POLITICAL ENVIRONMENT FOR INVESTMENTS IN LATIN AMERICA†

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I. Introduction

This is a very difficult subject to treat fully. There is the problem of inadequate information. The activities of multinational enterprises are not well known. Likewise, little is known about some of the Latin American governments themselves. There is also a great deal of misinformation and polemics here rather than hard analysis.

There is also no political or legal consensus concerning this issue between the United States and Latin America. One scholar has written, "In no area of inter-American relations has there been a more serious clash of interests than in matters relating to aliens and their property. Here the conflicting currents of political and economic interests are reflected in diametrically opposed doctrines concerning a State's obligations."[1]

The point is that the issue of United States private investment in Latin America was, is, and will remain a chronic problem in inter-American relations. As long as the Latin American countries remain relatively underdeveloped and short of capital in comparison to the United States, there can be no final solution to this problem.

Within the fragmented political culture of Latin America there are some groups that want private United States investment and there are other groups that loathe such investment. Sometimes individual policy makers have both attitudes at the same time.

II. The Latin American Position

In traditional Spanish law, subsoil rights belonged to the king. After independence, the predominant thought was that subsoil rights belong to the nation. This is one doctrine that is different from any found in the United States.

The Latin Americans have also developed the Calvo Doctrine. Under this doctrine, foreign investors are subject to the national laws of the host country. They have no recourse to their own governments in any disputes with the host Latin American government. Many United States corpora-

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1. E.J. Williams, The Political Themes of Inter-American Relations 149 (1971).

tions have signed contracts in Latin America which include the Calvo clause.

The major difficulty between the United States and Latin America is the fact that Latin American governments sometimes feel free, and sometimes compelled, to constantly shift the terms of agreement with United States corporations. A long-term agreement with one government may not be honored by a succeeding one, as the United States copper corporations in Chile found out when Salvador Allende succeeded Eduardo Frei. The terms of the agreement in the Latin American environment cannot be set for a long period of time. They will oscillate according to the relative power of the host state and the United States corporation. Over time, as the corporation invests capital in the host state and trains local citizens, the bargaining position of the host country improves. The capital invested becomes a hostage to increased economic nationalism.

III. United States Position Towards Expropriation in Latin America and the Third World in General

On April 25, 1927, President Coolidge gave the classic statement of the United States economic position: "It is well established that our government has certain duties toward our own citizens and their property wherever they may be located. The person and property of a citizen are a part of the general domain of the nation even when abroad."[2] This statement represents the furthest extension this country has ever taken, although it has withdrawn from that position to a certain degree. The United States has, however, consistently held that no citizen can sign away his claim to Washington's protection. In other words, the United States has never accepted the Calvo Doctrine.

Following the Mexican expropriation of 1938, the United States acknowledged that every nation has the sovereign right to expropriate foreign property in conformity with international law, which requires that a taking be non-discriminatory, for a public purpose, and accompanied by prompt, adequate, and effective compensation. This is the United States view of international law. If property is expropriated in a manner that is inconsistent with international law, the United States feels justified in applying existing legislation, namely, the Hickenlooper amendment.[3] Following an illegal expropriation, this amendment suspends bilateral assistance from the United States to the expropriating country, requires United States diplomats to cast a negative vote on loans in multinational development banks such as the Inter-American Development Bank or the World Bank, and denies eligibility for trade preferences to countries which have expropriated the property of United States citizens without discharging obliga-

2. H. Feis, The Diplomacy of the Dollar: First Era, 1919-1932 29 (1950).
3. 22 U.S.C.A. § 2370(e)(1) originally enacted as Section 620(e)(1) of the Foreign Assistance Act of 1961, Pub. L. 87-195.

tions imposed by international law.

