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CUBAN PROPERTY RIGHTS AND THE 1940 CONSTITUTION

IGNACIO E. SÁNCHEZ*

The [1940] Constitution is understood to be the basic and supreme law of the land—to define the country's political structure, regulate the functioning of government agencies and determine the boundaries of their activities. It must be *sui generis*, stable, enduring—and to a certain extent inflexible.

—Fidel Castro¹

I. INTRODUCTION

On January 1, 1959, following the abdication of power by Fulgencio Batista, Fidel Castro entered Havana as the revolutionary leader of the Republic of Cuba. The new year marked the end of the popular uprising against Batista that had begun on March 10, 1952, when Batista executed a military coup d'etat and suspended constitutional guarantees. The declared purpose of Batista's opponents was to restore the 1940 Constitution.² This objective became the unifying banner under which Cubans fought and ultimately forced out Batista.

The victory over Batista inspired hope that the Republic of Cuba would once again be governed by a constitution that expressed the will of the people. Unfortunately, history bears witness to the fact that Castro and his ministers betrayed the public trust. Within days of seizing power, Castro began the process of illegally amending the Cuban Constitution. These amendments were part of an illegal scheme by the Castro revolutionary government to confiscate and expropriate assets belonging to Cuban nationals, foreign companies, and individuals. These confiscated properties, worth billions of dollars, ranged from sugar mills, distilleries and petroleum refineries to small businesses and private residences.

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1. INTERNATIONAL COMMISSION OF JURISTS, CUBA AND THE RULE OF LAW 83 (Geneva 1962)(*quoting* FIDEL CASTRO, HISTORY WILL ABSOLVE ME 69 (1959)).

2. INTERNATIONAL COMMISSION OF JURISTS, CUBA AND THE RULE OF LAW 78 (Geneva 1962).

Castro's rule has lasted for more than thirty-four years and one can only speculate as to when his regime will end. Recent events, however, indicate that Castro's days are numbered. The collapse of communism in the former Soviet Union, Castro's main trading partner, has produced a severe economic crisis in Cuba. In addition, the Cuban people have begun to openly express their dissatisfaction. Ultimately, as with the former communist bloc countries of Eastern Europe, Castro's regime will come to an end and the Cuban people will be able to implement a democratic, free-market oriented political system.

The restoration of democracy and the implementation of a free market economy in a post-Castro Cuba will raise many important constitutional and legal issues. The purpose of this Article is to highlight the property law concepts embodied in the 1940 Constitution, illustrate the constitutional abuses perpetrated by the Castro regime with respect to property rights and formulate a historical basis for the various models addressing property rights issues in a post-Castro Cuba.

II. HISTORICAL OVERVIEW

Whenever constitutional analysis is undertaken, it is important to review the drafters' intent (as derived from historical antecedents) and underlying public policy. As such, the following section briefly touches on the constitutional history leading to the enactment of the 1940 Constitution.

The desire to be governed by a Constitution clearly expressing the will of the Cuban people can be traced to the Spanish colonial era. On October 10, 1868, Carlos Manuel de Céspedes issued the historic "Grito de Yara" from his plantation, La Demajagua, proclaiming Cuba's independence.³ In order to overcome regional differences among the Cuban rebels and overcome the Spanish counter-offensive, Carlos Manuel de Céspedes, and the other signers of his declaration, called a constitutional convention to be held in Guáimaro on April 18, 1869.⁴ This convention resulted in the promulgation of a constitution calling for a republican government. The ensuing struggle with Spain, known as the Ten Years War, ended in February of 1878 with the Cuban revolutionaries being unable to overthrow the Spanish. As a result the Guáimaro Constitution ceased to exist as a governing instrument.

3. JAIME SUCHLICKI, *CUBA: FROM COLUMBUS TO CASTRO* 68 (3d ed. rev. 1990).

4. Fox and Tabio, *Cuba: Considerations of Future Constitution-Making Process*, THE CUBA PAPER-SERIES: PAPER NO. 5, 1 (The Endowment for Cuban American Studies, Cuban American National Foundation).

