

7-1-1970

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CUBAN AND PERUVIAN AGRARIAN REFORMS: AT THE CROSSROADS

GEORGE R. HARPER*

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I. INTRODUCTION

The recognition that a reasonable system of agrarian reform is a prerequisite to economic development has led many countries to adopt, in one form or another, some type of land reform bill. Two countries which have enacted such laws are Cuba and Peru. This article will discuss the history and some of the provisions of the two laws—the Cuban Agrarian Reform Law of June 3, 1959,¹ and the Peruvian Decree Law Number 17716 of June 24, 1969.² The Cuban law will be analyzed in terms of its economic results; the connection between the Cuban law and the Peruvian law will then be shown by means of the Punta del Este Charter of the Alliance for Progress.³ Similarities and differences between the two laws will be compared and the first applications of the Peruvian law will be examined, the ultimate purpose being to show a marked tendency for Peru to embark upon the same path that was taken by Cuba ten years ago and which resulted in her economic downfall.

II. CUBA'S CONFISCATORY DECREES: THE FIRST LINK

On January 1, 1959, Fidel Castro's revolutionary *Movimiento 26 de Julio* forced capitulation of the Batista government in Cuba. Despite

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1. Law of June 3, 1959, Concerning Agrarian Reform, [1959] Gaceta Oficial 7 (Cuba) [hereinafter cited as Cuban Agrarian Reform Law].

2. Law of June 24, 1969, Concerning Agrarian Reform, [1969] Decreto-Ley No. 17716 (Peru) [hereinafter cited as Peruvian Agrarian Reform Law].

3. Pan American Union, Alliance for Progress; Off. Doc., *Charter of Punta del Este*, 45 DEP'T STATE BULL. 463 (1961) [hereinafter cited as Punta del Este Charter].

the deceptive political calm of the subsequent months, during which time there was apparently a reassessment of the corresponding foreign policies of both the United States and Cuba, relations between the two countries gradually began to deteriorate. The first indication that there was some question concerning the solidarity between the two countries came when Premier Castro and his cabinet proposed legislation⁴ which called for an extensive agrarian reform law, the results of which would be the stripping of ranch and farm lands from the *latifundists*⁵ and the distribution of these lands to the peasants. The legislation made no mention of the protection of foreign investors; property of both Cubans and foreigners (mostly United States citizens) was to be nationalized. Some weeks later, on June 3, 1959, the proposed Agrarian Reform bill was enacted into law. It was to have a profound effect on the subsequent policies and legislation of the countries of the Western Hemisphere, at both national and international levels.⁶

In apparent response to this and other acts and statements of intention by the Cuban Government, the Congress of the United States amended existing legislation⁷ in order to authorize the President to reduce the Cuban sugar quota.⁸ Three days later, on July 6, 1960, President Eisenhower exercised his power and reduced the quota by 95 percent.⁹

The immediate reaction of the Castro government was the enactment of Law Number 851,¹⁰ ostensibly "in retaliation for political action against Cuba,"¹¹ and under which the President and Prime Minister of Cuba were given full power to nationalize enterprises and properties belonging to United States citizens. Article 4¹² of Law 851 provided for compensation to deprived owners in the form of 30-year bonds, bearing interest at a rate of not less than 2 percent per year. Article 5,¹³ however, stipulated that payment of the bonds would be made from 25 percent of the foreign exchange received by Cuba each year from the purchase of sugar by the United States in excess of three million long tons, at a price of not less than 5¾ cents per English pound. Any payment coming from this method is generally conceded to be impossible.¹⁴

4. Law of Agrarian Reform, 7 Leyes del Gobierno provisional de la Revolucion 135, May 17, 1959 (Cuba).

5. This term, used in virtually all Latin American countries as a justification for land reform, signifies the owner of a great estate made up of smaller ones. Through regular usage, the term has come to be almost one of invective.

6. See pp. 764-66 *infra*.

7. Act of July 6, 1960, Pub. L. No. 86-592 § 3, 74 Stat. 330, amending Act of Aug. 8, 1947 ch. 519, § 408, 61 Stat. 933.

8. The quota had been set at 3,119,655 tons for 1960. The United States was paying two cents per pound above the world price.

9. Exec. Proc. No. 3383, 3 C.F.R. 100 (1959), 3 U.S.C. § 1158 (1964).

10. Law of July 6, 1960, No. 851, [1960] Gaceta Oficial 12 (Cuba).

11. *Id.*

12. *Id.* art. 4.

13. *Id.* art. 5.

14. It would seem apparent that, given the suspension of the Cuban sugar quota by the United States, the fund from which compensation would be paid would be

In fact, it was pointed out in a note issued by the Department of State on July 16, 1960, that Law 851 was manifestly confiscatory.¹⁵ On August 6, the Cuban Government, acting pursuant to Law 851, issued Executive Power Resolution Number 1,¹⁶ under which it commenced its expropriations by listing some 26 American-owned properties¹⁷ which would thenceforth belong to the Cuban Government.

Expropriations of other privately-owned businesses came fairly quickly. On September 17, all United States and Cuban banks were nationalized.¹⁸ On October 13, all commercial, industrial, and transportation concerns were transferred to state ownership.¹⁹ On October 24, some 164 large American companies were declared, for reasons of "necessity and the national interest," to be the property of the Cuban Government.²⁰ Eventually, all property owned by United States citizens in Cuba was nationalized.²¹

Finally, on December 6, 1961, the Cuban Government abandoned any pretense that its confiscatory actions were in retaliation for "economic aggression" by the United States. On that date, it passed Law 989,²² which gave the government the authority to confiscate all real and personal property of "persons belonging to classes affected by revolu-

nonexistent. Moreover, it has been observed that from 1950 to 1959 the monthly average price for Cuban raw sugar shipments to the United States at no time exceeded 5.50 cents per English pound, making meaningless the 5.75 cents requirement of the Cuban law. Indeed in only three years . . . were Cuban sugar sales to the United States in excess of 3 million Spanish tons.

Dawson & Weston, "*Prompt, Adequate and Effective*": A Universal Standard of Compensation? 30 FORDHAM L. REV. 727, 756 (1962).

