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BOOK REVIEW


Michael P. Malloy*

Recent developments in Mexican banking regulation and structure are of continuing interest to scholars and transnational practitioners alike. Aside from the simple fact of geographic contiguity between U.S. and Mexican markets, this interest is probably due in large part to three significant events: the conclusion of the North American Free Trade Agreement (NAFTA) in 1993, the Mexican fiscal crisis that emerged in 1994, and the conclusion of the General Agreement on Trade in Services (GATS), under the auspices of the World Trade Organization, in 1994. Mexico has been intimately involved in these events, and they have had a substantial impact on the restructuring of Mexican banking and bank regulation.

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3. See Lustig, supra note 1 (discussing legal implications of fiscal crisis).
Banks, particularly U.S. banks, have had a long and not altogether pleasant interaction with Mexico. From independence in 1821 until the 1870s, the Mexican financial system was incapable of aiding development. Finally, in 1884 the French-owned Banco Nacional Mexicano was authorized by Mexico to act as its central bank, but there was no centralized control of bank note issuance, and this continued to hamper development.

Pursuant to the mandate of the 1917 Constitution, Banco de Mexico was organized in 1925, with exclusive power to issue notes. Unfortunately, Mexico was dogged by a succession of bank failures, inflation, and currency devaluations through the end of the 1930s. In 1934, the Nacional Financiera was established to promote the development of a domestic capital market, among other things by administering large public trust funds for development purposes, and by issuing guarantees for domestic and foreign indebtedness of a number of public and private enterprises. In 1937 Mexico established Banco Nacional de Commercio Exterior to promote foreign trade by granting loans to finance exports and imports, production of exports and imports and to issue guarantees and letters of credit with respect to foreign trade.

Mexico has been traditionally wary of the intervention of foreign banks in the national market. Until recently, foreign banks were only permitted to establish representative offices in Mexico, and only since 1979 have they been allowed to incorporate offshore financial operations. With the exception of Citibank’s grandfathered operations, foreign banks were not permitted to engage in retail branch operations. To make matters worse, following the 1982 fiscal crisis and Mexico’s repudiation of its external debt, almost all banks in Mexico were nationalized in September 1982.

Mr. Adams’ book takes up the story of Mexico’s path towards fiscal redemption and the role that the reform of Mexican bank structure and regulation is playing in this policy initiative. He tells the story well, in a practical and informed manner, with a large helping of very useful economic and market data. It should be noted, however, that this book is not a work of legal analysis, and it will not directly assist the reader in understanding the legal foundations of Mexican bank reform.

The book takes essentially a chronological approach. It begins with the unsettled and unsettling state of Mexican policy with respect to banking and investment in the 1970s and 1980s, and the role of banking and external debt in Mexico’s developmental problems and emerging fiscal crisis. It then examines the crucial historical role of regional trade and finance in Mexican economic and development

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8. Id. at 13-31.
policy. In light of this history, it is natural that contemporary efforts by Mexico to reform its economy have been both spurred by and focused upon the enhancement of regional trade and cooperation, with a growing role for transparent, direct foreign investment.

In the midst of this developmental saga, the currency crisis of 1994 looms large. Nevertheless, the book concludes with a strong optimism for the future of reform of Mexican banking policy and structure. It argues that “the economic fundamentals remained relatively sound during much of the early 1990's, [and] Mexico has been able to gradually recoup at a surprising pace.”

This book is a helpful survey of contemporary developments that should be of interest to practitioners and scholars. There are some drawbacks, however. The writing is sometimes less than felicitous. There is a lack of precision in some of the discussion.

While the book’s coverage of the impact of NAFTA on the reform of Mexican banking policy and structure is always useful and pertinent, the book would have benefited from more extensive discussion of the future implications of GATS on the reform process. The GATS establishes “a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization,” by applying GATT nondiscrimination principles to trade in services.

The interplay of GATS obligations and national and regional banking policy is of interest, since the GATS specifically applies to financial services, but permits WTO member states to enforce domestic regulations for “prudential reasons, including for the protection of . . . depositors, . . . or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability

9. Id. at 33-50.
10. Id. at 51-66.
11. Id. at 67-86.
12. See id. at 87-134 (discussing peso devaluation of 1994 and resulting 1995 failure of confidence). See also id. at 135-152 (discussing "Tequila hangover" effect on other regional economies).
13. Id. at 153-76.
14. Id. at 153.
15. My two favorite passages in this regard are the previously quoted remark by Adams about Mexico "gradually recoup[ing] at a surprising pace" (emphasis added; see supra, text at note 14), and this magnificently impenetrable sentence:
   One of the principal trade negotiating objectives of the United States called for equal market access for "all services," and also agreed to by Mexico to include financial services such as banking, securities, insurance and financial intermediaries.
ADAMS, supra note 7, at 61.
16. For example, Adams misidentifies the GATS, an annex to the Agreement establishing the WTO, as a "portion of NAFTA." Id. at 61. Cf. supra, note 4 (discussing GATS).
17. Supra note 4.
18. GATS, preamble.
19. See, e.g., GATS, art. II, ¶ 1 (applying most-favored-nation treatment to services and service suppliers); GATS, art. XVII, ¶ 1 (applying national treatment to services and service suppliers of other WTO member states).
of the financial system.” How this might work out for a banking system in transition, like Mexico’s, would be a useful extension of the book’s analysis.

In addition, aside from a glancing reference, the book does not discuss the implications for continuing regional cooperation of the enactment of the Cuban Liberty and Democratic Solidarity Act of 1996 ("Helms-Burton"). Helms-Burton has been a source of significant controversy between the United States and its trading partners, including Mexico. Title III of the act, which has been temporarily suspended by presidential determination, authorizes a private cause of action for a U.S. national against any third party holding property that had been confiscated by the Cuban Government from the U.S. national. Despite the abeyance of Title III, some foreign firms, including Cemex, the Mexican cement producer, have divested themselves of Cuban assets. However, Mexico joined Canada in a NAFTA against Helms-Burton. In addition, in October 1996, Mexico enacted “antidote” legislation that authorizes counterstrike causes of action for Mexican nationals to recover damages assessed against them in Title III litigation, and prohibits Mexican firms from furnishing information to foreign authorities concerning involvement in Cuban assets.

Title IV of Helms-Burton, which is currently in effect, authorizes denial of entry into the United States to any firm, or any official or employee of a firm, that “trafficks” in expropriated Cuban property formerly owned by a U.S. national. This provision is already having an impact on regional trade relations, and will undoubtedly continue to affect regional economic cooperation.

It would have been interesting to have Adams’ thoughts and observations on this problem. Nevertheless, on the core concerns of his book, Adams makes a useful contribution to the literature.

22. See ADAMS, supra note 7, at 159 ("indirect irritation in Mexico over the Helms-Burton Act restricting trade with Cuba . . . could have contributed to the hard line of the Mexican government" concerning maquila facilities).
24. See, e.g., Ralph Galliano, Cuba a Dilemma for Clinton: Anger Florida or U.S. Allies, J. COMM. July 15, 1996, at 7B.
25. Id.
30. See id.