

## LAND TITLE REGISTRATION IN CUBA: PAST, PRESENT, AND FUTURE

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Cuba was the last country in our hemisphere to emerge from the Spanish colonial empire. As such, it was also the last country in our hemisphere where the application of Spanish laws prevailed, and—at least in some areas of the law—continued to prevail well into the Republican era. One of those laws, was the Spanish Mortgage Law (*Ley Hipotecaria*), by which the recordation of legal documents—in what we in the United States call the public records and in Spain is known as the *Registro de la Propiedad*—was regulated and organized.

A Cuban version of the Spanish Registral System was in force at the time Castro's revolution took over. It was a registral system that came very close to resembling the one in Spain, meaning one that, despite having evolved pursuant to Cuban societal needs (which have always differed from those of Spain), distinguished Cuba from almost every other nation in the hemisphere. Even to this day, the Spanish Mortgage Law remains Cuba's Registral Law.

A reference to the rules and regulations governing the public records system as being a special and distinctive branch or area of the Law—Registral Law—may sound odd to Anglo-American legal ears, but this is how it is regarded in Spain and in many other countries in the world. The Spanish Mortgage Law, and the body of laws and regulations associated with it, are still today a monument to transparency, safety, and expediency at the service of the real estate and financial markets. Despite the fact that it dates back, in its original version, to the XIX century, the Spanish Mortgage Law is as market oriented a piece of leg-

islation as you are likely to find anywhere in the world today.

Contrary to the longstanding perception (or prejudiced mis-perception) according to which most of the problems afflicting Latin America are a consequence of its Iberian heritage, Spanish Registral Law is a heirloom all Cubans and many other people in Latin America can be proud of.

The fact that this Registral Law is still in force in present day Cuba may be seen as a favorable sign that some of the most delicate tasks ahead when the time comes to consensually conceive and develop the blueprint for the Cuba of the future, may turn out to be much less conflictive than they may seem to us today.

### THE PAST

The first Mortgage Law was adopted by Spain in 1861. Its adoption was driven by the changes Spain and the World at large experienced through the first half of the XIX Century. The fact that Spain's population had almost tripled, the advent of the railroad in 1848, and the World economic expansion, all contributed to the growth of foreign investment in Spain and to the perception that more needed to be done in order to solidify and guarantee property rights to satisfy growing housing needs and to facilitate real estate financing. Spain responded to those challenges through the adoption of its *Ley Hipotecaria*, and before long, began considering its application in its *provincias de ultramar*, Cuba among them.

It took about twenty years for the 1861 law to be implemented in Cuba, and by the time it was adopted—by means of a Royal Decree dated December 19, 1879—it contained reforms and improvements to the original law made in 1869, as well as a number of changes that took into consideration problems which were of particular relevance to the island of Cuba. For instance, the two last Sections (*Títulos*) of the law dealt with matters like the registration (*inscripción*) of unrecorded title documents<sup>1</sup> and the effects of old recording entries.<sup>2</sup> These issues, as well as the large number of undivided ranches,<sup>3</sup> and the special importance that the financing of small agro-businesses (*créditos de refacción agrícola*) had for Cuba, were given special treatment and consideration by the drafters of both the 1879 Law and its Regulations.

The interaction in the development of the Mortgage Law between Spain and its far away provinces (Cuba, Puerto Rico, and the Philippines) was very fluid and fruitful, as shown by the fact that, when in 1893 Spain reformed the registral law in force in its three *provincias de ultramar* by enacting a uniform mortgage law for them—the *Ley Hipotecaria de Ultramar*, also known as *Ley Maura*, after Don Antonio Maura y Montaner, then Ministro de Ultramar—the changes and innovations introduced by it foretold the reforms implemented in Spain in 1909. This meant, for instance, that for over 16 years, Cuba and its two sister territories had a summary or expedited procedure for the execution of mortgages (*procedimiento judicial sumario*) that was not available in Spain.

The market-friendly approach pursued by the drafters of this law—inspired by both Latin and Germanic legal principles—is evinced by the fact that the law prescribes that the information recorded in registry entries is presumed to be truthful and exact, and the person listed as the owner (the owner of record or *titular registral*) is deemed to be the legitimate owner,

meaning he is legitimized to efficiently act as the owner in the real estate market (*principio de legitimación registral* or legitimacy principle).