15. 43 DEP'T STATE BULL. 171 (1960).

16. Law of Aug. 6, 1960, Executive Power Resolution No. 1, [1960] Gaceta Oficial 15 (Cuba).

17. Number 22 of which was Compania Azucarera Vertientes Camagüey de Cuba, thus giving rise to the celebrated case of Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964).

18. Law of Sept. 17, 1960, Executive Power Resolution No. 2, [1960] Gaceta Oficial 20 (Cuba). The second "whereas" of this Resolution began as follows: "Whereas: It is not possible that a considerable part of the National Finances remain in the hands of the imperialistic interests which caused the reduction of our sugar quota in an act of cowardice and criminal economic aggression. . . ."

19. Laws of Oct. 13, 1960, Nos. 890, 891, [1960] Gaceta Oficial 24 (Cuba).

Laws 890 and 891 did recognize the right of the stockholders of the nationalized companies to compensation, but the amount of compensation was left to the discretion of the National Bank of Cuba. Payment was to be made in cash up to a maximum of 10,000 pesos and in government bonds for anything over that amount. The bonds were to be redeemable within 15 years, and bore an annual interest rate of two percent. No bonds were ever issued under these laws.

20. Law of Oct. 24, 1960, Executive Power Resolution No. 3, [1960] Gaceta Oficial 25 (Cuba).

21. The Castro government in Cuba, on and after January 1, 1959, expropriated and nationalized all properties owned by nationals of the United States in violation of the principles of international law. Compensation has not been provided for nationals of the United States.

It is estimated that 4,000 U.S. nationals have claims against the government of Cuba totaling more than \$1.5 billion. . . .

H.R. REP. No. 1759, 88th Cong., 2d Sess. 2 (1964).

22. Law of Dec. 6, 1961, No. 989, [1961] Gaceta Oficial 237 (Cuba).

tionary measures" who had shown "unpardonable disdain for the Fatherland by abandoning the country."²³ In this law, as opposed to Law 851,²⁴ there was no mention whatsoever of any compensation.

The confiscatory measures of the Castro government had thus come full circle; where the agrarian reform law made no distinction between Cubans and non-Cubans in relation to the lands which were to be confiscated, so, also, did Law 989 make no distinction between Cubans and non-Cubans in relation to the taking of property in general. The ultimate purpose—the transfer, to state ownership of *all* property in Cuba—was thus realized.

Having provided historical perspective, it is now pertinent to take a closer examination of the Cuban Agrarian Reform Law, which was truly the first step leading to the decline of the Cuban economy. A comparison will then be made between the Cuban law and its indirect progeny, the Peruvian Agrarian Reform Law. The remainder of this paper will be devoted to an examination of the legal and economic aspects of the two laws, and a prediction for Peru based on presently discernible trends.

III. THE CUBAN AGRARIAN REFORM LAW

A. *Background*

The Cuban Agrarian Reform Law, which was enacted on June 3, 1959, was the final draft of a series of laws which had been proposed by Castro as early as October 10, 1958, while he was still fighting in the mountains.²⁵ The earlier proposals, however, have been described as being "carefully phrased to please both peasant *and* landowner,"²⁶ and thus constituted "a sly political tool."²⁷ The right to own property was to be respected and the former owners of land confiscated by the government were to be paid in cash;²⁸ but these proposals were not included in the law which was finally enacted. The actual law, which was much more restrictive in its terms,²⁹ placed less emphasis both on the rights of the former landowners and on the benefits which were to accrue to the peasants.

B. *Terms of the Law*

As finally enacted, the Cuban Agrarian Reform Law consisted of nine chapters, divided into 67 articles. Chapters one through five described the lands which were to be affected by the law, the manner of redistribution and indemnification, and the types of cooperatives and

23. *Id.* at 23, 705.

24. Law of July 6, 1960, No. 851, [1960] Gaceta Oficial 12 (Cuba).

25. R. LOPEZ-FRESQUET, MY FOURTEEN MONTHS WITH CASTRO, 113-15 (1966).

26. *Id.* at 113 (emphasis added).

27. *Id.*

28. *Id.* at 114.

29. For example, a portion of the Law prohibited any person from possessing more than 1,000 acres. Cuban Agrarian Reform Law art. 1. See generally LOPEZ-FRESQUET, *supra* note 25, at 115.

communes which were to be set up.³⁰ Chapters six and seven created the National Institute of Agrarian Reform (INRA), which was to administer all the confiscated lands.³¹ Chapters eight and nine covered conservation and other general matters.³²

More specific provisions of the Law are as follows:

Article 1: No natural or legal person may possess more than 30 cabs.³³

Article 16: A Vital Minimum of 2 cabs. of fertile, non-irrigated land, located some distance from the urban centers and dedicated to the cultivation of an average economic crop, is established for each 5-person rural family.

The National Institute of Agrarian Reform shall be in charge of determining, in each case, what is the necessary Vital Minimum, departing from the stated basis and considering the average level of annual income which is desired for each family.

Article 18: The private lands cultivated by tenants, subtenants, renters, subrenters, and sharecroppers shall be adjudicated as belonging, free of cost, to the cultivator, when its size does not exceed the Vital Minimum. When these workers cultivate land of a size which is less than the Vital Minimum, they shall be granted the lands necessary to complete it, always depending on the economic and social conditions of the region in which they are located.

Article 21: Those state lands cultivated by tenants, subtenants, renters, subrenters, and squatters shall be given free of charge to their possessors, when their size does not exceed the Vital Minimum.

Article 29: *The constitutional right of the proprietors affected by this law to indemnification for their expropriated property is recognized.*³⁴ This indemnification shall be fixed keeping in mind the stated value of the farms which appears on the declarations of income tax of October 10, 1958. The affected installations and buildings existing on the lands shall be appraised independently by the authorities in carrying out this law. . . .