By the beginning of the 1890s, José Martí, Máximo Gómez and Antonio Maceo, through the Partido Revolucionario Cubano (Cuban Revolutionary Party), began organizing a new war against Spain.⁵ During the struggle for independence, two separate constitutions were promulgated for the governance of Cuba. The constitution of Jimaguayú was promulgated on September 16, 1895. The final constitution of the colonial period was known as the Constitution of La Yaya, and was promulgated in October of 1897.⁶

In early 1898, the U.S. battleship *Maine* exploded in Havana harbor and the United States entered the conflict between the Cuban revolutionaries and the Spanish government. By the end of 1898, the conflict was over. On December 10, 1898, the U.S. and Spain signed the Treaty of Paris, whereby Spain renounced sovereignty over Cuba. Unfortunately, the Cubans who led the struggle for independence were excluded and not represented in the Treaty of Paris. As a result, although Cuba obtained its independence from Spain, its governance was left in the hands of the United States.

Beginning in 1899, the United States maintained a military presence in Cuba. Between 1899 and 1902, the island was governed by two U.S. military governors.⁷ As a step towards self-governance, in September of 1900, elections were held in Cuba for delegates to a constitutional convention.

By February of 1901, the thirty-one delegates to the convention drafted a constitution, establishing Cuba as an independent, sovereign state. The Constitution, however, contained as an annex, the Platt Amendment (named after U.S. Senator Orville H. Platt) which gave the United States the power to intervene in Cuban affairs to preserve Cuba's independence and maintain its government, or fulfill any other obligation placed on the U.S. by the Treaty of Paris. The Platt Amendment stipulated as follows:

[T]he President [of the U.S.] is hereby authorized to "leave the government in control of the Island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance append thereto, shall define the future relations of the United States with Cuba, substantially as follows:

5. SUCHLICKI, *supra* note 3, at 76.

6. Fox and Tabio, *supra* note 4.

7. The first governor was General John Brooke, who served between January 1899 and December 1899. The second military governor was General Leonard Wood who served between December 1899 and May 1902.

I. That the Government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorized or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgement in or control over any portion of said island.

II. That said government shall not assume or contract any public debt to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which the ordinary revenues of the island, after defraying the current expenses of government, shall be inadequate.

III. That the Government of Cuba can sense that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba.

IV. That all acts of the United States and Cuba during its military occupancy thereof are ratified invalidated, and all lawful rights acquired thereunder shall be maintained and protected.

V. That the Government of Cuba will execute, and, as far as necessary, extend, the plans already devised or other plans to be mutually agreed upon for the sanitation of the cities of the island, to the end that a recurrence of the epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein.

VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

VII. That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling, or enable stations at certain specified points, to be agreed upon by the President of the United States.⁸

By a majority of only one, the constitutional convention agreed to annex the Platt Amendment to the new constitution.⁹

Pursuant to the new constitution, the constitutional convention adopted a law for the election of the first president and, thereupon,

8. Platt Amendment, 31 Stat. 897 (1901).

9. SUCHLICKI, *supra* note 3, at 82.

the convention dissolved. On December 31, 1901, Tomás Estrada Palma was elected president of the Republic of Cuba. On May 20, 1902, the Republic of Cuba was officially born and governed under a constitution enacted pursuant to the will of the people.

Between 1902 and 1940, the political instability of the new Cuban Republic and the resentment created by the Platt Amendment resulted in uncertain and inconsistent application of the Constitution. In 1928, President Gerardo Machado modified the 1901 Constitution through a packed constitutional convention that granted Machado a new six year period of power without re-election and abolished the vice presidency.¹⁰ On August 12, 1933, Machado's opposition ultimately forced him to resign. Pursuant to the Platt Amendment, the United States intervened and U.S. Ambassador Benjamin Sumner Welles appointed Carlos Manuel de Céspedes, Jr. to succeed Machado.¹¹ The political unrest continued, however, and by September of 1933 Fulgencio Batista seized control of the armed forces. Batista and the political factions that led the uprisings against Machado, primarily the Directorio Estudiantil Universitario, called for de Céspedes' overthrow. As a result, de Céspedes resigned and a five man "Pentarchy" headed a provisional government. The Pentarchy, however, was ineffective and was not recognized by the Roosevelt administration in the United States. By September 10, 1933, the Pentarchy disintegrated and Dr. Ramón Grau San Martín, backed by the groups that had opposed Machado and by Batista's military, was named as Cuba's provisional president.¹²

Dr. Grau, an opponent of the Platt Amendment, abrogated the 1901 Constitution and promulgated provisional statutes to govern Cuba while calling for a constitutional convention to be held on April 1, 1934.¹³ By early 1934, however, Dr. Grau was also forced out of power. Political unrest continued as various presidents were appointed with Batista's approval, such as Carlos Mendieta (1934-35), José A. Barnet (1935-36), Miguel Mariano Gómez (1936) and Federico Laredo Brú (1936-40).

