

COMMENTS ON

**“Economic Factors in Selecting an Approach to Expropriation Claims
in Cuba” by Rolando Castañeda and George Plinio Montalván**

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It is important to draw a distinction between the terms “expropriated property” and “confiscated property” inasmuch as “expropriated property” implies compensation in return for the taking of property while “confiscated property” explicitly infers there has been no compensation forthcoming. Given the authors’ selected title, the opportunity to develop what would otherwise be the heart-and-soul of this paper, “the economic value of confiscated property in Cuba,” is seriously lacking. Moreover, the authors’ reference to “property rights” as a political issue *not* an economic one, in fact, counters the titled intent of the paper. Consequently, this paper is better titled, “Selecting an Approach to Confiscated Property in Cuba.”

The paper is rather unclear when it comes to distinguishing between the rights of *certified U.S. claimants* (see p.1) and *claims by Cuban nationals*. According to the authors, “Another critical issue is defining citizenship for the purpose of restitution laws. Most countries have defined that only those individuals who were citizens of the country and who had lived there permanently when the law came into effect are eligible for restitution.” First of all, this paper needs to clarify and separate the rights of certified U.S. claimants from the rights of any other claimants. While a table of countries is presented, the authors fail to explain how those countries have defined citizenship with respect to the issue of restitution and the actual economic impact of that country’s deci-

sion. The authors seem to be struggling with the concept of “restitution” which is the simple idea of returning to people property that was illegally taken—that means *confiscated*—a right that fully belongs to the original property owner.

The authors’ paper opens with a quotation by Professor Stanley Fisher which states in part, “Compensation should *not* take the form of giving the original owners the rights to the property itself, but rather the right to compensation by the State.” (emphasis added). Herein lies the inherent problem with regard to this paper whereby reliance is placed on the rights of the *state* rather than on the rights of the *individual* to resolve the issue of confiscated property.

At one point the authors concede that restitution may be justified and they cite the economic success of Chile where “It began through restitution...” presenting the strongest possible case in favor of restitution in Cuba. However, the authors tend to shun restitution as a viable solution and rely upon the consideration of the perceived benefits of the alternatives to restitution instead.

Throughout their paper, the authors put forth a series of obstacles to the settlement of property claims including: 1) the rights of the state over the rights of the individual; 2) damages from human rights violations which would render compensation untenable by its sheer magnitude; 3) usufruct of property, although, it does not apply especially if force was used

Comments on “Economic Factors in Expropriation Claims”

to take the property or to cause the property owners to flee for their lives; 4) expand the claims against Cuba so as not to be limited to property but to “include all manner of torts” in effect attempting to render the claims process untenable; and finally, 5) not holding a future Cuban government (read post-Castro) responsible for the confiscations.

It is astounding that the authors then should suggest that the act of compensation by Cuba actually has been fulfilled through the U.S. placement of the embargo upon Cuba for its confiscation of U.S. owned property in the first instance.

The authors’ conclusions and recommendations appear faulty and unworkable insofar as they call for lifting the embargo prior to the conclusion of bilateral negotiations on claims settlement. Nicaragua serves as an example where the U.S. embargo was lifted following the declaration of free and fair elections but before the property claims issue was fully resolved. Today, Nicaragua’s economy languishes and the property claims linger. The authors’ call for international organization financing prior to the settlement of claims is tantamount to a raid on the U.S. Treasury as well as a raid on international treasuries for the financing and revitalization of state socialism in Cuba.