Article 31: The indemnification shall be paid in redeemable bonds. To such end, there shall be made a series of bonds of the Republic of Cuba, *the quantity, terms, and conditions of which shall be determined by need.*³⁵ The bonds shall be known as

30. Cuban Agrarian Reform Law, chs. 1-5.

31. Cuban Agrarian Reform Law, chs. 6, 7.

32. Cuban Agrarian Reform Law, chs. 8, 9.

33. One cab. (caballería) equals 33½ acres.

34. Emphasis added.

35. Emphasis added. Subsequently, legislation was enacted pursuant to this article.

See text corresponding to note 37 *infra*.

"Agrarian Reform Bonds" and shall be considered part of the public debt. The series shall be for a term of 20 years, with an annual interest of no greater than 4½%. In order to carry out the payment of interests, amortizations, and costs of the bonds, the corresponding sum shall be included in the budget of the Republic each year.

Article 32: The recipients of Agrarian Reform Bonds, or their heirs, are granted an exemption, for a period of 10 years, of the Tax on Personal Rentals, in the proportion which is derived by the investment which they have made in new industries over the amount received for indemnification.

. . . .³⁶

The Cuban Agrarian Reform Law was implemented to a certain extent by two subsequent laws.³⁷ These laws authorized the issuance of 20-year Agrarian Reform Bonds in the amount of 100 million pesos, to be issued in denominations of 1,000, 500, and 100 pesos, with interest payable semiannually.³⁸ Compensation representing an amount less than 100 pesos was to be paid in cash.³⁹ Jurisdiction over expropriation proceedings was to be vested in local judges, pending the establishment of "soil tribunals."⁴⁰ The decisions of these judges were subject to review by the Court of Constitutional and Social Guarantees, whose findings in the matter were final.⁴¹

C. Short-Range Results of Cuban Confiscatory Decrees

In 1963, the President of Cuba estimated that as a result of confiscatory and nationalization decrees,⁴² the following had become property of the state: all the sugar industry; 90 percent of all tobacco and coffee plantations; 90 percent of all industry and mining; 75 percent of all buildings and transportation; and all of the banks.⁴³ A breakdown of these figures indicates that of the 85 percent of the farmland subject to the Agrarian Reform Law,⁴⁴ approximately 4,500,000 hectares⁴⁵ had

36. Cuban Agrarian Reform Law, arts. 1, 16, 18, 21, 29, 31, 32.

37. Law of Sept. 30, 1959, No. 576, [1959] *Gaceta Oficial* 18 (Cuba); Law of Oct. 7, 1959, No. 588, 8 *Leyes del Gobierno Provisional de la Revolución* 45 (Cuba 1959).

38. Law of Sept. 30, 1959, No. 576, art. 2, [1959] *Gaceta Oficial* 18 (Cuba).

39. Law of Oct. 7, 1959, No. 588, art. 1, 8 *Leyes del Gobierno Provisional de la Revolución* 45 (Cuba 1959).

40. Law of Oct. 7, 1959, No. 588, art. 2, [1959] *Gaceta Oficial* 23 (Cuba).

41. *Id.*

42. Cuban Agrarian Reform Law; Law of July 6, 1960, No. 851, [1960] *Gaceta Oficial* 12 (Cuba); Laws of Oct. 13, 1960, Nos. 890, 891, [1960] *Gaceta Oficial* 24 (Cuba); Law of Aug. 6, 1960, Executive Power Resolution No. 1, [1960] *Gaceta Oficial* 15 (Cuba); Law of Sept. 17, 1960, Executive Power Resolution No. 2 [1960] *Gaceta Oficial* 20 (Cuba); Law of Oct. 24, 1960, Executive Power Resolution No. 3, [1960] *Gaceta Oficial* 25 (Cuba); Law of Dec. 6, 1961, No. 989 [1961] *Gaceta Oficial* 237 (Cuba).

43. O. Dorticós, *La Revolución Cubana en su Cuarto Aniversario*, CUBA SOCIALISTA 1, 2 (1963).

44. D. SEERS, A. BIANCHI, R. JOLLY, & M. NOLFF, CUBA: THE ECONOMIC AND SOCIAL REVOLUTION 102 (1964) [hereinafter cited as SEERS]. The 85 percent figure was due to the high concentration of land ownership and the large number of tenants, sharecroppers, and squatters. *Id.*

45. One hectare equals 2.47 acres.

been confiscated by the beginning of 1961; an amount equal to just under half of the land in farms.⁴⁶

D. *Per Capita Economic Consequences of Cuban Confiscatory Decrees*

Despite the approval expressed by some writers,⁴⁷ as to the results achieved in Cuba, there can be no doubt that the Cuban confiscatory decrees, especially the agrarian reform law, have been dismal failures. For example, prior to 1959 per capita consumption of beef, which was the largest component of meat consumption, was in the neighborhood of 68 pounds. In 1962, the rationing system allowed 39 pounds of beef per person.⁴⁸ Similarly, in March of 1962, ground vegetables for people over seven years of age were rationed at 3.5 pounds per week, which averages out to a yearly per capita consumption of some 200 pounds. This can be compared with an average of 373.1 pounds in 1953.⁴⁹ Other figures appear in the footnote.⁵⁰ The only conclusion that can be drawn from these statistics is that the Cuban farming system is neither productive nor efficient.⁵¹

46. SEERS at 103. While these figures are the latest the writer could locate, it must be assumed, in view of the high percentages named by President Dorticós as of 1963 (see text at note 43 *supra*), that at present the percentage of confiscated land is much higher, and probably approaches the 100 percent mark.

47. It is not true that the latifundia reaches the highest productive efficiency. The Cuban Agrarian Reform—so hated by the latifundists of Latin America, their lackeys and their yes-men—categorically demonstrates the opposite. In Cuba the sugar latifundists have disappeared. They have been replaced by agricultural co-operatives, in this way maintaining the unity of production. And, in spite of all the adverse circumstances, national and international, sugar cane production under the cooperative system broke a record which the latifundist exploitation could not ever reach. Against facts, there are no arguments.

R. MACLEAN Y ESTENOS, *LA REFORMA AGRARIA EN EL PERU* 172 (1965) [hereinafter cited as MACLEAN]. This book was written in 1965, some time after the results of the Cuban "experiment" were well known. The actual facts are set out in notes 48-51 *infra*.

