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THE SIGNIFICANCE OF RESTITUTION IN THE ECONOMIC RECOVERY OF CUBA

ROBERT E. FREER, JR.*

"Law and government . . . seem to propose no other object but this, they secure the individual who has enlarged his property, that he may peaceably enjoy the fruits of it."

Adam Smith, Lectures on
Jurisprudence Notes dated 1766.

"The respect for private property is the cornerstone of our Judaeo-Christian society."

Jack Kemp, *Larry King Live* (CNN
television broadcast, Jan. 26, 1993).

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- II. PROPERTY RIGHTS: RESTITUTION AND COMPENSATION
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 - A. *The Policy of The Cuban Government Should Be to Return Property to Its Rightful Owners*

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I. INTRODUCTION

Throughout history, private property has been the core element of economic success for nations. Respect for the right of individuals to labor and thereby acquire property motivates and gives incentive to strive for success. Non-adherence to this essential principle is a primary cause of the current economic problems forcing the collapse of communist Cuba's infrastructure. Dwindling trade and reduced subsidies from the former Soviet Bloc countries have left Cuba economically isolated and its development stalled. The absence of foreign support places a tremendous strain on the Cuban economy and causes catastrophic losses in productivity.¹

Currently there is overwhelming pressure for Cuba to abandon its centrally controlled economy and convert to a market

1. ELIANA CARDOSO & ANN HELWEGE, *CUBA AFTER COMMUNISM* 5 (1992).

based economy.² Most observers accept that such a conversion will ultimately occur. When this market-oriented conversion takes place, Cuba will require a large infusion of capital to stimulate economic growth and production. With the withdrawal of Eastern Bloc subsidies and the end of governmental controls from the centrally managed economic scheme, a free economy will welcome new private capital. Once again, the forces of free market competition will determine prices and encourage increased productivity in the Cuban economy. This will occur only if the sources of capital believe that the government of Cuba³ is a reliable partner which will provide stability, order, and respect for property rights.

When an economy that abruptly departed from free enterprise principles returns to the market, it will have to find the capital it needs to stimulate growth. Generally there are two sources of capital: foreign and domestic. Domestically, the Cuban treasury is drained, the resources of the citizens are nominal, and the government is on the verge of bankruptcy. The only feasible major source is foreign capital.

Central to the legitimacy of any return to a market-based democracy, and to the confidence of capital markets, is the Cuban government's recognition that individuals whose property was confiscated thirty years ago regain legal rights to their property. These rights must be restored, and the owners should be able to either reoccupy their property and put it to productive use, or receive fair compensation for their loss.⁴

Also essential to an effective return to a market democracy

2. Spencer Reiss, *Requiem for a Revolution*, NEWSWEEK, Jan. 18, 1993.

3. The purpose of this paper is not to argue for or against any particular government, but rather to view the situation in terms of immutable principles that must be adhered to by any Cuban government if the current economic problems on the island are to be remedied and sustained economic growth achieved.

4. See Domingo Moriera, *Issues for Post-Castro Cuba: Privatization, Restitution*, MIAMI HERALD, May 8, 1992, at A17.

is rapid and efficient adoption of the new system. One observer noted that "[t]he important thing is to achieve privatization, not how it is done,"⁵ while agreeing that any delay in privatization will retard recapitalization of the economy and subsequently slow growth. However, the method of accomplishing privatization *is* important. The rights of those whose property was confiscated must be appropriately recognized if the transformation is to occur.

In light of the competitive markets of the 1990s, the importance of restitution of or compensation for property, and rapid privatization and recapitalization in Cuba require that the new economic system strike a balance between the two interests. Such a balance will encourage rapid redevelopment of the Cuban economy in the most effective manner. Only by promptly restoring confiscated property to its prior owners, and by favoring the return of property over cash compensation can these needs for investment be met.