Finally, in 1939, elections were held for delegates to a constitutional convention designed to end the political unrest and uncertainty surrounding self-governance. The convention was convened in 1939 and was charged with the task of reconciling the disparate interests which had led to the instability of the 1920s and '30s. Toward that end, the constitutional convention was comprised of 76

10. SUCHLICKI, *supra* note 3, at 99.

11. *Id.* at 107.

12. *Id.* at 108.

13. *Id.* at 111.

delegates, representing nine political parties (including the Communist party). The convention met and debated for approximately four months and on July 8, 1940, the new Constitution was published in *Gaceta Oficial*.¹⁴

The period following the enactment of the 1940 Constitution was marked by twelve years of relative stability. During that time, three presidents, Fulgencio Batista (1940-1944), Dr. Ramón Grau San Martín (1944-1948) and Carlos Prío Socarrás (1948-1952) succeeded each other through democratically held elections.

III. PROPERTY RIGHTS UNDER THE 1940 CONSTITUTION

The two seminal provisions pertaining to property rights in the 1940 constitution are found in Article 24 and Article 87. Article 24 is found in the section entitled "Individual Rights". In describing these individuals rights, it states:

Art 24.-Confiscation of property is prohibited. No one can be deprived of his property except by competent judicial authority and for a justified cause of public utility or social interest, and always after payment of the corresponding indemnity in cash, judicially fixed. Non-compliance with these requisites shall determine the right of the person whose property has been expropriated, to be protected by the courts, and, if the case calls for it, to have his property restored to him.

The reality of the cause of public utility or social interest, and the need for the expropriation, shall be decided by the courts in case of impugnation.¹⁵

Significantly, Article 24 establishes an individual's property rights as fundamental rights to be protected under the Constitution. Article 24 prohibits the taking of property without judicial proceedings to establish a justified cause of public utility or social interest. Additionally, adequate payment *in cash* must be made to the person who owned the confiscated property. Unless these criteria are complied with, the person whose property has been confiscated is guaranteed access to the courts to obtain restitution of his property.

Article 87 is found in the section of the Constitution titled "Labor and Property." Article 87 reads:

The Cuban Nation recognizes the existence and legitimacy of private property in its broadest concept as a social function and

14. *Gaceta Oficial* is the Cuban analog to the U.S. Congressional Record.

15. CONST. OF THE REPUBLIC OF CUBA, title IV, § 1, art. 24.

without other limitations than those which, for reasons of public necessity or social interest, are established by law.¹⁶

The remaining articles in the property section of the Constitution, Articles 88 through 96, set forth additional property concepts such as the prohibition of "latifundos" (large landholdings), recognition of intellectual property rights, etc.

The importance and prominence of the property rights protection afforded by the 1940 Constitution is reflected in the articles governing amendment of the Constitution. Articles 285 and 286 establish the process for amendment of the Constitution.

Article 285 sets out the prerequisites for raising an issue with respect to constitutional amendment or revision. Two methods exist: (1) by initiative of the people, whereby the corresponding proposition is signed by not less than one hundred thousand voters, and is presented to the Congress;¹⁷ or (2) by initiative of Congress, by means of a corresponding proposition, signed by not less than one-fourth of the members of the co-legislative body to which the proponents belong.¹⁸ If either of these processes is complied with, then Article 286 sets forth the manner for consideration of the amendment.

Article 286 recognizes that revisions or amendments are of three kinds: 1) specific, 2) partial or 3) complete. In the case of a complete revision of the Constitution, Article 286 calls for an election of delegates to a plebiscitary assembly to address the complete revision of the Constitution.¹⁹

By contrast, when specific or partial amendment is sought, the approval process for the proposed revision depends upon whether it was brought forward by initiative of the people or whether it was brought on by initiative of the Congress. In case of initiative by the people, the specific or partial revision must be submitted to a referendum at the next election to be held. If the specific or partial revision is by initiative of Congress, approval may be obtained by a favorable vote of two-thirds of the total members of both the House and Senate, jointly assembled. The revision cannot become effective until it is ratified in a like manner within the following two regular sessions of the Congress.