A consequence of this pro-market feature is seen in the protection the Spanish registral system affords third parties (bona fide purchasers for value that take title from the legitimized owner of record) who rely on the information contained in land record entries at the *Registro de la Propiedad*: the rights of these third parties are upheld (in effect, they are guaranteed) even against the *verus dominus* or true owner. This feature, the result of the interplay between the principle of registral public faith, or *fe pública registral*, and the aforementioned legitimacy principle, is supported by two other important features or principles of Spanish Registral Law:

1. The Registrar must determine the due form of all documents presented for registration, examining them thoroughly (*principio de calificación registral o de legalidad*) and linking them to the information he or she already has in the registry office (*principio del tracto sucesivo* or chain of titles principle); and
2. The registry must be kept or organized according to the *folio real* system, which requires an individual record for every parcel or tract: it is in that individual record where all transactions (all property rights and encumbrances) pertaining to that parcel or tract are registered so that by looking at a single *folio real* record, all the information affecting that piece of property can be ascertained (something akin to the concept around which our title insurance industry builds its title plants).

Plainly, the features of this registral system, and the extent of the powers it confers on its registrars, suggest that very special skills and a great deal of dedication is needed to fill the position of Registrar. A Spanish Registrar is an extremely well trained legal professional, whose remuneration is commensurate

1. *Reglamento General para la ejecución de la Ley Hipotecaria de la Isla de Cuba, Título XV*, articles 468 to 483.

2. *Ibid*, *Título XVI (efectos de las inscripciones antiguas)*, articles 484 to 495.

3. *Ibid*, *Título IV (fincas comuneras)*, articles 120 to 123.

to his or her training. He or she accedes to the office of Registrar after a painstaking competitive selection process. The Spanish registrars comprise an elite corps within the legal profession in Spain. The same could be said about the Registrars in Cuba before Castro.

### THE PRESENT

Since those lawyers presently charged with the registry system in Cuba are trained by the same Spanish Registrars described above, and are familiar through that training with many of the principles and the mechanics that guide the Spanish registral system, we may have reason to infer a solid foundation for the registral system in the Cuba of the future.

This is not to say that registral law practice in Cuba today resembles that in Spain. The measures taken by the revolutionary government with regard to the Cuban registry system over the past 46 years have created discrepancies between the two systems. But from the late nineties on, Cuban registral law seems to have gone in the direction of revalorization of the Spanish registral system.

Over the almost forty seven years the revolution has been in power, the registral system in Cuba has been through different stages: from utter disinterest and disdain on the part of the Cuban government, to a rediscovery of its significance in the late nineties, a stage that is still being played out.

Some of the first revolutionary laws affecting or changing real property interests contained provisions for recording and making public those changes through the existing registral system, even if, in some cases, the revolutionary law called for special new sections within the existing registry offices for such purposes.

For instance, the 1959 Agrarian Reform Law “created” a Rural Property Section (*Sección de Propiedad Rústica*) within the Registry, where all transactions related to rural property (*fincas rústicas*) were to be recorded. But the implementation of this special section was to be governed by regulatory norms that were never adopted. This omission led to the loss of anything resembling a chain of title (*tracto sucesivo*) to most rural properties. Since the 1959 Agrarian

Reform—continued and exacerbated by the 1963 Agrarian Reform Law—entailed a massive transfer of property rights, on which few reliable records were kept, this has created a problem not just in terms of property rights, but also with regard to measurements and boundaries of parcels resulting from the fragmentation of larger ones.

Similarly, Law No. 1180 of July 1, 1965, “created” an Urban Property Section (*Sección de Propiedad Urbana*) within the Registry, where the “beneficiaries” of the 1960 Urban Reform Law—persons who completed the payments towards the acquisition of the urban dwellings they were occupying when the revolutionaries seized power—were expected to record their titles. Few of these new “owners” complied with this requirement, and those who did, filed “title documents” that were so lacking in detail (for example, they showed no description of the premises, such as parcel, condominium unit) that they were insufficient for recording purposes. It did not take long for the Urban Property Section to follow the Rural one into the waste bin of Cuban registral law history.