II. PROPERTY RIGHTS: RESTITUTION AND COMPENSATION

"In order for an economic transition to take place, domestic and foreign investment is required; while uncertainty remains over land rights and ownership, investment is unlikely."⁶ Market economies must view the sanctity of private property rights as a fundamental tenet in order to give security of ownership to investors.⁷ Private ownership drives investment and capital formation in market economies through individual incentive to maximize profit. In order to generate substantial investment, it is critical for a newly forming market-based economy to provide full assurance that legitimate property rights will be respected. Without

5. *Id.*

6. MEMORANDUM FROM HERIBERTO LOPEZ ALBEROLA TO MEMBERS OF THE CUBA TASK FORCE 1, June 12, 1991.

7. Ulrich Drobnig, Privatization of State Enterprises in West Germany, in PRIVATIZATION IN CENT. AND E. EUROPE 1, 4 (Petar Sarveric, ed., 1992).

the belief in private ownership, many prospective investors will hesitate to risk capital where there is a continual threat of loss through confiscation.

The primary premise for a successful conversion to a market democracy is this: at a minimum, property rights must be enforced in the form of compensation for benefit received, but wherever possible, the government should strive to give full restitution of the property to those owners who are willing to make their property economically useful.⁸

Cuba will encourage the return of foreign investment by showing from the outset that it will respect legitimate property rights.⁹ Conversely, the absence of practical assurances that property ownership will be respected and that any acquired rights will not be threatened will slow the return of capital investment. The government must make investors feel that their property is safe from arbitrary takings.

The most effective way to convince the economic community that Cuba will respect property rights is to follow the generally applicable provisions protecting private property which appear in the constitutions of most nations. These provisions were in effect at the time the communists took over the Cuban government. Under the Cuban Constitution of 1940, property rights were protected against unlawful takings.¹⁰ Therefore, property that was confiscated should now be restored to its rightful owners. Adherence to the generally accepted commercial principles and pre-existing Cuban law will demonstrate Cuba's respect for the rule of its own law as well as the rights of individuals to own property in the market-based economy.

8. Moreira, *supra* note 4, at A17.

9. Cuban American National Foundation, Promoting Trade and Investment in Post-Castro Cuba: Interview with Sergio Leiseca, *CUBA SURVEY*, at 7 (Oct. 1992).

10. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA, art. 24, § 1 (1940).

III. THE PLAN

There are three central themes which should be contemplated in a system for restitution of property. First, with respect to economically productive property, restitution should be the rule and compensation should be the exception.¹¹ Second, restitution of property should be the primary method of privatization in order to encourage confident investment in property that has clear title. Rather than having a slow industry privatization scheme which inhibits the natural expansion of a free market economy, a macroeconomic privatization is more appropriate. Third, former owners should have the opportunity to elect compensation over restitution. Unfortunately, compensation would lag behind a restitution plan because of the cash poor position of the Cuban treasury. The goal is to initially recognize the free market as the preferred method of conducting transactions. Thus property owners who want cash might be compensated based on the market price at a state auction of the property. A policy where property rights will either re-vest in the last recorded owner or be transferred in favor of compensation will permit title to any property to be clear of claims and will allow investment without risk of loss due to worthier title.

A. *The Policy of the Cuban Government Should Be to Return Property to Its Rightful Owners*

Cuba should place a high priority on restitution of productive resources to previous owners. A number of countries have enacted laws providing for the return of confiscated property

11. See GEMEINSAME ERKLÄRUNG DER REGIERUNGEN DER BUNDESREPUBLIK DEUTSCHLAND UND DER DEUTSCHEN DEMOKRATISCHEN REPUBLIK ZUR REGELUNG OFFENER VERMÖGENSFRAGEN [JOINT DECLARATION OF THE FRG AND GDR ON THE SETTLEMENT OF OUTSTANDING ISSUES OF PROPERTY RIGHTS] [Hereinafter JOINT DECLARATION ON PROPERTY RIGHTS], June 15, 1990; see also Dorothy A. Jeffress, *Resolving Rival Claims on East German Property Upon German Unification*, 101 YALE L.J. 527, 545.

to the previous owners. "Although their programs vary, the principle is the same: property should be returned to private ownership."¹² For example, the Baltic Republics have recognized the need to create a market economy based on investment, and should have opted to return all confiscated property. Cuba should adhere to this principle.

Restitution of confiscated properties in Cuba will indicate to past and prospective investors that once they have invested in Cuba, the government will not disregard their legitimately established rights. However, in return for restitution of key industrial or commercially significant properties, the government could require a commitment from these property owners that they will make their property economically useful and productive.