48. SEERS at 133.

49. SEERS at 135, 136.

50. Planned and actual cane and sugar production in 1962 (in thousands of metric tons):

	Planned	Actual	Percent of Goal
Cane Ground	54,588.4	36,691.7	67.2
Sugar	6,141.8	4,815.2	78.2

SEERS at 131.

Food rations established in March, 1962 (per person):

Whole country	
Animal or vegetable fats	2 lbs/mo.
Rice	6 lbs/mo.
Beans	1.5 lbs/mo.
Havana	
Beef	.75 lbs/wk.
Chicken	2 lbs/mo.
Fish	1 lb/mo.
Ground vegetables	3.5 lbs/wk. (5.5 lbs for children under 7)
Butter	.125 lbs/mo.
Milk	.200 Liter/day (1 liter for children under 7)

SEERS at 35.

51. R. LOPEZ-FRESQUET, *MY FOURTEEN MONTHS WITH CASTRO* 179 (1966): "Today,

In addition, it is recognized that the confiscatory measures of the Cuban Government were directly responsible for the embargo imposed by the United States⁵² on trade with Cuba and the termination of diplomatic and consular relations with the United States;⁵³ this situation also contributed to the general economic decline of Cuba.

IV. THE ALLIANCE FOR PROGRESS: THE SECOND LINK

A. *Creation of the Charter of Punta del Este*

There can be little doubt that the Alliance for Progress owes its creation in no small part to the economic and legislative events which occurred in Cuba during 1959-61. The Cuban confiscatory decrees, which gave rise directly to the economic sanctions taken by the United States,⁵⁴ also gave rise indirectly to the Bay of Pigs disaster of April 17, 1961,⁵⁵ which brought U.S. prestige abroad to its lowest point in years. In addition, the United States recognized that Castro-type revolutions (such as that planned for Chile in August 1961) are a threat to the political stability of many Latin American countries.⁵⁶ This belief may be traced directly to the relationship existing between the United States and Cuba as a result of the latter's confiscatory policies. Thus, at the urging of President Kennedy, the following event occurred:

In 1960 . . . the . . . American nations assembled at Bogota under the auspices of the Organization of American States. The recent Cuban crisis, partially responsible for a \$500 million authorization of American funds for the purpose of United States bargaining at the meeting, lent urgency to the conference's deliberation on the necessity of an integrated program of Latin American regional planning in the economic and social sphere. One year later the same states signed the Charter of Punta del Este,⁵⁷ establishing the Alliance for Progress.⁵⁸

B. *Agrarian Reform Provisions of the Charter*

Apparently, in recognition of the possibility of more Castro-type land reform systems in Latin America,⁵⁹ the Punta del Este Charter, by

there are fewer factories than in 1959. In the 1960 sugar harvest, 160 sugar mills were active; in 1965, there were only 150."

52. Exec. Proc. No. 3447, 3 C.F.R. 157 (1962), 22 U.S.C. § 2370 (1964).

53. 44 DEP'T STATE BULL. 103 (1961).

54. See notes 52 and 53 *supra*.

55. MACLEAN at 156.

56. R. OWENS, PERU 173 (1963).

57. Pan American Union, Alliance for Progress, Off. Docs., *Charter of Punta del Este*, 45 DEP'T STATE BULL. 463 (1961) [hereinafter cited as Punta del Este Charter] [footnotes added].

58. Note, *The Chilean Land Reform: A Laboratory for Alliance-for-Progress Techniques*, 73 YALE L.J. 310, 313 (1963) (footnotes omitted).

59. Comment, *Puerto Rican Land Reform: The History of an Instructive Experiment*, 73 YALE L.J. 334 (1963):

[T]he United States has committed itself heavily to backing the Alliance for Prog-

reason of the economic impetus provided by the United States,⁶⁰ placed emphasis on agrarian reform and agricultural improvement. Relevant portions of the Charter are as follows:

Title I, point 6: To encourage, in accordance with the characteristics of each country, programs of comprehensive agrarian reform leading to the effective transformation, where required, of unjust structures and systems of land tenure and use, with a view to replacing latifundia and dwarf-holdings by an equitable system of land tenure so that, with the help of timely and adequate credit, technical assistance, and facilities for the marketing and distribution of products, the land will become for the man who works it the basis of his economic stability, the foundation of his increasing welfare, and the guarantee of his freedom and dignity.

Title II, point 2: National development programs should incorporate self-help efforts directed to:

b. The wider development and more efficient use of natural resources, especially those which are now idle or underutilized.

C. *Effect of the Charter*

In furtherance of the above-mentioned principles, which were re-asserted in subsequent meetings,⁶² some fourteen countries,⁶³ not including Cuba, have enacted some sort of land reform legislation in the decade of the sixties. Practically none of this reform, however, has attained a high degree of success in achieving the goals for which it was enacted. Indeed, even as late as 1968, the following conditions existed:

3 to 8 percent of the total number of farms in Latin America occupy 60 to 70 percent of the productive land, while 75 to 80 percent of the total number of farms, each smaller than 12 acres, cover only 5 to 10 percent of the suitable land.⁶⁴

ress as an instrument for preventing the spread of Communism in the Western Hemisphere while bettering the sorry living conditions of the working classes. Among the broad social and economic reforms which it hopes to induce in member countries, the Alliance has attached high priority to tenurial reform and agricultural improvement.

60. The basis for the dependence of Latin American nations on United States money and knowledge to implement their agrarian advance was established when the members of the Organization of American States with the exception of Cuba, committed themselves to the Alliance for Progress outlined in the Charter of Punta del Este.

Note, *Agrarian Reform as a Means to Economic and Social Developments in Peru*, 50 IOWA L. REV. 526, 531 (1965).

61. Punta del Este Charter at 464-65.

62. See Thome, *The Process of Land Reform in Latin America*, 1968 WIS. L. REV. 9.

63. Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, and Venezuela. *Progress in Land Reform*, Fourth Report, 21 U.N. ECOSOC 61, Rev. 1, at 6, U.N. Doc. E/40201 (1966).

