economy began to be created. Armstrong acknowledges this flirtation with the market, but considers custom to have been stronger than contract, even though the contract was predominant in the Civil Code of 1870.¹¹ President Díaz may have preferred domestic and foreign colonists in carrying out the enclosure law of 1883,¹² but Armstrong suggests that neighbors as prospective purchasers were ignored.¹³ The author affirms that a more commercial economy was developed at the close of the century. He argues that corporativism traditions really caused economic development to assume contours more of state control and protectionism than of a market economy. Armstrong's development of state control, nevertheless, is effective, increasingly dominating the subsequent chapters as the central theme of evolving state socialism.

Armstrong then turns to the Mexican revolution, the cause of which is widely debated. Unequal land distribution is usually accepted as an important element in bringing about the revolution. Indeed land distribution was part of every essential proposal from Madero's Plan of San Luis Potosí in 1910¹⁴ to the final Constitution of 1917.¹⁵ Even though the Constitution is viewed today as a document of social rights, Armstrong suggests that this Constitution maintains much of the liberal theory of the state from the earlier Constitution of 1857, and does not remove the concept of private ownership of production. The Constitution of 1917's elements of state socialism lay more in the aspirations of the Convention, than in the articles of the Constitution. The author contrasts its focus on concern for purchasers¹⁶ with the Sherman Act's¹⁷ at-

10. G. ARMSTRONG, *supra* note 1, at 49. The Reform imposed a liberal legal system which was grounded in a concept of man as autonomous, equal, and egoistical on the traditional Mexican society. *Id.*

11. *Id.* at 57.

12. *Id.* at 59.

13. *Id.*

14. *Id.* at 71. The Plan of San Luis Potosí called for an armed uprising against President Díaz's regime and laid responsibility for Mexico's problems on the dictator. *Id.*

15. *Id.*

16. Article 28 forbade hoarding commodities or taking advantage of persons. MEX. CONST. art. 28.

tempts to cure distortions in the market.¹⁸ However, there is little attention paid to the role of foreign investment, which might have supported Armstrong's view that the market was less for neighbors than foreigners. Indeed, as this century unfolds in the succeeding pages of the work, landholding continues to dominate the discussion.

Chapter 6, "Agrarian Socialism: A Superstructure Without Foundation" is a significant chapter in Armstrong's book. Without more attention paid to the broader picture where the state and market forces may come in conflict, it is harder to accept the thesis that Mexico is currently an example of state socialism. Perhaps in landholding forms there is much more to the composition of the market. Although Armstrong notes the priorities of President Ávila Camacho in the early 1940s,¹⁹ Armstrong gives little attention to the effect of Camacho's policies.

Although the early chapters of this book were devoted to demonstrating "that the contemporary relationship among market, government, and society in Mexico has deep historical roots,"²⁰ the later chapters were devoted to the "contemporary situation of agriculture and property in land."²¹ His emphasis is on the agrarian codes of 1942 and 1971. The analysis carries through to the early part of the Echeverría administration,²² but fails to discuss either the major expropriations in Northern Mexico in the waning months of that administration, or the agrarian policies of the succeeding dozen years, under Presidents López Portillo²³ and de la Madrid.²⁴

In chapter 7, "The Administered Market," Armstrong states that "[t]oday Mexico has an administered market economy."²⁵ He

17. Sherman Antitrust Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. § 6a (1988)).

18. G. ARMSTRONG, *supra* note 1, at 77.

19. *Id.* at 94.

20. *Id.* at 96.

21. *Id.*

22. Echeverría was pressured into granting land to peasants in the North and Northwest of Mexico during the last half of his administration. S. SANDERSON, *LAND REFORM IN MEXICO: 1910-1980*, at 149 (1984).

23. López Portillo's intentions were to increase basic food crops to reduce foreign food imports. However, his investments in agriculture and subsidies to farmers and consumers were inadequate to meet the consumption needs of Mexico's growing population. *Id.* at 152.

24. De la Madrid's policy promoted increased production of export goods and livestock production. *Id.*

25. G. ARMSTRONG, *supra* note 1, at 103.

stresses administered prices, a feature currently in the process of considerable dismantlement. Unfortunately, what is missing is mention of Mexico's increasing entry into the international market, with the consequent movement away from administered prices. It is possible that Armstrong's thesis that Mexico is not adaptable to a market economy will cause Mexico to fail in achieving any important role in the international market economy. In this reviewer's opinion, Armstrong places too much emphasis on the state socialism of President Echeverría in the early 1970s, and insufficient attention to the movement away from, and discrediting of, much of which President Echeverría stood for in the successive administrations.

Certainly, President de la Madrid may be criticized for his privatization tameness. To suggest that no concrete action occurred under de la Madrid,²⁶ however, overlooks the major removal of one of Mexico's two airlines, Aeromexico, from heavy state subsidies, and the privatization of two large copper producers, Cananea and Mexicana de Cobre. Where Armstrong and this reviewer differ conclusively, is with Armstrong's predictions that the "etatization of the economy will increase"²⁷ and "state intervention will continue to intensify."²⁸ Joining the GATT is not an element of continued etatization. History has proven dozens of critics to be wrong, nevertheless, the uncertain strength of Cuauhtémoc Cárdenas, a certain state socialist, will not be known for another six years.

The final chapter, "The Dissolution of Property," addresses the separate issue of Mexico's attitude towards intellectual property. While mostly historical, it is somewhat consistent with the theory of state socialism that Mexico has profound impediments to innovation. If this thesis is not proven in the beginning of the chapter, it is certain that it will be proven at the end of the chapter.

It was expected that the book focus less on the agrarian sector and more on the means of production and distribution of manufactured commodities and services. Although the latter might have been more convincing to this reviewer, one suspects that the thesis of etatization would have been more difficult to prove once one

26. *Id.* at 114.

27. *Id.* at 115.

28. *Id.* at 116.

strayed far beyond the agrarian sector. Armstrong handles the agrarian development very well, and leaves the reader with a new awareness of Mexico's history of corporativism versus individualism in that sector. However, the agrarian economy of Mexico does not wag the tail, but it may impede moving towards a market economy. Mexico is quickly entering the ranks of industrial nations. Any thesis as to what is the dominant theory of development alive in Mexico today, and likely to survive tomorrow, must include the industrial rather than the agricultural sector as the driving force.

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