It should be noted that Latin America has the highest tariffs in the world, sometimes as high as 400 percent. Consequently, in order to maintain the trade advantages that were available before World War II, United States corporations have frequently penetrated the local tariff or import licensing protection and now operate, to a great extent, behind the tariff wall. All told, it has been estimated that United States businesses in Latin America employ about two million people, pay more than one fifth of the continent's taxes and produce about 12 percent of its total output and about one third of its exports.[4]

IV. Latin American Justifications for Economic Nationalism

Latin American fears concerning exploitation by foreign capitalists are nothing new. One need only recall the numerous debt controversies between Latin America, Europe, and the United States during the late nineteenth and early twentieth centuries, as well as the Mexican nationalization of foreign oil companies in 1938. In the past, Latin American nationalists were mainly concerned about foreign investments in the sectors of natural resources and public services. Today, they have expanded and intensified their concern to include the sectors of manufacturing, banking, and insurance. Many Latin American countries still desire foreign capital but under increasingly stricter national controls.

Obtaining private United States capital is still considered a safer policy for many Latin American governments than trying to raise the capital through tax efforts. Perhaps a better term than "safer" is "lesser evil" because it is so difficult to raise tax money in Latin America. Legitimacy is threatened, and the bureaucracy must be depended upon to collect the money honestly. Foreign investors and corporations in Latin America face increasing pressure partly because many nationalist leaders have found it to be good politics to have conflicts with United States corporations. Whether it is also good economics will be answered in the coming years.

The crucial point is that economic nationalism and the resulting conflict with foreign firms is, in the substantive view of many Latin American political leaders, the cheapest and quickest means to buy legitimacy, which is a scarce political resource in the southern hemisphere. In contemporary Latin America, political legitimacy is obtained by proving one's nationalism, and nationalism in the political environment in Latin America is established by opposing the United States. For Latin American leaders of all leanings, conflict with foreign investors is proving to be an effective political tactic, at least in the short run. No other policy is as universally popular.

Unlike other policies such as tax, land, and educational reforms, expro-

4. Some of these figures have changed since the Venezuelan oil expropriation, and more recent data are not available.

priation of foreign property does not arouse class antagonisms. There appears to be something for everyone to gain with only the foreigners losing. Policies of expropriation are not only popular with politicians; they are also increasingly the major ideological interest of Latin American intellectuals. Until recently, the objective was pursued by cooperating with the United States in the hope that a more autonomous existence would become possible once the nation was industrialized.

Today there is a growing consensus among intellectuals that autonomy from the United States is the indispensable prerequisite for development in Latin America. Thus, the sequence of Latin American development has been reversed. In other words, in the past it was: develop now and achieve autonomy later; now the sequence has increasingly become: gain autonomy from the United States and then develop. A comparison of the recent developmental plans of various Latin American countries reveals that autonomy, self-determination, and a reduction in foreign dependence are among the fundamental objectives of most, though not all, Latin American countries.

In short, intellectuals have spread the idea throughout Latin America that the Latin Americans are not dependent because they are poor; rather, they are poor because they are dependent. The belief has grown that private foreign capital operates to maintain what they call underdevelopment by withdrawing capital. Although scientific studies to prove this assertion are lacking, a case can be made by pointing out that Latin America has been open to foreign investment for over a century, yet it remains underdeveloped with ever-increasing foreign debts. Nevertheless, it must also be pointed out that just as in the past when the costs of foreign investment were underestimated by the dominant ideology of positivism, today the benefits of foreign investment, such as the transference of capital and technology, the creation of sources of employment, the reduction of imports, and the expansion of exports, are not emphasized by the prevailing ideology.

Contemporary Latin American ideologies focus upon the negative aspects of this economic phenomenon. Emphasized are foreign control over vital sectors of the economy, the introduction of consumption habits inappropriate for developing societies, the unwillingness of multinational enterprises to export their goods and thus compete with their other plants in other countries, the remittance of high rates of profits out of Latin America, and the influx of capital-intensive technologies not suitable for countries having a labor surplus. Much of the technology developed in the United States is capital intensive. Given the population explosion in Latin America, there is much greater need for a labor-intensive technology that can provide jobs for a growing population.