64. Thome, *The Process of Land Reform in Latin America*, 1968 WIS. L. REV. 9, 10.

Furthermore, it was pointed out that in 1966, some five years after the signing of the Punta del Este Charter,

the Mexican and Bolivian reforms—and the Puerto Rican . . .—
are the only significant Latin American land reforms (apart
from Cuba) to date.⁶⁵

Then, on June 24, 1969, curiously almost ten years to the day after the enactment of the Cuban Agrarian Reform Law,⁶⁶ the governing military junta of Peru passed a comprehensive agrarian reform bill,⁶⁷ which is by far the most revolutionary and far-reaching of its kind to be enacted since the passage of the Cuban Agrarian Reform Law itself. The remainder of this paper will be devoted to an examination of the terms, provisions, and projected long-range effects of the Peruvian Agrarian Reform Law.

V. THE PERUVIAN AGRARIAN REFORM LAW: THE LAST LINK

A. *History*

The idea of agrarian reform has existed in Peru since as early as 1930, when President Augusto B. Leguía outlined a proposal for the equitable redistribution of land.⁶⁸ No action was taken on this proposal, but apparently the idea was kept alive by political candidates and by periodic peasant uprisings, in which the practice seemed to be the wholesale invasion of a piece of property by thousands of laborers who would hold the land until driven off by the army.⁶⁹ As a result of these worker revolts, which often led to bloodshed and death, in 1956 the then President, Manuel Prado, created the Commission for Agrarian and Housing Reform in order to study the problem and to draft land reform legislation.⁷⁰ During the four years that it took the Commission to investigate the problem and submit its draft, the peasant invasions reached such a peak⁷¹ that a legislative backlash was created. In the wake of this backlash, the bill was tied up in debate for two years and never came up for a vote.

In 1962, presidential candidate Dr. Fernando Belaunde Terry, whose defeat at the polls was imminent, obtained the backing of the military and formed a junta to successfully overthrow the government. One year later, after strengthening his position, he allowed elections to

65. Prosterman, *Land Reform in Latin America: How to Have a Revolution Without a Revolution*, 42 WASH. L. REV. 189, 196 n.23. (1966).

66. See text corresponding to notes 25-41 *supra*.

67. See note 2 *supra*.

68. MACLEAN at 21.

69. See generally MACLEAN at 106-39.

70. Note, *Agrarian Reform as a Means to Economic and Social Development in Peru*, 50 IOWA L. REV. 526, 537 (1965).

71. MACLEAN at 107.

take place and was elected President of the Republic.⁷² Apparently, as a result of urging by the legislature, pressure from foreign sources (such as the Cuban situation and the Punta del Este Charter⁷³) and further peasant uprisings,⁷⁴ President Belaunde Terry proposed a land reform bill which was enacted into law by the Peruvian Legislature on May 21, 1964.⁷⁵

B. *The 1964 Law*

Although Belaunde's bill was called "the most radical program short of revolution yet to be presented in the hemisphere,"⁷⁶ in actual fact the most novel of its features were never put into operation. The stated purpose of the law was to increase productivity in the agricultural sector and raise rural employment and income⁷⁷ by means of a program of land redistribution to replace over-sized and under-sized holdings with family-sized units.⁷⁸

At the time of the passage of Belaunde's bill, only 45,942,000 acres out of the 316,160,000 acres comprising the national territory were devoted to agricultural and livestock units and of these, only 5,434,000 acres were under cultivation.⁷⁹ By October 1968, the Land Reform Office had distributed 6,819,670 acres, most of which were state-owned jungle and other underdeveloped land; only 1,891,000 acres had actually been expropriated. Meanwhile, the process of expropriating an additional 276,640 acres was incomplete due to lack of the necessary financial resources.⁸⁰ Thus, it can be seen that only some 4.1 percent of the developed land has been expropriated.

The slow pace at which the expropriations were proceeding was

72. Details taken from UNITED STATES BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, Report No. 262, *Labor in Peru* 11 (1964).

73. See text at note 119 *infra*.

74. Note, *Agrarian Reform as a Means to Economic and Social Development in Peru*, 50 IOWA L. REV. 526 (1965). See also MACLEAN at 95-102. Proponents of the Agrarian Reform Bill even rallied the Catholic Church, which is a tremendous influence in every Latin American country. A Jesuit father, Romeo Luna Victoria, declared in a television interview: "A Catholic who is faithful to his conscience cannot be opposed to agrarian reform . . . because then he would be a bad Catholic." MACLEAN at 96.

75. Law of May 21, 1964, Concerning Agrarian Reform, [1964] Decreto-Ley No. 15,037 (Peru).

76. Note, *Agrarian Reform as a Means to Economic and Social Development in Peru*, 50 IOWA L. REV. 526, 540 (1965), quoting from Delmas, Peru's New Politics: The hit or miss approach, Reporter, Oct. 24, 1963, at 36.

77. Rural per capita income for 1958 was estimated at \$117. Some 52 percent of the active population was working in agriculture in 1961. GENERAL SECRETARIAT, ORGANIZATION OF AMERICAN STATES, INVENTORY OF INFORMATION BASIC TO THE PLANNING OF AGRICULTURAL DEVELOPMENT IN LATIN AMERICA: PERU 1 (1964) [hereinafter cited as INVENTORY OF INFORMATION].

78. Law of May 21, 1964, Concerning Agrarian Reform [1964] Decreto-Ley No. 15,037 (Peru).

79. INVENTORY OF INFORMATION at 18. See also COLE, GEOGRAPHY OF WORLD AFFAIRS 110 (2d ed. 1963). An estimated 100 million hectares of potential agricultural land are presently untouched.

80. Andean Air Mail & Peruvian Times, June 27, 1969, at 1, col. 3.

probably due in part to the desire of the Belaunde government to proceed in such a manner as not to interfere with those land operations which were being efficiently and conscientiously managed. President Belaunde was quoted as saying:

[W]e will undertake the redistribution of rural property, a program which requires the liquidating of latifundia and the feudal servitudes. We believe that latifundia are large property holdings, *either unexploited or insufficiently exploited*, with antiquated tools and methods, which results in a low yield of agricultural products; and that feudal servitude is the situation of economic dependence of the rural worker, detrimental to his human dignity.⁸¹

Similarly, the First Vice President of Peru, Edgardo Seoane, stated that:

[T]he Agrarian Reform . . . will not disturb the activities of the large firms which are located near the coast and which export their products; and there will not be expropriations of the large Peruvian or foreign plantations.⁸²

Regardless of the reasons, however, it is clear that the 1964 agrarian reform law did not achieve a high degree of success during the four years in which it was in operation.