God gave the world to men in common; but since he gave it to them for their benefit and the greatest conveniences of life they were capable to draw from it, it cannot be supposed He meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational - and labor was to be his title to it - not to the fancy or covetousness of the quarrelsome and contentious.¹³

The imposition of requirements by the government on previous owners places an added burden on the rights of these proprietors. To the extent that such demands are inconsistent with unfettered rights to private property, the critical need of the Cuban people to jump start the economy could be a sufficient justification, provided that the owner's right to request compensation, in lieu of

12. Michael Hiltzik, *Reclaiming the Past in the Baltics*, LOS ANGELES TIMES, Sept. 16, 1991, at 1.

13. JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* (1690).

return of the property remains protected.¹⁴ This process enables the individual to elect to receive compensation rather than to comply with these requirements, permitting an acceptable choice between balanced interests.

A restitution plan which returns property to its former owners, and a commitment from those owners of economically strategic properties to make them fully productive, would encourage these investors to develop property to its maximum social value; such a plan therefore serves as a powerful means of resurrecting a faltering economy. In the case of Cuba, where many of the investors are eagerly waiting to return and reinvest, recapitalization is likely to be rapid. In some cases, however, owners will simply want to get their property back and hold on to it while it appreciates. In these cases, where strategic industrial property is involved, there may have to be a compromise between the rights of these owners to do what they want with their property and the competing need for the revival of the Cuban economy. For key industrial, commercial, or recreational property, this exercise of the right of property ownership may have to be tempered by the needs of the Cuban people to spur the economic growth of the Cuban economy, but only within the framework of full compensation.

Restitution is "the natural law" and should be the general rule with respect to previous confiscation of private property. However, the plan should also contemplate the possibility that the nature of the property's use may have changed, thereby making

14. See 1989. évi XIII törvény a gazdalkodó szervezetek és gazdasági társaságok a talakulásáról [Hungary Act No. XII of 1989 on Transformation of Economic Organizations and Companies] [Hereinafter Hungary Economic Act] (Requiring the negotiations between the government and the prospective purchase of a company to commit a minimum of 20% of the value of the company to initial investment); see also Tamas Sandor, *PRIVATIZATION IN CENTRAL AND EASTERN EUROPE* 23, 26 (Petar Sarcevic, ed., 1992).

restitution impracticable.¹⁵ Priorities of use are essential to privatization. If many individuals are dislocated at the expense of business owners, the individuals suffer and the political legitimacy of the government becomes suspect. Indeed, the very success of the economic conversion could be placed at risk by the consequent loss of political consensus.

Privatization in the Baltic Republics illustrates the problems inherent in failing to recognize changed circumstances. Their radical restitution process, which returns all property to its pre-Soviet occupation status in spite of any changed circumstances, "will create serious economic and possibly political dislocations, and since all three Baltic countries suffer from severe housing shortages, finding new homes for displaced tenants could take years."¹⁶ A situation where massive displacement occurs is clearly not in the best interest of the Cuban people. The well-being of natural citizens must be recognized and protected in any restitution scheme.

In sharp contrast to the Baltic States' restitution plan, the German system "allows restitution to be excluded by [a change in] 'the nature of things.'"¹⁷ Certain scenarios where circumstances have changed must be contemplated in evaluating the applicability of restitution in a given case. For example, in cases where property has been converted to residential use, the residents should not be forced to abandon their homes. In these cases, restitution

15. I have been asked what change qualifies to make restitution impracticable. Ultimately the Cuban people will have to decide this, but a standard that is so high it discourages reinvestment or appears inconsistent is not in Cuba's interest. The change contemplated by this article might include conversion from industrial to residential, or an expansion of one economic use to include adjacent property. Here, competing claims would appear to favor the return to the owner best equipped to operate the facility and willing to buy out the conflicting rights.