These amendments undermined the Spanish Mortgage Law in yet another way: filings were made without the Registrar passing muster on the titles presented for recordation, leading to the demise of one of the system’s guiding principles (the *principio de calificación registral*) and damaging the system’s very core. This was not Cuba’s first experience with special registry sections where documents are filed with barely any examination by the Registrar, however: very early in the Twentieth Century, during the American occupation, special sections were also used to expedite the recording of newly-created, and privileged, property rights. The first such special section was established for the benefit of railroad companies involved in the construction of the *Ferrocarril Central*, pursuant to Executive Order No. 34 of 1902.

Law No. 1180 foreshadowed the phasing out of the old registral system and the advent of a new/revolutionary one, embodied in Land Tenure Registries (*Registros de la Tenencia de la Tierra*) and Urban Residential Property and Vacant Site Registries (*Registros de la Vivienda Urbana y Solares Yermos*), the latter created by the 1984 and 1988 Housing laws.<sup>4</sup> The

Land Tenure Registries fell under the supervision of the Agriculture Department, and the Urban Residential Property Registries were placed under the supervision of the National Housing Institute (*Instituto Nacional de la Vivienda*) and were to be run by the Municipalities. But as had happened years before, none of these registries were ever formally established, because the regulatory norms required for them to function were never passed.

It can be argued that the type of property rights—personal property rights over real estate, or *propiedad personal*—legally recognized in Revolutionary Cuba is, by its nature, not likely to be recorded; in other words, that the holder of such rights will have no incentive to record them. At least not the type of incentives the holder of private property rights may have in a different type of society.

Under Cuba's economic and social system, all goods and assets that are not considered as means of production are deemed to be destined for individual consumption, and are thus capable of being the subject of individual or personal property rights. Houses are considered gradual or extended (long-term) consumption assets, and Cubans are allowed to have a personal right to use them to satisfy their housing needs and those of their families. But they hold those rights practically at the State's will, since only with the consent of the State can those rights be negotiated or transferred. This is not an incentive for the right-holders to rush to the registry office.

What is more, Resolution number 259 of the National Housing Institute (*Instituto Nacional de la Vivienda*), in charge of running what we might call the urban side of the registry system, issued in 1989,<sup>5</sup> temporarily barred the recording of any real property interests other than those held by the State (“... *títulos que acrediten la propiedad del estado . . .*”), or through the State by way of usufruct (“... *títulos en los que se*

*establezca el usufructo sobre terrenos urbanos de la propiedad del estado . . .*”).

But the 1984 General Housing Law (*Ley General de la Vivienda de 1984*), which temporarily “liberalized” the rules governing the rights to urban housing until it was superseded by a similar law in 1989, considered those personal rights (the housing rights included) inheritable, and, according to the opinion of some of our Cuban colleagues (as manifested in Registrar Law seminars and conferences), one of the most “active” registries in Cuba today is that of wills and testaments. As it is frequently the case in Civil Law countries, a will needs to be recorded by the time of its author's death if it is to be probated. Cubans eagerly record their wills, we are told.

The 1989 Housing Law kept the transmission of rights through inheritance viable, although it added a series of requirements tied to issues such as who was in fact occupying the house in question (together with the decedent) and the size of the premises: if the decedent wanted the house to go to you, you needed to have been a resident there for the legally prescribed time (two to five years), and if the house is deemed by the Municipal Housing Directorate as too large for your needs, the State takes it over and you technically get another one in substitution.

Despite this ample room for arbitrariness in the law, there seems to be a very strong feeling of proprietorship in most Cubans, many of them telling you proudly that they have paid for their houses (for their “personal” housing rights, if you wish), buying them from the State. They do not seem in need of any incentive to record and protect their rights, once such recordation becomes available.

The latest chapter of this brief “history” of the Cuban Revolution's ever changing views regarding the recording of property rights begins with the changes made to the 1989 Housing Law by the *Decreto-Ley 185*, of 1998. This piece of legislation amended

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4. Law No. 48 of December 27, 1984, *Ley General de la Vivienda*, and Law No. 65 of December 23, 1988, *Segunda Ley General de la Vivienda*.