Taking all benefits and costs into consideration, however, the fact that many Latin American countries continue to suffer from balance of payment difficulties lends credence to, although it does not confirm, the position that the negative costs of foreign investments outweigh the benefits. Whatever the truth is, there is no doubt that public opinion in Latin America is increasingly convinced that United States investors make exorbitant profits in Latin America. Although conclusive proof to confirm this belief is missing, most Latin Americans believe it simply because of the power of United States corporations relative to that of their own institutions. In the words of one Latin American intellectual,

> The Latin American economist, politician or man of the street is aware that domestic industrialists as a rule make extremely handsome profits because of domestic protectionist policies. They cannot accept the proposition that the foreign entrepreneur, endowed with access to modern technology, good management techniques, abundant capital funds, and high bargaining powers vis-à-vis host governments, could be earning less than his weaker national counterpart.[5]

The practices of the multinational enterprises cloud this issue from rational analysis and thus encourage ideological polemics. Individual multinational enterprises are extremely complex. A diversified organization frequently buys and sells to itself across a multitude of local and national jurisdictions. Armed with skilled accountants and tax lawyers, such corporations manipulate their losses and gains in different jurisdictions so as to earn the company the greatest net advantage. For Latin American leaders, the crux of the problem lies in the fact that unless the multinational enterprises are regulated, or in some cases eliminated, critical decision-making powers affecting national development will not be in national hands.

Even such a supporter of multinational enterprises as George Ball[6] admits the validity of this anxiety by asking, "How can a national government make an economic plan with any confidence if a board of directors meeting 5000 miles away can, by altering its pattern of purchasing and production, affect in a major way the country's economic life?" In short, Latin American leaders are determined to become masters of their own economic resources and policies which will mean continuous conflict with United States private investors for the foreseeable future.

The ultimate danger for Latin America, however, is that its political elites will accept the naive view that one can obtain economic independence simply by acts of legislation and expropriation. The Chilean economist Oswaldo Sunkel correctly emphasizes that "economic independence cannot be the magical consequence of an heroic political act; rather, it will be the medium or long-term result of the construction of a national economy which is both efficient and flexible and also capable of generating a large and rapidly increasing surplus of resources for investment."[7]

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5. Wionczek, *Integration and Development*, International Journal, Summer 1969, at 451.
6. United States Undersecretary of State 1961-1966.
7. Sunkel, *National Development Policy and External Dependence in Latin America*, The Journal of Development Studies, Oct. 1969 at 48.

V. Conclusion

In conclusion, there is no doubt that United States private investment in Latin America is operating and will continue to operate in a hostile ideological climate. There may be some short-term fluctuations in which a new government extends a cordial invitation to United States investors and multinational enterprises. Nevertheless, the long-term trend is inevitably opposed to United States investors. United States investors in Latin America can only be protected by very authoritarian governments. Even if they succeed in generating revenue and jobs, they are sowing the seeds of their own destruction and causing increasing problems for the United States government. Opponents of United States investment will hold the very success or failure of such investment as justification for future expropriation.

Questions and Answers

Question: Which countries in Latin America are most open to United States private investment?

Answer: Brazil, but even it is selective in the kinds of investments it wants. The problem with all Latin American countries is that they lack capital. Because of their culture, they do not produce their own technology. They produce great poets and great lawyers, but until recently there were relatively few schools of technology. They depend upon either United States, Germany, or some other country for technology. Cubans are dependent on Russian technology to a great extent. However, this reliance exacts a high price because the technology of most countries is geared to their own needs. The Cubans have found, for example, that Russian technology is not particularly efficient. The Russians test their technology in the Ukraine. When Soviet equipment is brought to Cuba, it is discovered that the machinery is not appropriate for such a humid or hilly environment. Almost all of Latin America is ambivalent towards United States private investment. There are groups that want it, and there are groups that do not want it. Even the same individual can have a kind of love-hate relationship with it. In Peru, the first act of the Velasco government was to expropriate the International Petroleum Company which is a subsidiary of Exxon. This achieved legitimacy for the government. At present the Peruvian government, because of its balance of payments problems, is inviting United States copper corporations to come in and is now rather favorably disposed to United States private investment. Private investors will go in, and then the government will change or the president will change his attitude and the government will start squeezing the investors again. At present, one cannot sign a contract with any Latin American government and have it maintained over a long period of time. The bargaining power of the two will shift tremendously. This is what troubles United States businessmen. There is no such thing as a binding contract in Latin America with the political instability as it is.