16. Hiltzik, *supra* note 12, at 1.

17. Drobniq, *supra* note 7, at 8 (quoting the Law on Open Property Issues).

is not a viable solution, and an alternative plan must be devised.¹⁸

There are two possible solutions to the cases where restitution is inappropriate. First, these owners may choose to acquire other property of equal value in Cuba as if they had reacquired their own property, subject to the applicable investment requirements. Second, the former owners may be compensated for their property in cash or a cash equivalent. Effectively, displaced investors have the right to purchase property before it is offered to the public.¹⁹ The second option is more helpful to economic conversion because it guarantees additional capital investment and will cost the government less than other forms of compensation. In the short term, it is unlikely that Cuba, with a depleted treasury, would be able to compensate each owner in cash for all of the property that it confiscated.²⁰ By offering property to previous owners who are willing to accept the responsibility to make it fully productive, Cuba will infuse critically needed capital into the economy²¹ and avoid the debt burden that would be incurred by paying for all of the property taken by the communists.²²

Restitution of productive property to those investors, foreign or domestic, willing to infuse capital to develop an industry is in the best interest of the Cuban people. The instant stimulus that investment creates will generate employment and opportunity for

18. Jeffress, *supra* note 11 at 544. (Similarly, however, changed circumstances should not justify occupation of a mansion on the basis of long-term residency alone.)

19. See *Property Compensation Law to Take Effect in Hungary*, INT'L TRADE REP. (BNA), Aug. 7, 1991.

20. Shaw, Pittman, Potts & Trowbridge, *Eastern European Models for Cuban Foreign Restitution Claims*, FREE MARKET CUBA BUS. J. 5 (Winter 1993).

21. Ferdinando Targetti, *The Privatization of Industry with Particular Regard to Economies in Transition*, in PRIVATIZATION IN EUROPE 1, 10 (Ferdinando Targetti, ed., 1991).

22. Shaw et al., *supra* note 20, at 6.

increased productivity. Cuba is currently in dire need of productive enterprises that will generate a continuous output of exportable goods that can be marketed throughout the world. Private investment in Cuba is the way to create jobs and provide necessary staples to all Cuban citizens.

B. *Restitution and Compensation Must be Rapid to Assure That the Economy Does Not Stagnate Before Investment Can Begin*

While respect for property rights and restitution of confiscated property are essential elements in the privatization of property in Cuba, to some degree the restitution process will inhibit the rapid privatization of property. Forcing claims into the courts could cause a lengthy delay between the claim and the actual vindication of title. While this delay has not discouraged Germany, other countries, including Hungary, have adopted a system of compensation for confiscated property without an option of restitution. These systems were adopted in the hopes that mass auctioning of property in the short term would result in immediate investment. The "Law to Provide Partial Compensation for Unjust Damage Caused by the State to the Property of Citizens" was passed on July 11, 1991 to this effect.²³

Hungary's program is efficient in clearing titles, but it creates a number of problems. First, there is the problem of finding the resources to pay for all of the property claims. Due to the former communist regime, there is a stagnation in monetary liquidity which in turn hinders compensation. Second, the program is inflationary. Third, total compensation creates the same time problems as restitution does with respect to initial capital investment. Since the owners will have to go through the additional step of litigating their rights in property that is auctioned off, they will not be able to invest until they receive funds with which to pay. The "credit vouchers" which are being distributed

23. Drobnič, *supra* note 7.

do not fill the void. On the contrary, instead of generating capital, credit vouchers simply award individuals ownership rights in property. Realistically, there is little or no advantage to a compensation scheme based on mass auctioning of property.

Germany, on the other hand, has operated under a system which prefers restitution above compensation. The German system illustrates that restitution can be the basis for a rapid privatization, provided an appropriate time limit is instituted in order to deal with claims. On July 11, 1990, the former German Democratic Republic [hereinafter GDR] issued a decree on the Registration of Property Claims.²⁴ Initially, this decree set up a deadline of January 31, 1991 for applications for the restitution of confiscated property. This deadline was later changed to October 13, 1990. "The short deadline was set in the interest of settling property issues quickly, a prerequisite to GDR economic development."²⁵ Despite the fact that this change in policy will preclude some potential claimants from restitution, Germany has determined that the need for immediate investment outweighs the potential benefits that additional time to claim would provide.²⁶

Cuba's system should emulate the German system of restitution. All claims for restitution of property must be filed by the early deadline. This deadline should be similar to the German model which provides a period of six months from the time of the announcement of the decision to convert. After this time period

24. Verordnung über die Anmeldung vermögensrechtlicher Ansprüche [Ordinance Regarding the Registration of Property Claims], July 11, 1990.