5. Article 3 (a) and (b).

Chapter IX<sup>6</sup> of the 1989 Housing Law, to some extent “restoring” the old registry system,<sup>7</sup> as it adopted the following measures:

1. The registry system was placed back under the supervision of the Minister of Justice,<sup>8</sup> while the Municipalities retained administrative control and remained in charge of rendering the registral services; this supervisory function by the Ministry of Justice (“*Minjus*”) was strengthened in 2003, when article 120 of the Housing Law was last reformed;
2. It compelled all owners (*titulares*) of housing units, other buildings, and vacant lots, to record their title documents, as well as any transaction whereby ownership (*dominio*) or other rights over property is transferred, or any encumbrances (*cargas*) are created, or even any changes in the structures built in the premises are obtained;<sup>9</sup>
3. It required the use of a public or notarial instrument (*escritura pública*) for the transfer of ownership (*transmisiones de dominio*) and for the description of new structures built in the premises.<sup>10</sup>

The amended Housing Law also attempted to restore the authority of the Registrars to decide upon the legality of the documents of title presented for recordation,<sup>11</sup> extending it to the point that the Registrars are allowed to fix and/or adjust (*fijar o ajustar*) the measurements and boundaries of the properties which are described in the title documents, an expansion of the *poder de calificación registral* that can only be explained by the low quality of the title documents used in Cuba and the Cuban authorities’ “decision” to fast track into a workable registry system. The 2003 reform to the Housing Law appears to subordinate the Cuban Registrars’ surveyor-like pow-

ers to the cadastre, by requiring that any such adjustments be supported by a cadastral certification.

When people in Cuba talk about their “title” to a given property, they are, in most cases, referring to administrative titles (*documentos administrativos*): documents issued by some bureaucratic governmental entity as opposed to the notarial deeds (*escrituras públicas*) that were used before 1960, that is, before the Urban Reform Law. The goal of this Urban Reform Law was to regulate the occupancy (or possession) of urban housing, and it was not concerned with guaranteeing any rights, which is the function of a registry system. Therefore, the law all but ignored the needs of the existing Registry of the Property (*Registro de la Propiedad*). The massive property transfers obtained through its implementation were documented in a variety of administrative titles, in some cases issued by the Popular Savings Bank (*Banco Popular de Ahorro*), where those “buying” from the State the housing units they used to rent had to make payments. These title documents did not fulfill many of the formalities you might expect in a title document suitable for recordation: the description of the property is frequently missing or is deficient, the parties’ personal information is incomplete, and so on. Thus the reintroduction of the public deed through article 118 of the Housing Law.

The rediscovery of the significance of having a workable registry system was apparently grounded on two perceived needs: (1) the need to satisfy the expectations of foreign investors in real property with regard to the certainty and stability of their rights; and (2) the need to “protect” the rights of those who benefited from the Urban Reform property transfers.

Under Chapter VI of Cuba’s 1995 Foreign Investment Law (*Ley 77 de 1995*), foreigners—meaning

6. *Ley General de la Vivienda*, articles 116 to 121.

7. Chapter 9 is now captioned *Registro de la Propiedad*, and there are claims in Cuban legal literature that this law “established” the Registral System in Cuba, so as to avoid saying that it “reestablished” it.

8. *Ibid*, article 116.

9. *Ibid*, article 117.

10. *Ibid*, article 118.

11. *Ibid*, article 119, as modified by *Decreto-Ley 233/03* issued by the State Council (*Consejo de Estado*).

those who are not permanent residents in Cuba—were allowed to acquire property rights in certain types of Cuban real estate, including residential property, tourism-related properties, and commercial property, for use as office space by foreign companies. But some of those foreigners tended to form relationships (like marriage, for instance) with Cuban nationals (permanent residents in Cuba) who could eventually claim a stake over the property in question. The realization of the impact this could have down the road seems to be the reason behind a sudden change in Cuba's attitude towards foreign investment in real estate: the Cuban government's enthusiasm with it barely made it into the New Century, and in the Summer of 2000 the authorities put the clamps on this incipient market, although the the Foreign Investment Ministry describes the situation as an "interruption" rather than a permanent ban. The explanation was that the condominium high rises that were being built, mostly in the Miramar area of Havana, for the foreign investment market were straining the city's utilities infrastructure, and therefore an exhaustive reassessment of the viability of pending projects was needed.

Still, those foreigners who bought Cuban real estate during this brief period—the roaring late 1990s—have their titles recorded, most of them at the local registry office (*Oficina del Registro de la Propiedad*) at La Lisa, one of the four currently functioning in Cuba's capital, as a result of the attempt to restore the historical (Spanish-inspired) registry.