There are, however, four articles of the Constitution which are considered of such magnitude that even if each alone is the subject of revision (which otherwise would classify as a specific or partial

16. *Id.* at title VI, § 2, art. 87.

17. *See id.* title XIX, art. 285(a).

18. *See id.* art. 285(b).

19. *See id.* art. 286.

amendment) the Constitution, under Article 286, calls into effect the plebiscitary assembly. Two of these four articles of the Constitution which are raised for purposes of amendments to a level as significant as a complete revision of the Constitution, are Articles 24 and 87 defining property rights.²⁰ Therefore, under the 1940 Constitution, amending the property rights sections contained in Articles 24 and 87 required the creation of a plebiscitary assembly. In effect, it required a quasi-constitutional convention limited to the issue of amending those property rights provisions.

IV. THE CONSTITUTIONAL ACT OF 1952

On March 10, 1952, towards the end of Carlos Prío's term as President, Fulgencio Batista executed a military coup d'etat. Shortly thereafter, on April 4, 1952, Batista's government issued a Constitutional Act which was to govern the country. At times throughout his tenure, constitutional guarantees were entirely suspended. The effect of Batista's coup and the suspension of constitutional guarantees was to break the legal continuity of the political system which was created with the enactment of the 1940 Constitution.²¹ Many opposition groups were established, including the 26th of July Movement (named after the assault led by Fidel Castro on the Moncada military barracks in the Cuban province of Oriente on July 26, 1953).

Because of the suspension of constitutional guarantees, the restoration of the 1940 Constitution became a unifying goal among groups opposing Batista. Although the Constitutional Act of 1952 incorporated verbatim most of the articles of the 1940 Constitution, great dissatisfaction resulted from the Act's provision placing authority to amend the Act in the hands of the Council of Ministers, i.e., the Cabinet, which was appointed by the President himself. Amendment of the Act was possible by merely obtaining a two-thirds quorum vote of the Council of Ministers. This clearly violated Articles 285 and 286 of the Constitution. In criticizing the Constitutional Act of 1952, Fidel Castro stated:

Batista's statutes contain an article that has not received much attention but which furnishes the key to the situation and is the one from which we shall derive decisive conclusions. I refer specifically to the modifying clause included in Article 257, which reads: "this constitutional law is open to reform by the Council of Ministers by a two-thirds quorum vote." Here, mockery reached its maximum.

20. The third article is Article 22 which proscribes the retroactive effect of laws. The fourth article is Article 23 which recognizes the sanctity of private contracts and prohibits their annulment or alteration by the legislature or the executive branch.

21. INTERNATIONAL COMMISSION OF JURISTS, *supra* note 2.

Not only did they exercise sovereignty in order to impose upon the people a Constitution without the people's consent and to install a regime which concentrates all power in its own hands; but also, through Article 257, they assume the most essential attribute of sovereignty—the power to change the basic and supreme Law of the Land and they have already changed it several times since the tenth of March. Yet, with the greatest gall, they assert in Article II "that sovereignty resides in the will of the people and that the people are the source of all power . . ."22

Castro's words, on their face, appear to be attacking the usurpation of popular sovereignty. As shown below, however, Castro's regime enacted its own constitutional reforms by also providing the Council of Ministers with the "constituent power." As such, it is apparent that what Castro objected to was the fact that Batista retained this power and not him.

V. CASTRO'S AMENDMENTS

Following the abdication of power by Batista, Fidel Castro selected Judge Manuel Urrutia to be the President of Cuba. In a speech to the Cuban people on January 5, 1959, Urrutia recognized the legitimacy of the 1940 Constitution by stating it was necessary to "provide for the exercise of the legislative power properly belonging to the Congress of the Republic, in accordance with the 1940 Constitution."²³ As a result, it appeared the 1940 Constitution was once again restored as the supreme law of the land. This apparent restoration proved to be short-lived.

The Cuban Constitution underwent drastic modifications during the early days of the Castro regime. The first amendment to the 1940 Constitution was published on January 13, 1959. This amendment introduced the use of constituent power by the Council of Ministers. In effect, it gave the Council of Ministers the right to amend the Constitution in derogation of the requirements set forth in Articles 285 and 286.

