

William J. Suarez-Potts. *The Making of Law: The Supreme Court and Labor Legislation in Mexico, 1875-1931.* Stanford: Stanford University Press, 2012. 360 pp. \$60.00, e-book, ISBN 978-0-8047-8348-4.

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The Making of Law surveys the development of labor legislation and the role of the Mexican Supreme Court in that process between 1875 and 1931. Using a variety of published and archival sources, especially collected decisions, William J. Suarez-Potts makes a strong case for the court's influence in shaping labor legislation. The book is divided into two parts: the years before the ratification of the 1917 Constitution, which embodied much of the radical promise of the revolution and aspirations of most labor organizations, and the period following, culminating with the passage of the 1931 Federal Labor Law, intended to implement Section 123 of the constitution by reconciling "harmoniously as factors of production the interests of capital and labor" through the administrative power of the state (p. 262). Where previous scholars have dismissed the significance of judge-made law and the influence of the Supreme Court, Suarez-Potts argues that the court was an integral actor in the slow evolution of Mexican labor law and judicial practice away from the individualist precepts of nineteenth-century legal liberalism to an understanding of the state as the principle actor responsible for assuring an amicable relationship between labor and capital.

Two institutions dominate this book. The first is the Supreme Court, which worked fairly steadily throughout the period, except during the most

tumultuous years of the revolution, while maintaining a semblance of its constitutional independence from the executive branch. In the civil law tradition, the principle role of the judiciary is to apply the law according to prescribed rules, rather than interpret it, as in the common (or judge-made) law tradition. Reflecting the influence of contemporary French legal theorists and the larger Continental judicial tradition, the court's apparent authority and independence were limited, but, as Suarez-Potts argues, nevertheless the court carved out a pivotal role in shaping state-labor-capital relations. As work became increasingly industrial, the court came to recognize that the classical liberal construction of the nature of labor and contract was no longer useful. In doing so, it carved out a dominant role for the state in mediating industrial conflict, to be embodied by the end of the period by federal boards of conciliation and arbitration.

The second is the *juicio de amparo*, a petition for injunctive relief against the "action of a public authority, including its application of a law" injurious to the individual liberty of a plaintiff, or an order requiring state authorities "to carry out an action or refrain from doing so" (p. 5). It is similar to a writ of mandamus and limited in scope to the case at hand. An *amparo* suit was the principle mechanism for individual workers seeking the

protection of the law, and the collected and published record of these suits form the most important portion of the author's evidence. The court's decisions reveal an evolving understanding of the employer-employee-state relationship that eventually created mechanisms to protect workers from arbitrary action, enlarged the role of the state in assuring economic harmony, and led eventually to the passage of the 1931 Federal Labor Law.

In the first four chapters, Suarez-Potts examines the rights and reality of labor in the Porfirian state. The 1857 Constitution, a paragon of mid-nineteenth-century legal and political thought, assured workers the natural right to control their labor as a form of property and to receive "just compensation" for their labor, and implied a limited right to withdraw it from the marketplace all wrapped within a larger concern for protecting the sanctity of contract. It specifically prohibited coerced labor, but Porfirio Diaz's desire to both control and placate the (increasingly commercialized) planter elite who formed an important bulwark of his power meant that many workers continued to labor in various forms of peonage, and industrial action was rare and usually unsuccessful. Diaz, however, did not ignore the complaints of urban workers, and he often sought to co-opt their organizations, without acting so overtly as to upset employers. The Diaz government privileged economic growth and stability over labor rights, especially in the final decade of his rule. Despite this, when given the opportunity, the federal judiciary spoke forcefully in defense of free labor and free contract. While it had little formal effect on labor relations given its subservient relationship with the executive branch, it planted seeds for significant changes in the postrevolutionary era.

Chapter 5 is a machine-gun run through the Mexican Revolution as it relates to labor. The convulsions of the revolution provided ample opportunities for labor organizations, such as the radical Casa del Obrero Mundial (COM) and the more

moderate Confederacion Regional Obrera Mexicana (CROM), to push for affirmative protections of the rights of workers and their organizations. Many revolutionary generals also promulgated labor reforms by decree, seeking favor with industrial and agricultural workers. The unions sought alliances with regional leaders, and CROM in particular developed a close relationship with the federal state that lasted into the late 1920s. Consequently, the 1917 Constitution reflected their power and influence. The document laid out a wide-ranging expansion of the workers' rights, and mandated that the state act forcefully to protect them.