The concern regarding the rights of those Cubans who benefited from the Urban Reform of the early 1960s is tied to one of Castro's favorite bugaboos: the return of the former owners. Some may see this new-found love for the registry system as part of a governmental ploy to fend off future claims by those pre-1959 owners. But even then, there are certain positive signs in this process of reaffirmation of some of the traditional principles of Spanish Regstral Law: the concern with strengthening the rights of the present owners/occupants of property taken from the former owners, by publicizing the present owners/occupants' chains of title, has not led to the destruction

of any of the records that would evince and sustain the claims of the former owners.

These "old" records may well be in better shape than their counterparts in other countries in Latin America, where it is not unusual to find registry books that tend to crumble when you are trying to read through their pages. The reason is that, as described above, the Cuban registry system was practically dormant during the first thirty-odd years of the Cuban revolution, and not until the advent of foreign investment in real estate did anybody have a need to handle the registry books. However, when you want capital to flow into your society, even if your society is built around socialism, you have to be ready to meet capitalist expectations regarding stability and legal certainty for investments.

But the registry system in Cuba is still permeated by another perceived need, which is a trait of a society that looks at freedoms and democratic principles from a different angle than we do: the need Cuba's rulers have to control most aspects of the daily life of its citizens. In Cuban legal literature, as in some of its legislation, the registry system is often described as serving a "public interest" such as "controlling land tenure." For instance, Article 4 of the 1990 regulations of the Land Tenure Registry or *Registro de la Tenencia de la Tierra*, when listing this registry's functions, highlights as the top one the role of accounting for, and regularly updating, the status of land holdings in Cuba, at every level: national, territorial, and municipal.

The holders of rights over agricultural lands (*tenedores*) are required to come before the Land Tenure Registry and record their "tenancies," and at that same time, their legal situation or status as holders of those rights can be "adjusted" by the Registrar. And not only at the time of recordation of their interests are Cuban property rights holders subject to such adjustments: under the aforementioned regulations, their recorded "legal situations" are to be periodically reviewed by Registry personnel, which gives a clear indication that the Registry was created in order to facilitate the State's vigilance and control over the tenants, and not necessarily for their protection. The same can be said about the Urban Housing and Va-

cant Lots registries overseen by the National Housing Institute, and even about the *Registro de la Propiedad*, described below, at least in its present stage of development.

The shortcomings of the Cuban registry system become apparent if we use the parameters that title insurance companies in the United States use to gauge the viability of their line of business in a given foreign market:

1. The country's legal framework must include a record keeping system relating to land transactions which is solidly protected by law and capable of providing notice to the public of the existence of the transactions;
2. The country's laws must protect the rights of bonafide purchasers and mortgagees;
3. The recording system must allow a title researcher to follow the chain of title to a given property in order to determine the existence of any defects or encumbrances; and
4. The transactions must relate to land described in a definable way.

The registry system in Cuba is not as "public" as a title insurance underwriter may require, although this seems to be changing. Still, it is difficult to foresee our title insurance industry, never overly enthusiastic with the idea of taking on risks, entering a market like Cuba.

But it is equally difficult to conceive a product along the lines of a title insurance policy selling well in a legal environment like the one provided by the Spanish Mortgage Law: present day Spain shows a booming real estate sector and one of the most active and fluid mortgage markets outside of the United States. Still, no title insurance is used because legal certainty in Spain rests on that very solid legal environment an-

chored by the one hundred and forty-three-year-old *Ley Hipotecaria*.

Had there been no Castro government in Cuba, the island's registry system—the old *Registro de la Propiedad Inmueble*—could have sustained a booming market like the one in Spain today. But the revolutionary registries (the *Registro de la Tenencia de la Tierra* and the *Registros de la Vivienda Urbana y Solares Yermos*) were something else. Could the *Registro de la Propiedad* turn out to be different?

### THE FUTURE?

The "revolutionary registries" were superseded by the aforementioned *Decreto-Ley 185/98*, which amended the 1988 Housing Law. As discussed above, as a result of this action, the old/historic registry system was, in a way, revitalized.

Ever hesitant to implement changes to the registry system by adopting the necessary enabling regulations, it took the Cuban government four years before the Minister of Justice issued Resolution number 39 of 2002, which enacts the rules for the recordation of title to real property and other real property interests in the Registry of the Property ("*Normas para la inscripción de los títulos inmobiliarios y otros derechos sobre bienes inmuebles en el Registro de la Propiedad*").