Question: What is the Latin American view of adequate compensation for expropriations?

Answer: The Latin Americans, lacking political power, have been the champions of the development in international law of a kind of sociology of knowledge. Given their political perspective, they have emphasized an international law that would restrict the power of creditor nations, which is understandable since they are debtor nations. The United States was a debtor nation until World War I. It was mainly after World War I that the United States borrowed from the British the idea of an international law based upon adequate compensation for expropriations. The Latin Americans claim that there is no validity to this idea. The United Nations has been discussing it for a long period of time. It is doubtful whether one could establish any consensus of international law, given the current positions of creditor and debtor nations. Each nation would view any proposed law from only its own perspective. It would be almost impossible to get any kind of agreement on it.

If they expropriate, then the United States will cut off their foreign aid. Expropriating countries will find that their applications to the Inter-American Development Bank, the World Bank, and the Export-Import Bank are no longer acted upon. The government will discourage private banks in the United States from making loans to the expropriating countries. This approach is fairly effective because expropriating countries are generally debtor countries.

The oil companies have been in and out of Latin America as much as the Jesuits have. In Argentina, for example, when Juan Peron first came to power, he threw the oil companies out, but by 1954, he was calling them back in. A new government came in and again threw them out, and they've been in and out ever since. Companies are well aware of this. It has the effect of creating a feeling on the part of these corporations that they had better get as much as they possibly can. The United States oil corporations in Venezuela had an agreement that they were going to be operating those oil wells until 1983. The Venezuelan government decided that by 1983 they would only be nationalizing a gigantic hole in the ground with dilapidated equipment; therefore, the government began to expropriate what the United States oil corporations said was $5 billion worth of property. The Venezuelan government gave them $1 billion. This has been going on for a long time. In March, 1938, Mexico expropriated what United States corporations claimed was $100 million worth of property; they probably received about $30 million from the Mexican government.

Question: Where do the arms come from which enable one outsider group to topple an existing Latin American government?

Answer: They come from all over. There is quite a large amount of gun traffic across the United States border into Mexico. The United States is a major exporter of weapons; so are the Russians, the Israelis, and the Germans. It is a big business. Once the weapons get into the Latin American military, they can be stolen, or even bought, by others.

Question: Do the problems discussed here exist only between the United States and the Latin American countries, or is it common to countries in the Common Market as well?

Answer: There are divisions, but the problem seems to be more with the United States, partly for historical reasons. Most of the European countries have no record of imperialism in Latin America. Consequently, there is less sensitivity about German investment, for example. The Argentines have been sensitive about British investment since Great Britain was a heavy investor in Argentina. The Japanese and the Italians have been very successful in Latin America, and there has not been quite the same fuss. The problem, of course, is that the United States has companies like IT&T in Latin America or, in the past, United Fruit, which have been tied to the United States government. These companies have caused tremendous harm to United States interests. Consequently, there is much greater sensitivity about United States investment than about investment by other foreign countries.

Question: Do Latin Americans distinguish between United States corporations and the United States government?

Answer: In Latin America there is frequently no distinction made between the United States government and United States corporations. United States policy in Latin American eyes is not just what the president or Congress or the State Department is saying. It is also what IT&T is doing or what United Fruit is doing, and this can be a real problem.

From the Marxist point of view, the government is merely an executive committee for United States corporations. But there is evidence that relationships are not always cordial; there are differences of opinion. During the 1938 Mexican expropriation, Exxon and the United States government were miles apart concerning whether or not Exxon should accept the settlement that Mexico offered. The United States literally forced Exxon to accept that settlement. Exxon did not want to accept the legitimacy of the Mexican expropriation, feeling that it was a very bad precedent and would rather have lost the money than establish legitimacy for the position that a Third World nation can expropriate United States private property and get the United States to come in and split the difference in a settlement that would be fairly beneficial to the host country. The money that Mexico paid to Exxon came largely from the United States government which began to buy Mexican silver and other commodities.