25. U.S. DEP'T OF STATE, NOTICE CONCERNING CLAIMS AGAINST PROPERTY IN THE GDR, at 1 (1991).

26. Czechoslovakia has adopted a system of privatization which lies somewhere between the German and the Hungarian systems. This scheme has returned a limited amount of farmland or provided compensation to the previous owners. The Czech government has attempted to blend limited restitution into an overriding compensation plan through compensation for other takings and subsequent auctions of the property.

lapses, the only claims that should be recognized are for compensation of property value at the time of the confiscation.²⁷

Failure to file by the German deadline is not a total forfeiture of all rights in the confiscated property. Rather, it is interpreted as an election for property compensation if the claim is valid. A program of this sort forces an early decision so that property can be disposed of efficiently, but it does not cut off all rights of previous owners. This procedure encourages investment and assures subsequent purchasers of property that their title is clear of any claims for restitution.

Invariably, there will be instances where the right to the return of property will block or inhibit investment because of the potential for multiple claims on the same property. Such is the nature of permitting claims of valid title. On the other hand, restitution indicates that the Cuban government has a high degree of respect for private ownership of property. It will also encourage a continuing flow of investment in the future. A delicate balance must be achieved. Fortunately, Cuba can benefit from the study of the Eastern European models.

IV. CUBA: THE BEST OF ALL WORLDS

Cuba's relationship with the United States is unique. The proximity of the island nation to Florida, historically close commercial ties, and the large Cuban exile population in the United States create opportunities which do not exist in liberated Eastern European countries. Cuba should learn from the various setbacks that have plagued the Eastern European countries in their property distribution systems and adopt the most favorable mechanism.

27. See Gesetz zur Regelung offener Vermögensfragen [Law Regulating Open Property Issues] Annexed to the Unification Treaty of Aug. 31, 1990.

A. *Cuba Must Establish a Claims Agency to Deal with the Claims of Individuals for Restitution*

"To privatize state-owned assets and to make certain that previous owners recover their property or receive compensation, the Cuban government would do well to establish a privatization oversight agency and a property claims court."²⁸ In order to clear title quickly, Cuba must set up an agency to address and resolve claims for restitution of property. The "Agency" should be independent of the government and have one purpose: to resolve property claims and declare ownership. This single function will avoid the problems that have plagued Germany in attempting to administer the claims system for former East German property.

The predominant problem in Germany has been an unwieldy adjudication system. Germany found that using a decentralized bureaucracy to adjudicate claims was not effective. While the Treuhandanstalt dictates the standards for claims recognition, the local courts throughout the republic hear the claims cases to determine their validity. This has been tremendously inefficient.²⁹ To avoid such inefficiency, an independent court system can be set up throughout Cuba to deal with the claims.

The claims agency should produce a set of clear guidelines instructing the courts on how to prioritize competing uses. "The most important factors in setting a policy to resolve property claims are fairness, predictability, stability, and the public interest."³⁰ This agency should begin with the premise that restitution of ownership is the rule, and compensation for lost property is the exception. Certain provisions for changed circumstances should be instituted, and the relative values of uses should be prioritized.

28. Bryan T. Johnson, *Preparing For a Free Market Cuba*, HERITAGE FOUNDATION BACKGROUNDER, No. 890, Apr. 8, 1992, at 6.

29. Jeffress, *supra* note 11, at 543.

30. *Id.* at 529.

Residential property must be of the highest value. Agricultural property should also rank highly because of the need for a steady food supply during the short-term transitional hardships. Productive industrial uses and small proprietorships should receive priority immediately after residential and agricultural uses. The key to the process is to allow restitution when the proposed use is compatible with the interests of the Cuban people,³¹ and allow full compensation when it is not. Therefore, all individuals in Cuba will be provided for, and investment opportunities will only be minimally restrained.

In addition to strict guidelines for the claims courts, the second aspect of the Cuban Claims system should be to set a rigid timetable for resolving property claims. In order to assure free alienability and clear title, all rights and ownership interests must be resolved as soon as possible. Claims should be heard promptly, and in exceptional circumstances claimants with valid claims should be granted their property subject to investment guarantees.³² For the strategic properties requiring follow-up investment, the program must be rational. By making investment requirements too strict, qualified owners will be discouraged from returning to their property. These owners could instead choose compensation, and deplete the potential investment in the economy. Cuba might have to sweeten the deal for investors to counteract this problem.³³

31. *Id.* at 545.