Using the constituent power, the Council of Ministers, as part of that first amendment, modified Article 24. The revised article reads as follows:

Confiscation of property is prohibited. However, confiscation is authorized in the case of property of natural persons or corporate bodies liable for offenses against the national economy or the public treasury committed during the tyranny which ended on December

22. *Id.* at 83-84.

23. *Id.* at 85.

31, 1958, as well as in the case of property of the tyrant and his collaborators. No one can be deprived of his property except by competent judicial authority and for a justified cause of public utility or social interest, and always after payment of the corresponding indemnity in cash, as fixed by a court. . . . (Emphasis supplied)²⁴

Therefore, within 14 days of taking power, the Castro regime ignored and violated the constitutional process and began to chisel at fundamental property rights in the 1940 Constitution. To quote Castro's own words:

Here mockery reached its maximum. Not only did [the Castro regime] exercise sovereignty in order to impose upon the people a constitution without the people's consent and to install a regime which concentrates all power in its own hands; but also . . . they assume the most essential attribute of sovereignty—the power to change the basic and supreme Law of the Land.

Fundamental property rights, once safeguarded under the Constitution, were the first to be illegally modified by the Castro regime to punish political foes and to reward friends of the revolution.

VI. CASTRO'S "FUNDAMENTAL LAW"

The property confiscation scheme continued. On February 7, 1959, the 1940 Constitution was repealed and replaced by the Fundamental Law. The new law, like Batista's Constitutional Act of 1952, repeated verbatim most of the articles of the 1940 Constitution.²⁵ Under the Fundamental Law, the Council of Ministers, not a popularly elected Congress, officially became the supreme legislative body. Under its articles, the Council was given authority to amend the Fundamental Law, in whole or in part.²⁶ The Fundamental Law also carried forward the January 13th amendment to Article 24.

Between February 7, 1959, and August 23, 1961, the Fundamental Law itself was amended sixteen times.²⁷ Each modification made it easier for the Castro regime to exercise direct repressive action against broader groups of property owners. The second amendment to the Fundamental Law came through the adoption of the Agrarian Reform Act (ARA) of June 3, 1959.²⁸

Under the ARA, large and medium agricultural estates were taken over and converted into state farms. Any land-holdings in

24. *Id.* at 87. In addition, this first amendment authorized the retroactivity of criminal law and introduced the death penalty for political causes.

25. *Id.* at 91.

26. *Id.* at 93.

27. *Id.* at 98.

28. *Id.* (CITING GACETA OFICIAL, Special edition No. 7 (June 3, 1959)).

excess of 400 hectares were expropriated. On October 3, 1963, a subsequent agrarian "reform" reduced the maximum permissible rural land-holding to 67 hectares. The ARA was unsuccessfully challenged before the Court of Constitutional and Social Guarantees on the basis that it violated Articles 24 and 87. The Court of Constitutional and Social Guarantees rejected the argument that Articles 24 and 87 were violated, since:

[I]t is also the doctrine of this Court that such standards regulating the right of property cannot be invoked with regard to property falling under the special system of the agrarian reform, which is subject to special provisions laid down by the ARA which is on equal footing with the Constitution.²⁹

The court further held that "the delegates of agrarian development areas may not be denied the power to occupy property affected by the [ARA]; they are not required to apply to the organs of ordinary jurisdiction, nor are there provisions [in the ARA] for prior compensation to the owners."³⁰ Thus, with one broad pronouncement the Castro regime executed a widespread confiscation plan, under the guise of "agrarian reform," affecting thousands of acres of privately owned lands.

On November 22, 1959, the Council of Ministers again used its constituent power to amend Article 24. As a result of this amendment, confiscation of property from the following class of persons was permitted:

1. Persons found guilty of offenses defined by law as counter-revolutionary;
2. Persons evading the action of the revolutionary courts by leaving the national territory in any manner whatsoever; and
3. Persons who, having left the national territory, perform conspiratorial acts abroad against the Revolutionary Government.³¹

The second and third provisions were clearly aimed at the ever increasing exile community.

On July 5, 1960, Article 24 was further amended. This amendment substituted the following paragraph for the second part of the original Article 24 text:

No other natural or juridical person can be deprived of his property except by competent authority and for a cause of public utility or

29. *Id.* at 99 (quoting Judgment No. 45 of the Court of Constitutional and Social Guarantees).