This regulatory act, comprising 27 articles, six special provisions, and two final provisions, determines which titles or "*títulos traslativos o declarativos de dominio...*"<sup>12</sup> and what kind of rights or "*derechos reales y otros derechos relativos a viviendas, otras edificaciones y solares yermos...*"<sup>13</sup> can be recorded in the Public Registry of the Property. It stipulates the formalities a title must meet and what its contents must show in order to be recorded,<sup>14</sup> establishes who (foreigners among them) can seek the recordation of titles,<sup>15</sup> and

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12. *Resolución 39/02 del Ministerio de Justicia*, article 1. Another Resolution (212/01) was previously issued to implement similar rules for the recordation of titles and other rights over state owned real property in the Registry ("*normas para la inscripción de Títulos Inmobiliarios y otros Derechos sobre Bienes Inmuebles Estatales en el Registro de la Propiedad*"); in 2001, only rights over state-owned properties were recordable. These two resolutions were unified into a single "harmonized" set of rules for the recordation of titles and real property interests, by means of Resolution number 247/03 of the Ministry of Justice.

13. *Ibid*, article 2.

14. *Ibid*, article 3.

how to go about doing it.<sup>16</sup> It also describes different methods whereby title chains can be restored (*procedimientos para la reanudación y convalidación del tracto registral*), and contain references to pre-revolutionary titles and recording entries.<sup>17</sup>

Read together with the reformed Housing Law, these rules tend to confirm the path towards a restored—and redeemed—old registry system, which slowly begins to resemble the one prescribed by the 1893 Spanish Mortgage Law, still Cuba’s Registral Law. Hopefully, there will be no “interruption” this time around.

At about the same time, in early 2002, the National Housing Institute adopted resolutions that complemented these registry regulations. For example, Resolution number 6/02 established the procedure to get State-owned housing assets (*viviendas que integran el patrimonio estatal*) from an Administrative Registry into the *Registro de la Propiedad* described in Chapter Nine of the Housing Law; article 9 of Resolution 6/02 makes this mandatory within sixty days from the completion of a verification process at the municipal housing authority level. And in several of its twenty articles or sections, there are references to said *Registro de la Propiedad* with a definite Spanish Mortgage Law flavor, for instance, the reference to a “*nota simple informativa*” issued by the *Registro* (a report used by registries in Spain when a legally binding certificate is not requested from them) in article 5(b), which must be attached as supporting evidence in the aforementioned verification process. By voiding all prior inconsistent regulations, this resolution seems to set aside Resolution number 259/89 of the National Housing Institute.<sup>18</sup> Still, the verification process supported by the information filed at the administrative registries, gives the municipal offices of the Housing Institute air-tight control over the information that is to reach the *Registro*. The *Departamento de Control del Fondo*, an internal division within the

Housing Institute which oversees the state-owned housing stock or inventory (*viviendas vinculadas y medios básicos*), is in control of processing, legalizing, and registering said information. The same control is exerted by the municipal housing authorities when it comes to putting together the information to be recorded in the *Registro de la Propiedad* with regard to private individuals’ personal rights to housing “titles” and other parcels held under personal property rights (“*trámites para la inscripción de los títulos de las viviendas y terrenos de propiedad personal en los registros de la propiedad*”), pursuant to Resolution number 33/02 of the National Housing Institute. The controlling vocation is also evident in an Agreement (*Acuerdo*) of the Executive Committee of the *Consejo de Ministros*, Cuba’s Cabinet, adopted in May 2003 calling for the ordaining and control of the country’s real estate assets.

Soon after this agreement, there was a new round of measures related to the registry system. Cuba’s legislative organs easily shift from an almost catatonic state to hyper-activity, at least in this area of the law. But this may also be due to the fact that, for some time now, the need to deal with property rights as well as with other related issues has been recognized by the authorities (in the late nineties there were great expectations about the sanction of a Property Law, which, if anything, may be in the process of being adopted piecemeal), and this perceived need may well go beyond ordaining and controlling their stock of housing and agricultural land.