32. MORIERA, *supra* note 4, at 1.

33. Professor Roger E. Betancourt, at the University of Maryland suggests that Cuba should insulate new investors from environmental damage liability inflicted by their predecessors, or have the current government managers streamline industries before the new owners come in, so as to minimize the shock of foreign or domestic restructuring. Telephone interview with Dr. Roger Betancourt, Professor of Economics, U. of Maryland (Jan. 27, 1993).

B. Foreign Claims Will Be Distinguishable From Citizen Claims

Foreign claims can be addressed in much the same way as Germany dealt with U.S. claims with respect to former East German property, but with some modification. The U.S.-German claims agreement established a \$190 million fund from which valid claims of U.S. citizens would be paid. Owners with claims may forego compensation from the claims fund in favor of litigating their claims in Germany in an attempt to get their property returned.

In spite of the general preference for restitution, Germany decided that the U.S. compensation fund should encourage election for compensation. For Germany, this is an acceptable solution, because there are ample West German marks available to finance the fund. Cuba is in a more precarious financial position. Its treasury is already depleted, and there is no way to pay for all of the potential claims in cash. An alternative funding vehicle is the issue of compensation bonds which will mature in a number of years in lieu of cash compensation.³⁴ It is unlikely that either of these options will be attractive to former property owners.

The Foreign Claims Settlement Commission [hereinafter FCSC] was authorized by Congress in 1964 to determine the validity of Cuban claims from owners based in the United States.³⁵ The FCSC adjudicated 8,816 United States-based claims between 1967 and 1972 and certified 5,911 of them as valid.³⁶ Since determinations have been made as to the validity of these claims, it is in the interest of rapid privatization to allow election out of a compensation fund, similar to the German system. It is important to consider, however, that the more Cuba has to pay, the

34. Jeffress, *supra* note 11, at 547.

35. 22 U.S.C. § 1643 (1964).

36. Shaw et al., *supra* note 20, at 5.

more it will deplete its cash reserves, so it may be forced to go into debt.

Cuba is better served by encouraging investment in property, rather than compensating individuals for it. The option for compensation can be provided, but in contrast to the German preference, the Cuban system should discourage compensation in favor of restitution and investment.

C. *Political Considerations*

Cuba is uniquely situated relative to other democratizing countries in its ability to make its transition to a market system smoothly and rapidly. The close proximity to the United States and the apparent willingness of Cuban-American exiles to work with any democratic government not led by Fidel Castro,³⁷ could make economic development easier. Much has been published supporting a high level of investment interest in a free market Cuba. A large number of exiles intend to return to Cuba with plans to contribute to a stable political system and a rich economic base for the country.³⁸

While there is mixed information regarding the intentions of some exiles to return permanently to Cuba, there is a great deal of interest both in the United States and abroad in potential investment in Cuba. Currently, this interest can be seen in the form of joint venture hotels and resorts which are springing up in Cuba.³⁹ These European based corporations are already investing

37. Johnson, *supra* note 28, at 1.

38. *Id.* at 1.

39. Robert Corrigan, *Investment Ideas for the Fidel-Free Cuba*, INVESTORS BUS. DAILY, Oct. 30, 1991, at 1.

in ventures with the Cuban government.⁴⁰ There are other potential sources of investment. A number of companies have expressed great interest in the investment opportunities in a post-Castro Cuba. Reportedly among the most interested are Carnival Cruise Lines, Hilton Hotels, and numerous airlines.⁴¹ Cuba is in a prime geographic location for the U.S. tourism industry. A major concern, however, is the possibility that the political situation in Cuba will not be stable enough to support a viable tourism industry. Sustaining a stable political environment depends upon the strength and ability of the government to provide basic supplies, food, and services to its citizens. Without a stable political situation, transformation of the Cuban economy is in jeopardy.