30. *Id.*

31. *Id.* at 100.

social or national interest. The law shall regulate the procedure for expropriation and shall establish legislation and forms of payment and shall determine the competent authority to declare the case to be of public utility or social or national interest and that expropriation is necessary.³²

This amendment bears witness to the way in which the Castro regime stripped Cuban property rights of all constitutional protection. Whereas the original text says "no one can be deprived of his property except by competent *judicial authority*," the amendment merely says "competent authority," which means, in effect, any authority. Also, where the original text says "and always after payment of appropriate compensation in cash," the amendment states that "the law shall regulate the procedure for expropriation and shall establish legislation and forms of payment." This allowed the government to escape paying just compensation. Significantly, the amendment adds "national interest" to the causes that may lead to expropriation. Finally, this Amendment deleted the provision of Article 24 that allowed the party whose property was expropriated the right of appeal to the courts and, if justified, have the property returned.³³

By October 1960, the Castro regime had prepared the illegal basis for mass legislative expropriations of property. For example, on October 13, 1960, the Council of Ministry passed Law No. 890. Law No. 890 allowed the "nationalization through compulsory expropriation of all industrial and commercial enterprises, as well as of the plants, warehouses, stores and other property and rights appurtenant, owned by the physical or corporate persons . . ." In accordance with the illegal amendment of July 5, 1960, referred to above, Article 6 of Law No. 890 declares Law No. 890 to be in the "national interest."

Another mass expropriation was decreed with the passage of the Urban Reform Act. The Urban Reform Act (URA), promulgated on October 14, 1960, adversely affected not only the right to property, but also the freedom of contract. Article 2 of the URA provides: "Leasing of urban property is prohibited, [and] any contract which implies the use of urban property is also prohibited."³⁴ This declaration rendered null and void all leases of urban property that existed at the time the URA was decreed. The URA also ordered the compulsory sale of urban houses and apartments. The sales price for such property was fixed by its rental value over a five to twenty year

32. *Id.* at 104.

33. *Id.*

34. *Id.* at 104 (citing *Gaceta Oficial*, Special edition No. 23 (October 14, 1960)).

period.³⁵ The URA restricted the free alienability of houses or apartments. In order to sell or transfer a house or apartment, the consent of the Council of Urban Reform was required.

On January 4, 1961, Article 24 was once again rewritten. The category of property subject to confiscation was extended to include "those [cases] deemed necessary by the Government in order to prevent acts of sabotage, terrorism or any other counter-revolutionary activities."³⁶

Ultimately, Castro ended the charade by openly proclaiming himself a communist. In April of 1961, he delivered a speech declaring the Cuban Revolution to be socialist. In December of 1961, he declared himself a Marxist-Leninist and called for a collective leadership.

On February 24, 1976, seventeen years after Castro's revolutionary government came to power, a socialist constitution was officially proclaimed.³⁷ The new constitution replaced the provisional Fundamental Law of 1959, under which Castro had ruled since suspending the 1940 Constitution in February of 1959. Chapter I, Article 15 of the Castro Constitution defines state property as follows:

The socialist state property, which is the property of the entire people, becomes irreversibly established over the lands that do not belong to small farmers or to cooperatives formed by the same; over the subsoil, mines, the natural resources and flora and fauna in the marine area over which it has jurisdiction, woods, waters, means of communication; over the sugar mills, factories, chief means of transportation; and over all those enterprises, banks, installations and properties that have been nationalized and expropriated from the imperialists, the landholders and the bourgeoisie; as well as over the people's farms, factories, enterprises and economic, social, cultural and sports facilities built, fostered or purchased by the state and those which will be built, fostered or purchased by the state in the future.³⁸

This comprehensive declaration of socialist property marked the final blow to the once protected constitutional principle of individual property rights in Cuba. As such, the Castro regime unequivocally disposed of constitutionally guaranteed property rights in Cuba.

35. *Id.*

36. *Id.* at 110 (citing *Gaceta Oficial*, Special edition, No. 1 (January 4, 1961)).

37. ALBERT P. BLAUSTEIN & GIBBERT H. FLANZ, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: CUBA 9 (Pamela S. Falk ed. & trans. 1993).

38. *Id.*

VII. CONCLUSION

The issues pertaining to the reprivatization of property will have to be addressed in a democratic Cuba. The resolution of these issues will be very complex. In considering pertinent political and social factors, it will be necessary to address the historical protection of constitutionally guaranteed property rights and not lose sight of the subsequent stripping of those fundamental rights.