The following and present Peruvian Government, which like the Belaunde regime came to power by means of a military ouster, also assigned top priority to its own agrarian reform bill. We turn now to a consideration of this latest and most revolutionary of all the Peruvian agrarian reform laws.

C. *The Velasco Bill*

On October 3, 1968, Juan Velasco Alvarado, head of a military junta, displaced the Belaunde government from power in Peru. On June 24, 1969, President Velasco signed the Peruvian Agrarian Reform Law.⁸³ Strikingly similar to the Cuban law, this far-reaching piece of legislation virtually erases the system of land tenure as it had existed in Peru.

The Peruvian Agrarian Reform Law contains 16 sections divided into 196 articles. The preamble states, *inter alia*, that:

it is imperative to bring into being an *authentic* Agrarian Reform which will respond to the needs of the Peruvian people as a whole, to the Fundamental Objectives of the Revolution and to the necessities for the complete development of Peru . . .⁸⁴

81. MACLEAN at 69, *quoting* B. TERRY, PROGRAMA DE ACCIÓN DE LA CANDIDATURA A LA PRESIDENCIA DE LA REPUBLICA DEL ARQUITECTO FERNANDO BELAUNDE TERRY (1962) (emphasis added).

82. La Presna (Lima, Peru), June 25, 1963, Política al Día [political section].

83. Law of June 24, 1969, Concerning Agrarian Reform, [1969] Decreto-Ley No. 17716 (Peru).

84. *Id.* Preamble (emphasis added).

Chapters I through IV of the Law deal with general matters, a description of the land affected, the establishment of a minimum size (three hectares) for each plot, and the procedures for putting the law into effect.⁸⁵ Chapter V deals with the procedure for estimating the value of the expropriated property; the valuation is to be based on tax return statements for 1968, in which the owners had evaluated their own property.⁸⁶ Chapter VI determines the order in which the land will be distributed and to whom the land will go, with the first choice going to those who work the land.⁸⁷ Chapter VII deals with technical assistance and credit.⁸⁸ Chapters VIII through X deal with dwarf holdings, private (non-governmental), voluntary distributions of property, and rural communes.⁸⁹ Chapter XI treats the subject of farming contracts (both rental and industrial), while Chapter XII establishes the administrative and judicial organs of agrarian reform.⁹⁰

Chapter XIII is divided into two parts; the first deals with patrimony (estates which have descended in the same family), while the second details the methods of financing the agrarian reform. Payments for expropriated property are to be made on various scales. Depending on the size of the property, payment for land being worked by a farmer-owner will vary from 50,000 soles⁹¹ to 100,000 soles in cash, with the rest in bonds. For unworked or underdeveloped land, the payment would be 25,000 soles in cash and the rest in bonds.⁹² Pertinent portions of the payments section are as follows:

Article 174: The Bonds of the Agrarian Debt shall be of three classes, denominated Class A, Class B, and Class C. . . .

Class A bonds will earn an annual interest of 6%, and shall be redeemable by means of equal annual amortizations and/or shares [in various industries] as stipulated by the present law, for a term of 20 years from the date of their placement.

Class B bonds will earn an annual interest of 5%, and shall be redeemable by means of equal annual amortizations and/or shares as stipulated by the present law, for a term of 25 years from the date of their placement.

85. *Id.* chs. I-IV. An interesting portion of the Law refers to property, the principal crop of which goes to an industrial plant. If the industrial part of the enterprise and the land form an economic unit, the whole economic complex would be expropriated, even though the industrial plant is located outside of the land and belongs to some third party. *Id.* art. 36.

86. *Id.* ch. V. See also Cuban Agrarian Reform Law art. 29, p. 767 *supra*, for the Cuban method of valuation.

87. Law of June 24, 1969, Concerning Agrarian Reform, [1969] Decreto-Ley No. 17716, ch. VI (Peru).

88. *Id.* ch. VII.

89. *Id.* chs. VIII-X.

90. *Id.* chs. XI, XII.

91. In 1961, one dollar equaled 26.81 soles. At the present time, one dollar equals 40 soles.

92. Peruvian Agrarian Reform Law, art. 177, *supra* note 83.

Class C bonds will earn an annual interest of 4%, and shall be redeemable by means of equal annual amortizations and/or shares as stipulated by the present law, for a term of 30 years from the date of their placement.

The bonds of the Agrarian debt and their interest are exonerated from all taxes.⁹³

Class A and B bonds are to be given in payment for lands worked directly by the owners and for lands which have been rented out, while Class C bonds are to be given in payment for idle and unused lands.⁹⁴ As to farm property other than the land itself, payment is to be made as follows:

Article 179: When plantations, installations, constructions, or farm or industrial equipment which forms part of the business is expropriated, their value shall be paid in cash up to an amount which does not exceed one million gold soles, and the balance shall consist of Class A or B bonds, depending on whether the lands had consisted of directly-worked property or rented property.⁹⁵

The bonds can be transferred in their entirety at face value into shares in industrial enterprises (which had not been set up as of this writing), in an amount equal to one-half the capital of a particular enterprise. These industrial enterprise shares may not be transferred for a period of ten years, unless the amount realized on their sale is also invested in a duly qualified industrial enterprise.⁹⁶

An interesting provision of the law is the section concerned with land invasions by the peasants, which had occurred with such frequency in the decade preceding the passage of the 1964 Belaunde Agrarian Reform Bill. Special sections of the new law provide that any land invaders, or people who disrupt production or incite strikes, will be treated as saboteurs.⁹⁷

D. *Comparison With the Cuban Law*

There are, of course, differences as well as similarities between the Cuban and Peruvian Agrarian Reform Laws. The big problem with both is the *actual* payment by means of bonds; well-written and comprehensive provisions for payment mean nothing unless those bonds are actually issued and distributed as fair and reasonable compensation for the expropriated property.⁹⁸

In this connection, it can be seen that under the Cuban Law, the

93. *Id.* art. 174.