The 1917 Constitution called for the creation of labor boards in the states to adjudicate industrial disputes without depriving parties of their constitutional rights. These boards had limited enforcement powers, similar to the situation in the United States of the arbitration boards convened under the provision of the Erdman Act of 1898, and relied on the goodwill of the participants. In chapter 6, Suarez-Potts discusses how these disputes often ended up in the federal courts; losers, both employees and employers, submitted *amparo* petitions seeking redress and calling into question the legitimacy of the boards. However, the Supreme Court charted a generally sympathetic course regarding the authority and scope of these boards, although not uniformly. By 1924, it held that the boards' decisions were binding, assuming the lack of procedural or legal errors, reflective of an emerging jurisprudence and political will in favor of state action in resolving industrial discontent.

In chapter 7, Suarez-Potts examines the tensions between the Supreme Court, the states' labor boards, and the federal Ministry of Industry, Commerce, and Labor. Each jockeyed for authority and power over labor issues. Throughout the 1920s, the federal legislature, fractured along regional, personal, and ideological lines, was unable to pass a uniform federal labor law despite the

mandate enshrined in the constitution. Consequently, the Supreme Court's *amparo* decisions in several significant labor actions, such as the 1927 railroad strike, became de facto judge-made law and pointed the way toward a "consensus that boards of conciliation and arbitration were the appropriate governmental bodies to adjudicate labor conflicts," not state ministries, and not the courts (p. 215). This pushed the legislature and political leaders to move toward the drafting of a national labor law.

Set against the tumultuous political upheavals of the late 1920s, chapter 8 discusses the creation of the 1931 Federal Labor Law. The bill formalized an institutional structure for industrial relations dominated by the federal state; one that was less radical than the promise of the 1917 Constitution, but where unions enjoyed the protection of the state and which assured stability for employers. Suarez-Potts argues that the court's *amparo* decisions over the previous decade protecting the legitimacy of the boards of arbitration and conciliation, provided a foundation of judge-made law that supported a progressive system of industrial relations that would eventually enjoy general (if somewhat grudging) support among workers, industrialists, the states, and the federal government. By placing the federal state at the center of an administrative system to mediate industrial conflicts, the 1931 Federal Labor Law represented the culmination of decades of movement away from fealty to classical liberalism in the realm of labor, work, and capitalism in Mexico.

I suspect that *The Making of Law* will have a small audience among historians of the Gilded Age and Progressive Era (GAPE), and this is unfortunate. I hope that this review will move some of you to read the book in its entirety. Suarez-Potts did not set out to write a comparative study, and the book is intended principally for specialists. Most GAPE scholars will note, rightly, that this is a close study of Mexican legal history, with little direct connection across the border aside from con-

temporaneity. In the second half of the book, the author does lean heavily on U.S. State Department records, particularly embassy dispatches, and that segment should be read by historians interested in the intersection of diplomacy and American financial investment abroad after 1914.

However, GAPE legal scholars will find much of interest, especially the potential for comparative analysis with the United States Supreme Court on labor issues. The core transition from liberty of contract jurisprudence to a progressive understanding that acknowledged the need for social harmony and recognized the altered nature of industrial capitalism is evident in both countries. The Mexican court amplified the authority of the federal state against regional authorities, both radical and conservative. For that matter, the Mexican court was much quicker to acknowledge and more consistently supportive of the rights of individual workers than can be said for its northern colleagues. Labor law provides a particularly useful window for comparing the on-the-ground differences between the common law tradition of the United States and the civil law tradition of Mexico.

Chapter 7 provides a particularly juicy opportunity for comparison in the author's discussion of the 1927 strike against the National Railways of Mexico. There are useful contrasts to the 1922 national shopmen's strike in the United States. While both led to efforts to reduce the enmity between labor and capital in the railway industry, the Mexican Supreme Court's generally sympathetic response to the strike is quite at odds with that of the U.S. courts as discussed in Colin J. Davis's work on the subject, *Power at Odds: The 1922 National Railroad Shopmen's Strike* (1997).

No book is above critique, and for non-specialists, *The Making of Law* can be a daunting read. Because the collected and published decisions of the Supreme Court form the bulk of the source base, at times the book reads like a case review. Secondly, the narrow scope of the study pre-

vents the reader from assessing whether the court's approach to labor law differed markedly from its decisions and jurisprudence on other issues related to the declining influence of classical liberalism. However, this concern only points out fruitful avenues for new scholarship.

In sum, despite outward appearances, this is a useful work for GAPE scholars, and provides multiple comparative opportunities for scholars of labor, the law, and the courts.

Note

[1] Colin J. Davis, *Power at Odds: the 1922 National Railroad Shopmen's Strike* Urbana: University of Illinois Press, 1997.

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