The recreation of the old or historic registry system seems to be geared towards a solidification of the rights born out of the several revolutionary laws that changed the property rights landscape in Cuba over the past forty-six years. By orderly recording each housing asset, and “publicizing” the property rights of those presently benefiting from them, the Cuban government may be seeking to establish a credible

15. Ibid, article 4.

16. Ibid, articles 5 to 12.

17. Ibid, articles 13 to 20.

18. Instituto Nacional de la Vivienda, Resolution 6/2002, article 20.

root of title for each of those situations. And they may be trying to do this without avoiding the issue of pre-revolutionary property rights.

Just how this *Registro de la Propiedad* that Cuba is trying to build will eventually look is foretold in Chapter VI of yet another Resolution issued by the Ministry of Justice in 2003. This is a Registry that will be gradually built,<sup>19</sup> based on a block-by-block mass registration program, using two recording Sections, one Rural and one Urban. As in the old Spanish Mortgage Law, it will be a registry system kept in books,<sup>20</sup> with the Rural Section organized by opening a record for each parcel (*finca*), and the Urban Section by opening one record for each block (*manzana*)—and within it, one for each housing unit, with both sections patterned after the *folio real* technique.<sup>21</sup> Recordings related to certain properties that do not fit into the block-by-block program envisioned by the Cuban authorities, will be made in the books of the Old Registry, in accordance with the Mortgage Law and its Regulations (“ . . . *se practican en los libros del antiguo Registro, de conformidad con lo estipulado en la Ley Hipotecaria y su Reglamento* ”).<sup>22</sup>

This is why I believe that in this area of the law, as well as in others, it is important to be cognizant of the type of legal construction that is being emplaced in Cuba, no matter how one may feel about its foundations.

The Cuban government’s position with regard to the legality of the nationalizations undertaken by the revolution in the early sixties is grounded on a series of resolutions passed by the General Assembly of the United Nations, as well as on a line of cases from the United States Supreme Court, where the Act of State Doctrine is upheld against the claims of those contesting the legality of Cuba’s actions. The Act of State Doctrine has also been interpreted by our Judi-

ciary in ways inimical to Cuba’s actions and position, but even if we consider those actions illegal seizures of property that infringe upon and contradict both, International law and Cuba’s own laws, we will still have to deal with them—and with Cuba’s “legal brief” on the subject—and with the fact that many of the eleven million Cubans in the island (as well as many of the young lawyers trained in Cuba over the past decade)<sup>23</sup> are bound to see Cuba’s position under a very different light than we do.

So rather than ignoring and dismissing Cuba’s arguments, we should be thinking of ways in which we can influence the future development of Cuba’s legal system with regard to property rights, whether by effectively (which is to say convincingly) refuting those arguments, or by seeking common ground with those we will need to persuade.

The fact that many of the guiding principles of Spanish Registral Law are still well understood among those legal professionals in charge of the apparent restoration of the Cuban Registral and Notarial Systems may open the door for the use of tools like the “*acta de notoriedad*,” a document signed before a Notary whereby diverse parties may recognize certain facts that carry juridical or legal consequences or effects, in order to reestablish or fill some gaps in a given chain of titles.

But it is vital that we emphasize the consensual nature of tools like the one just described, because it is through such an attitude that the Cuba of the future will be able to reestablish, not just the title chains shown in the *Registro Público*, but its legal system itself, making it durable and truly representative of the views and aspirations of all Cubans. Because all people, every society, aspires to develop a legal system that is an accurate reflection of its special needs, culture, and idiosyncrasies. But in order for that legal

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19. *Resolución 247/03 del Ministerio de Justicia*, September 15, 2003, article 46.

20. *Ibid*, article 47.

21. *Ibid*, article 49.

22. *Ibid*, article 51.

23. Even if Castro once asked, in one of his oratorical marathons, “who needs lawyers?” (*¿abogados para qué?*) the number of lawyers and of law schools in Cuba have increased at a very brisk pace lately.

system to be efficient and capable of satisfying the needs of the society it serves, it must be the product of the broadest possible consensus within the society in question. A consensus arrived at in absolute freedom, without exclusions or prejudices of any kind.

The experiences of other societies in transition, the expectations of investment capital, the principles of Inter-

national Law, are all factors to be taken into account. But ultimately, it is the freely expressed will of a sovereign people that will count when the time comes to lay the foundations for the Cuban legal system of the future. And here, the emphasis should be on “freely expressed”: a legal system arising, by democratic means, from the consent of the Cuban people as a whole.

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