94. *Id.* art. 177.

95. *Id.* art. 179.

96. *Id.* art. 181.

97. *Id.* *Disposiciones Especiales (tercera)*. See text at notes 68-71 *supra*.

98. See note 19 *supra*. See also text at notes 13-15 *supra*, and note 103 *infra*.

amount payable in bonds is to be determined according to a valuation based on the 1958 income tax return filed by the legitimate owner of the property.⁹⁹ Similarly, the Peruvian law provides that the valuation will be based on the 1968 income tax return of the owner of the property.¹⁰⁰ This system will, naturally, be beneficial to the honest taxpayer and detrimental to the dishonest one. However, the problems and inequities inherent in this form of repayment valuation seem to far outweigh the advantages of rewarding or punishing landowners for their honesty or dishonesty with regard to something that happened in the past and which has no relation to land redistribution.

Any compensation should represent the value of the property affected, and should not be based on past taxation of properties, as in the Mexican oil expropriation of 1938 and now again in the Cuban Agrarian Reform Law. . . . The assessment of taxes . . . is based on wholly different factors and should not be considered as a proper method for determining compensation.¹⁰¹

A difference between the Cuban and Peruvian repayment systems is in the matter of the actual amount set aside for the payment of the bonds. Under the Peruvian law, the bonds are issued in a specific total amount of 15 billion soles,¹⁰² while under the Cuban law the amount of bonds issued is to be determined "according to need,"¹⁰³ which means that the Cuban Government could issue the bonds or not, as it chooses. To date, it has chosen to do the latter; all it has done is authorize the issuance of the bonds. By the same token, it is too early to tell whether Peru will issue her bonds, and if so, whether she will find the money for their payment. Fifteen billion soles is equivalent to 375 million dollars, a considerable sum until the value of the land purchased is considered. Under present conditions, 44,936,710 acres, representing some 88 percent of the total farmland in Peru, is eligible to be expropriated.¹⁰⁴ This averages out to some 83 cents per acre, if all the eligible land is expropriated.

Another major difference between the two laws arises in connection with the size of the plot of land which is to be distributed to the peasants. The Cuban law sets a minimum size of 2 cabs. ($66\frac{2}{3}$ acres), which can be varied by the National Institute of Agrarian Reform, and a strict maximum size of 30 cabs. (1,000 acres) for each family plot.¹⁰⁵ The

99. Cuban Agrarian Reform Law, art. 29, *supra* note 1.

100. Peruvian Agrarian Reform Law, art. 63, *supra* note 83.

101. Domke, *Foreign Nationalizations: Some Aspects of Contemporary International Law*, 55 AM. J. INT'L. L. 585, 608 (1961) (footnote omitted).

102. Peruvian Agrarian Reform Law, art. 173, *supra* note 83.

103. Cuban Agrarian Reform Law, art. 31, *supra* note 1.

104. Figures based on statistical sampling data taken from the *First Agricultural Census of Peru*, July 2, 1961, as reported in PAN AMERICAN UNION, AMERICA EN CIFRAS, Vol. III, No. 1, Table 7.2 (1961).

105. Cuban Agrarian Reform Law, art. 1.

Peruvian law is quite different: it sets a strict minimum of 7.22 acres,¹⁰⁶ the theory being to prevent excessive subdivision among heirs to the point of loss of efficiency. Furthermore, it also sets, as a maximum size for each plot, a figure which can vary greatly according to the situation.¹⁰⁷ This flexibility was established so that the big agro-industrial properties, rather than being broken up as they were in Cuba, would be made over into cooperatives; this would also serve to reduce any loss of operating efficiency. In addition, the size of the property to be affected varies according to the part of the country in which it is located and to the type of agricultural activity being carried on in that region. Under certain conditions, established maximums may be doubled and even tripled. In some cases, it would be possible for an owner to retain to 3,600 acres.¹⁰⁸

E. *Present Status of Agrarian Reform in Peru*

The relatively short period during which the Peruvian Agrarian Reform Law has been in operation makes it difficult to accurately assess the effectiveness of that law and the degree to which it has accomplished the goals for which it was created. There are, at present, only general indications of the method through which Peru intends to apply the Law in order to reach the desired results. In the absence of more concrete and authoritative sources, resort must be made to recent newspaper articles, periodicals, and speeches which have touched upon the Agrarian Reform Law to obtain an up-to-date picture of how that law is being applied.

The first step taken by the Peruvian Government to implement the Agrarian Reform Law has imparted an ominous tone to the entire Law, reminiscent of the first moves of the Cuban Government under its own law. On June 25, 1969, just one day after the Law went into effect, the Peruvian Government declared that the areas which contained virtually all the big sugar estates of the north coast were subject to land reform, and it appointed interventors to take charge of the land.¹⁰⁹ This action prompted the following criticism from a Lima newspaper which had been generally favorable to the Agrarian Reform Law itself:

Although the agrarian reform affects all the rural property in Peru, the government has elected to initiate it by expropriating the richest and best-developed lands in the country, when as a matter of fact—to avoid economic collapses—experience has shown that the first lands affected should always be those which are uncultivated or which belong to the state.

In effect, the first to be expropriated were the large sugar plantations in the north, which constituted—which is recognized all over the world—a model of efficiency in their operations.

106. Peruvian Agrarian Reform Law, art. 98.

107. Peruvian Agrarian Reform Law, arts. 31-35.

108. *Id.* arts. 28, 29, 31, 34.

109. *Andean Air Mail & Peruvian Times*, June 27, 1969, at 1, col. 2.

The high rate of efficiency reached by the Peruvian mills can be compared only with those existing in Hawaii.

That is to say, that where there was no need for agrarian reform . . . was precisely in the area of those sugar plantations.¹¹⁰

This is precisely what occurred in Cuba; the well-developed, efficiently-run lands were confiscated first, with the result that the farm economy immediately took a downward turn.

