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Reseña

Carlos de Jesús Becerril Hernández, *El juicio de amparo en materia fiscal en México, 1879-1936 (centralización judicial y desempeño económico)*, México, Tirant lo Blanch, 2018, 373 pp.

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El juicio de amparo en materia fiscal en México, 1879-1936, is an excellent monograph about the quintessential legal action, the *amparo* lawsuit, as it has evolved in relation to tax matters. The period covered by this study encompasses the years during which Mexicans endeavored to consolidate the modern, liberal order, promoted industrialization, underwent revolutionary civil war, and then reformed State and society. Tax law is not typically the focus of students of history drawn to the dramatic life of a country that has undergone such momentous change in little more than fifty years. However, tax and fiscal policy are constitutive of the State and its reach, and understanding the dynamics of taxation can go a long way towards recognizing the anatomy and operation, including the limits, of governmental power in society and the economy. Carlos de Jesús Becerril Hernández is aware of the significance of this point, and his study centers on the *amparo* action to thresh out the relationship between taxpayers and the State, as it was manifested through the mediation of the decisions of the nation's Supreme Court either to uphold or deny appeals from governmental taxation, and thereby indirectly affirm (or qualify) state policy. His book is foremost a legal history, but it is also a major contribution to the historiography of the period. On the basis of extensive research and the extant scholarship, the author masterfully outlines the laws and institutions concerned with taxation, presents truly informative tables, figures, and graphs, and, furthermore, narrates analytically relevant, federal judicial practice, as triggered by taxpayers seeking legal relief: economic and social historians interested in the institutional frameworks of their studies should find much that is useful in this work.



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As Becerril Hernández summarizes in his introduction, the *amparo* lawsuit has been the fundamental, federal instrument for the vindication of one's constitutional rights since its inception in the middle of the nineteenth century. In connection with governmental taxation, whether federal, State, or municipal, between 1879 and 1936, the federal judiciary's grant of an *amparo* (analogous to an injunctive or declaratory order) was the exclusive, lawful remedy against government officials' tax collections. Ultimately, *amparo* petitions reached the Supreme Court (although indisputably not all were actually transmitted to it), which issued final decisions that were published. These published decisions are the main historical source for *El juicio de amparo en materia fiscal* (totaling about 600 cases, p. 13), and in a succession of chapters organized chronologically, Becerril Hernández explains the Court's decisions, which actually tended to limit narrowly the scope of an individual's lawsuit, even when successful.

To a degree, the narrowness of this judicial decision-making resulted from the nature of the *amparo* action, already set out in 1847 and thereafter affirmed in the 1857 and 1917 Constitutions, as well as in secondary legislation. In brief, the Court's judgments (*sentencias*) applied only to the parties of the action before the Court; they could not have general application nor overturn law. Widely known as the Otero formula, this constitutional-political limitation on the scope of the *amparo* action facilitated its use during the Porfirian regime (1877-1911), and thereafter, under the 1917 Constitution. Before the consolidation of the *amparo* action, however, an alternative administrative procedure –*juicio contencioso administrativo*– was also used in tax disputes, and Becerril Hernández in Chapter 1 recounts the nature and use of this procedure. Associated with the prestigious, conservative jurist Teodosio Lares, and implemented during the last dictatorship of Santa Anna, the Supreme Court finally supplanted it. It is a telling moment in the institutional development of the nation, in which judicial process combined with political contests and liberal ideology, and Becerril Hernández provides the reader with a detailed account of the process. Significantly, the final derogation of the administrative action in favor of the judicial suit, a triumph of liberalism –one might conclude– was coupled with the Supreme Court's limitation of the *amparo* action in 1879, to avoid judicial challenges of legislative policy. Articulated by the leading Supreme Court jurist Ignacio Vallarta, the doctrine (*el criterio Vallarta*) largely restricted judicial review to procedural irregularities. Thus, Becerril Hernández argues that the Supreme Court's decisions served to strengthen the federal executive branch's power to tax (“brindó al Poder Ejecutivo Federal un ‘blindaje jurisdiccional’ ” p. 193), and, more generally, to rationalize and centralize the fiscal system that the Porfirian regime established (p. 162, pp. 242-43). But as Chapter II illustrates, litigation brought by taxpayers continued; and as Becerril Hernández shows, the taxpayers who filed *amparo* actions were a varied set of individuals, encompassing most social classes and both women and men, although merchants and property owners stand out (p. 236).