Question: What are some of the major drawing cards, excluding the search for natural resources, which attract United States investors to Latin America?

Answer: The Latin Americans are most sensitive about natural resources. Increasingly, they are entering into service contracts instead of the old kind of agreements. Some United States corporations have sold there for a long time. There is a market there for Arrow shirts, Gillette razor blades, Colgate-Palmolive toothpaste, underarm deodorants, and a whole series of products. These markets were created there a long time ago. When the tariff walls were put up, a number of these manufacturers simply went under them. Today they make what appears to be a fairly substantial profit. These tariff walls were put up originally to protect Latin American industry; however, United States corporations are often much more efficient and move much more quickly. Now they have the market there. They are not bound by nationalism. An Argentine will think twice about investing in certain Latin American countries, whereas a United States corporation is not tied to any Latin American country nor are they particularly tied to the United States. They place investments where they can make the most profit. The Marxists are quite wrong in thinking that United States multinational corporations are dominated by the United States government. Indeed they transcend any known nationalism. When the United States was about to devalue back in 1971, President Nixon was surprised at how quickly United States corporations were buying up yen, marks, and francs. There was no patriotic support for the United States dollar here. They moved money very quickly to where the profits were.

The United States is making a bad mistake in literally encouraging its corporations to invest money overseas and to set up these subsidiaries. They cause all kinds of political problems for this country. Unemployment is increasing in the United States. As an historical analogy, in the latter part of the nineteenth century Great Britain's decline may very well have been related to the amount of capital it was investing overseas. Perhaps the United States will not encounter the same kind of problems; however, this country's economic record since World War II has not been that impressive although these effects cannot be proved because of a lack of reliable data. Even today during the energy crisis, the United States does not know whether the oil and gas companies are holding certain things off the market. If the government, which is fairly intelligent, cannot know this, imagine the difficulty of Honduras trying to understand what United Fruit is doing within their country or another Latin American country trying to find out what Exxon or United States Steel is doing. This is an indication that United States multinational enterprises should not be encouraged to invest in the Third World. European countries, on the other hand, are perfectly capable of taking care of themselves. United States Steel cannot push around the French government or the British government. Nor is there the fear of any insoluble political conflict in Europe. However, since IT&T treated the Nixon administration like a banana republic, one begins to fear how some of these corporations act overseas. Probably most of them behave very cautiously and concern themselves mainly with profits. They are not concerned with overthrowing governments. Nevertheless, the United States should try to make sure that as much investment as possible stays in the United States.

Question: Is the United States overplaying its hand by putting money into overseas manufacturing investments rather than simply extracting natural resources?

Answer: The Latin Americans are going to invite United States corporations in to develop their natural resources. Venezuela has a tremendous amount of oil, but it lacks the technology and the tremendous amount of capital needed for its extraction. Therefore, Exxon is going to be involved. Although they are having trouble negotiating, Exxon will probably get some sort of service contract.

As far as manufacturing is concerned, it is doubtful that the local countries are being helped by selling Mennen deodorants to them. Latin America should have to buy the technology and develop it and, in a sense, emulate what Japan was able to do. There has been a tremendous change in attitude towards Japan in one lifetime. At one time, if a product was made in Japan it was the equivalent of being made in Hong Kong. Today many people cannot afford most of the products manufactured in Japan. This is a tremendous change, and this is what Latin America should attempt to emulate. The Japanese did not invite very much foreign private investment. They squeezed their own people for it. In Latin America, partly because of cultural factors, countries are using United States private investment as a kind of safety valve This tends to bring about hostility between the United States and Latin America.

Question: Will Brazil develop nuclear weapons and capabilities in the near future? If so, how will it affect political stability in Latin America?

Answer: It is very likely. Brazil has a big agreement with West Germany. The Brazilians aspire to be a world power by the year 2000. Pessimistically, this is a catastrophic development. When one combines atomic weapons with political instability and a lot of mutually hostile groups, the chances of a terrorist group getting hold of the bomb just increases that much more each time another nation develops its own atomic weapons. There is no need for Brazil to acquire atomic weapons. There is no one threatening her externally. It's purely symbolic.