One periodical carried a quotation from the Buenos Aires *Clarín* to the effect that:

[T]he drastic decision of the military government constitutes an act which imposes a definitive trend on that revolutionary process. The timid rehearsals initiated by Belaunde Terry have now been transformed into a radical program, very similar to the Mexican or Bolivian, and with some aspects which approximate that of Cuba.¹¹¹

The same publication made the statement that the Peruvian project also had the approval of Moscow, which offered to finance the studies of a plan to irrigate one portion of farmland.¹¹² In relation to this same matter, in July 1969 ex-President Belaunde called for an overthrow of the military regime that removed him from power, alleging that "personalist cliques addicted to international communism" had been responsible for some of the "so-called reforms" occurring in Peru at the present time.¹¹³ The objectivity of his statements were, however, almost certainly colored by the manner in which he made his exit from Peru.

Other publications and individuals have expressed fears that Peruvian agrarian reform may be the outward manifestation of a movement similar to that in Cuba. This feeling was so widespread that President Velasco felt constrained to issue a statement that reaffirmed the nationalistic basis of his takeover.

This is not a Marxist revolution; therefore we are not heading in the direction of a communist society . . . This is a nationalistic revolution which, without relying on unrealistic plans, firmly proposes to alter the socioeconomic order of Peruvian society in a radical way; because only in this manner will Peru rapidly be able to overcome its underdeveloped state.¹¹⁴

This statement, however, has been interpreted as "an effort to inspire confidence in national and foreign investments in Peru."¹¹⁵

110. La Presna (Lima, Peru), Oct. 4, 1969, § 1 at 4, col. 1.

111. *VISIÓN*, Aug. 29, 1969, at 10, col. 3.

112. *Id.* at 12, col. 1.

113. The Miami Herald, July 29, 1969, § A at 3, col. 1.

114. *VISIÓN*, Aug. 29, 1969, at 15, cols. 2-3.

115. *Id.*

A strong attack on the method in which the agrarian reform is being conducted was made by Roger Lopez, Secretary General of the Federation of Workers of Peru, who accused the government of restructuring Peruvian agriculture in favor of a state bureaucracy, rather than in favor of the deserving workers. "The government is not attempting to achieve cooperativization but rather a state takeover of all national enterprises."¹¹⁶

Another periodical compared the Peruvian law to that of Cuba by saying that one difference is that in Peru there is no collectivization and that there is at least a recognition of the right of the landowners to an indemnification. It then went on to say, however, that the high percentage of payment authorized to be made in bonds results in a recognition of the fact that such principle of payment is more symbolic than real.¹¹⁷

In view of the above, it can be seen that the Latin American Press is generally hostile to the methods by which the Peruvian Government has carried out its agrarian reform program to date. This is, of course, no indication of the ultimate success or failure of the Law, nor is it an indication of the feelings of those who stand to benefit directly from the application of the Law—namely, the Peruvian peasants. We can, however, gather from the foregoing that large segments of the population are not satisfied with the methods being used to apply the Peruvian Agrarian Reform Law. Only time will tell whether their criticism is justified or premature.

VI. SUMMARY AND PREDICTIONS

To summarize, it can be stated that one of the main reasons given by the Peruvian Government in justification of its Agrarian Reform Law is the Punta del Este Charter.¹¹⁸ This point was made abundantly clear by General Francisco Morales Bermudez, Peruvian Minister of Finance and Economy.

The Agrarian Reform, in effect, owes its existence to the high-level conference at Punta del Este, and also to the start made by previous governments of Peru, but only the present revolutionary government has established actual plans to rapidly carry forward the Agrarian Reform.¹¹⁹

In turn, that portion of the Punta del Este Charter which deals with agrarian reform owes its existence to the situation existing in Cuba after the enactment of a revolutionary agrarian reform in that country.

What remains to be seen is whether Peru, now at the crossroads, will choose the path taken by Cuba or will choose one leading to an

116. *La Prensa Argentina*, July 13, 1969, at 1.

117. *THE ECONOMIST PARA AMERICA LATINA*, July 9, 1969, at 31, col. 3.

118. See text at notes 59-61 *supra*.

119. *Diario de las Americas*, July 4, 1969, at 2, col. 2. See text at notes 54-58 *supra*.

equitable, reasonable, and just system of land redistribution, with prompt, adequate, and effective compensation being paid to the owners of the confiscated property.

Peru's reliance on the Punta del Este Charter is misplaced and unconvincing; it must be remembered that Cuba, as well, based its land reform law on the written terms of an international document.

Whereas: In all the studies undertaken for the purpose of promoting economic development, especially those done by the United Nations, it is recognized, as an essential premise, that it is important to put into practice an Agrarian Reform¹²⁰

If Peru chooses the Cuban way, there is little doubt that the results will be highly detrimental to Peruvian economy and society. Peru's recent imposition of almost total censorship on the national press is an ominous move, reminiscent of Cuba in the early days of its revolution. In addition, the tactics which Peru has so far engaged in have already begun to have adverse effects on her economy.

In Peru, a variety of U.S. and foreign companies have been holding in abeyance for a year their decisions on some \$600 million of new investment in mining. The loss of expected foreign exchange earnings from these stalled investments in part has forced the military government to seek refinancing this fall of an \$842 million debt owed to banks in thirteen foreign countries.¹²¹

Peru is, indeed, at the crossroads with its Agrarian Reform Law. The path it chooses to take in interpreting and applying this Law may well determine the economic future not only of Peru but of South America as a whole. While it must be recognized that some system of agrarian reform is inevitable, the example of a successful program in Peru would act as an incentive to other Latin American countries to commence their own reasonable programs of agrarian reform. On the other hand, should Peru continue to engage in the same tactics that were employed in Cuba, the result will almost inevitably be economic chaos and a corresponding unwillingness on the part of other countries to initiate peaceful land reform. It is to be hoped that Peru will heed the lesson to be learned from Cuba.

120. Cuban Agrarian Reform Law, Preamble.

121. *FORTUNE*, Oct., 1969, at 101, col. 1.