The situation in Cuba is a stark contrast to the situations in Central and Eastern Europe, where a majority of the citizens cannot remember what it was like to operate a market economy. Cuba has been a communist system for one generation, and many of the citizens recall the way the economy functioned. Cuba's population is acutely aware of the dynamics of a market economy and will be better prepared to adapt to the system. Further, Cuba's current needs have forced it to mimic capitalism with regard to foreign investment agreements.⁴² The single greatest advantage to having a population that remembers the economy as a free market is that restitution and privatization will be faster, and the ability of the

40. This is inadvisable at the moment because it is unclear whether, following any change in the control of the Cuban government, these ventures will be respected in their current form as having legally invested in Cuba. While there is a diversity of political opinion within the exile community, they are unified in their opposition to the present development of confiscated property by the Cuban government and joint venture partners. See PRELIMINARY REPORT BY THE BLUE RIBBON COMMISSION ON THE ECONOMIC RECONSTRUCTION OF CUBA, Sec. I, at 12, June 1991.

41. *Benneton in Cuba*, THE FINANCIAL POST: INTERNATIONAL BRIEFS, at 8.

42. Shaw et al., *supra* note 20, at 1.

economy to provide for all who need resources will be enhanced.

Since a relatively short period of time has passed, there is still a substantial portion of the original infrastructure left from Cuba's previous market economy. Additionally, Cuba invested government resources in a number of new industries, with particular emphasis on biotechnology. The infrastructure for industry will facilitate the transition to an efficient economy.

People want to invest in Cuba. Many see the opportunity to get in on the ground floor by reclaiming their property or by buying property that will remain unclaimed. The possibility that Cuba will become an unstable political system and an investment risk not only for tourism, but also for industry, is a growing concern. The government must ensure that the political system is secure and that property rights are not only free from potential confiscation by the government, but also free from the risk of loss due to political upheaval.

D. *Social Considerations*

There is always the possibility of hostility when perceived outsiders move into someone's native land. In the Baltic States, there has been tremendous tension between those who are returning and retaking their property and those who are being temporarily or permanently displaced.⁴³ While the dislocation in Cuba will not be as dramatic, the feeling of invasion will not dissipate immediately. This potential for social unrest makes it essential that companies who are committed to providing capital and jobs immediately lead the investment movement. When people are employed and have the financial ability to consume, they generally accept government policy; when people are unemployed, the risk of social unrest grows.

As with any market-based system, the natural

43. Hiltzik, *supra* note 12, at 3.

unemployment rate lies between four-to-six percent.⁴⁴ Cuba must take care to be an exception in transition. While many in Cuba are not "employed" as the term is used in a free economy, citizens of a communist system are not accustomed to unemployment as a concept, because of the policy of 100% guaranteed employment. While the transition will be cushioned by familiarity with the old market system, it is imperative that Cuba maintain unemployment at or below this natural minimum. To that end, investment is the initial key to reduce unemployment and maintain the low rates through development.

The bottom line consideration in restitution and privatization of property is not to make the Cuban people suffer while bickering over property rights. Cuban nationals are not to blame for the dilemma, so they should not be made to suffer for the mistakes of their government. To tie up property rights while the debate over true ownership is litigated would only penalize the innocent citizens of Cuba. While they wait for the rights of prospective owners to be resolved, unemployment will remain high and productivity will remain low.

There should be little debate over who owns property in the short run. If the claims cannot be resolved quickly and restitution cannot be granted, then the property should be divested and sold.⁴⁵ The ownership rights may be reviewed later and compensation may then be granted. This is the only way to prevent the extended suffering of Cuban citizens.

V. CONCLUSION

Cuba needs to institute a rapid macroeconomic change to a market economy. Problems experienced by the Eastern European

44. ANDREW B. ABEL AND BEN S. BERNANKE, *MACROECONOMICS* 735 (Addison-Wesley 1992).

45. This should not be allowed to serve as an excuse for allowing frivolous claims to force divestment of valuable property.

countries in their rocky transitions to market systems should be avoided. Cuba must move quickly to remove the barriers to investment and enable the economy to grow and mature. Both foreign and domestic capital is needed to insure adequate funding for continued growth.

The system Cuba adopts should encourage long-term investment commitments which will prevent capital depletion. Provided both social and political elements are reconciled in a form that is acceptable to citizens and investors alike, these favorable conditions will flourish.

Cuba must become an attractive investment for business. This can be achieved if the conversion to a market economy is centered in a restitution program that will allay the fears of investors. Respect for law and property rights is the key to foster investor confidence and to ensure economic stability for Cuba's future.