Chapter IV, building on a shorter chapter reviewing the revolutionary years, covers the post-revolutionary period, 1919 to 1936, from the enactment of the Amparo Law of 1919 (Ley de Amparo), through the passage of the general tax law of 1936 (Ley de Justicia Fiscal), which reinstalled an administrative procedure for resolving most tax disputes. Becerril Hernández, like many historians, contends that notwithstanding revolutionary disruption much of the liberal-legal tradition persisted (p. 285), and in particular in connection with the *amparo en materia fiscal*, at least until the advent of *Cardenismo* in the mid-1930s. Still, the legal-historical process that culminated with the turn toward the administrative State (or rather, in a sense, the return to this project, albeit now with progressive, and social inflection), was contentious and nuanced, involving the rearticulation of tax and fiscal principles stated in the text of the 1917 Constitution, the recognition

of the dominance of federal executive power, and ultimately of the federal government over the states. Becerril Hernández posits each of these themes clearly, first through an exposition of the relevant laws, secondly through an analysis of 174 *amparo* sentences decided by the Supreme Court between 1917 and 1935 (p. 302). What his analysis points to is: more cases in the first years of the re-establishment of constitutional order; a marked trend toward more tax litigation by collective entities (*personas jurídicas colectivas*, e. g., business corporations); and even the survival of supposedly abolished forms of tribute (viz., *the alcabala*), side by side with persistent challenges to new forms of taxation, such as the income (*renta*) tax.

Becerril Hernández argues that the Supreme Court's rulings contributed to the federalization of tax law and practice, even as the Court reconsidered in the mid-1920s the Vallarta doctrine, and moved toward the adoption of the contrary position, so as to allow challenges to laws that taxed disproportionately and unfairly, in violation of the 1917 Constitution (Article 31, which carried over from the 1857 Constitution). This moment in the Court's history, 1926, when its decision-making in tax cases indicated its major role in the ongoing institutionalization of government practices after the years of revolutionary turbulence, paralleled decisions in other legal areas, such as labor law. Thus, the Court's tax decisions largely tended to affirm federal executive power, while they still adhered to liberal-legal principles to a point. In any case, the *amparo* decisions from the late 1920s to the mid-1930s serve as an epilogue for this book, in view of the legislation and constitutional amendments promoted by Lázaro Cárdenas, as he reinforced federal executive power in the new administrative State to deal with social challenges more effectively. In addition, they raise a set of final questions, which Becerril Hernández, understandably more focused on a positivist exposition of the Supreme Court's decision-making in connection with tax matters, perhaps opens up for further discussion and research. For the social and economic, as well as legal, historian, it is significant that the high court should have played such a major role in the regulation of taxation, despite the constitutional limits of the *amparo* action, and the nature of executive power and social turbulence throughout much of the period.

Becerril Hernández has persuasively shown the importance of the *juicio de amparo en materia fiscal*. In his conclusion, he mentions that it served as an escape valve for opposition to tax demands (pp. 346-347). However, it was also more than this. As Becerril Hernández has ably suggested throughout the monograph, and, indeed, he states that judicial doctrine and the petitions that the Court resolved regarding the collection of taxes influenced the form of the fiscal law adopted in 1936 (p. 347). That is, the Court's decision-making in *amparo* tax cases contributed to the centralization and institutionalization of the post-revolutionary State, just as it had to the earlier rationalization and centralization of fiscal power during the Porfirian era. The issue for historians nonetheless remains to square fully the import of the Court's *amparo* decisions in tax matters with what is also already known about the time period: the economic, political, and social developments that were so momentous for the post-revolutionary decades of the twentieth century, in part still impacted by Porfirian legacies.