

## PRIMER ON THE CUBAN LEGAL SYSTEM

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The Cuban legal system is a unique blend of many historical influences and political theories. With the reestablishment of diplomatic relations between the United States and Cuba in 2015 and the easing of travel restrictions between the countries, the number of U.S. attorneys and law students visiting Cuba has grown exponentially. Interest in the Cuban legal system has likewise increased dramatically, but little current information about the Cuban legal system is available in English.<sup>1</sup> This Article provides an overview of the structure of the Cuban government and its legal system that will be useful to lawyers and law students in preparing to visit or do business in Cuba. It also provides background regarding the profession of law in Cuba, including information regarding the legal education system. Finally, this Article provides brief summaries of a few selected areas of law to give a general sense of Cuban civil and criminal law and procedure and draws some comparisons between the U.S. and Cuban legal systems.

### I. CUBAN LEGAL CULTURE AND CIVIL LAW

The Cuban legal system reflects three major periods of Cuban

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<sup>1</sup> Dept. of the Treasury, Office of Foreign Assets Control, *Frequently Asked Questions on President Trump's Cuba Announcement*, U.S. DEPT. OF TREASURY 2, 11-12 (last updated July 25, 2017), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba\\_faqs\\_20170725.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_20170725.pdf); LOYOLA UNIVERSITY CHICAGO, <http://law.libguides.luc.edu/cubanlaw> (last visited October 22, 2017) (finding although the Trump Administration has announced some tightening of the U.S. embargo again, it is still possible for U.S. persons to travel to Cuba under various educational and business licenses).

history. “The modern history of Cuba began when Christopher Columbus claimed the island for Spain in 1492.”<sup>2</sup> Cuba remained a Spanish colony for most of its history until the United States militarily occupied the island in 1899 after assisting the Cubans in their war for independence against Spain, historically known as the Spanish-American War of 1898.<sup>3</sup> The United States’ military occupation of Cuba continued until 1902.<sup>4</sup> Reflecting its Spanish colonial past, Cuba is a civil law state that utilizes written codes rather than looking to precedent as a primary source of law. As discussed in more detail below, criminal procedure utilizes an inquisitorial system like that of Spain and France.<sup>5</sup>

The next major period in modern Cuban history is the Anglo-American period from 1899 to 1959.<sup>6</sup> Even after Cuba finally achieved independence in 1902, its independence was tempered by economic dependence and “by the often-exercised power of intervention by the United States under the terms of the Platt Amendment” of 1901.<sup>7</sup> The United States supervised initial elections in Cuba after independence but was disappointed by the strength of the independence movement.<sup>8</sup> As a result, the United States informed Cuba that it would only end its military occupation on the condition that Cuba adopt the Platt Amendment to its new constitution, which allowed for unilateral United States intervention in Cuba.<sup>9</sup> According to one Cuban scholar: “The U.S. military occupation deprived Cubans of the opportunity to reorder the economy and reorganize property relations to accommodate their own interests.”<sup>10</sup> By

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<sup>2</sup> RAY MICHALOWSKI, WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS: CUBA 2 (1993), <https://www.bjs.gov/content/pub/pdf/wfbcjsc.pdf>.

<sup>3</sup> LOUIS A. PEREZ, JR., CUBA: BETWEEN REFORM AND REVOLUTION 137-38 (3d ed. 2006). The French and British also briefly occupied the island nation at times.

<sup>4</sup> *Id.* at 146.

<sup>5</sup> MICHALOWSKI, . *supra* note 2, at 2.

<sup>6</sup> *See id.*

<sup>7</sup> JAMES D. RUDOLPH, CUBA: A COUNTRY STUDY 3 (3d ed. 1985).

<sup>8</sup> *See* PEREZ, *supra* note 3, at 143-44.

<sup>9</sup> *Id.* at 143-44, 150-51. (stating the amendment is named after U.S. Senator Orville Platt, who introduced it into Congress in 1901. Among other conditions, the Platt Amendment restricted Cuba’s ability to enter into foreign treaties and to incur debt. It also was this amendment that led to the long-term U.S. lease of land at Guantanamo Bay).

<sup>10</sup> *Id.* at 147.

1905, 60% of all rural property in Cuba was owned by United States persons, and another 15% of the land was owned by resident Spaniards, leaving only 25% for Cubans.<sup>11</sup> The United States used the Platt Amendment to justify its armed intervention and military occupation of the island again between 1906 and 1909 to ensure that a U.S.-friendly government stayed in power in Cuba.<sup>12</sup> The United States continued to intervene in Cuban affairs between the world wars to ensure that Cuba was run by a series of governments that were friendly to U.S. financial and business interests.<sup>13</sup> During this period, *habeas corpus* and other American law elements were introduced to Cuba.<sup>14</sup> There was also a greater separation of courts and prosecutors than under the civil law system.<sup>15</sup>

The next major period in modern Cuban history began in 1959 with the Cuban Revolution led by Fidel Castro and continues to the present.<sup>16</sup> The legal system changed radically during this period. In the early 1970s, Cuba restructured its legal codes to formally recognize the economic, social, and legal changes President Fidel Castro had decreed after the Cuban Revolution.<sup>17</sup> Thus today, Cuba follows a civil law system that was inherited from its former Spanish colonizers but which has been adapted to incorporate a socialist philosophy.<sup>18</sup> Several decades of legal development guided by Marxist legal theory, and shaped by close ties with the former Soviet Union, have transformed the legal system to reflect a clearly socialist character.<sup>19</sup>

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<sup>11</sup> *Id.* at 151.

<sup>12</sup> *Id.* at 169.

<sup>13</sup> DEBRA EVENSON, *LAW AND SOCIETY IN CONTEMPORARY CUBA* 4-5 (2d ed. 2003).

<sup>14</sup> MICHALOWSKI, *supra* note 2, at 2.

<sup>15</sup> *Id.*

<sup>16</sup> PEREZ, *supra* note 3, at 237. (stating while Fidel Castro passed away on November 25, 2016, his legacy continues under the government led by his brother, Raul Castro); see Marjorie Cohn, *The Remarkable Legacy Of Fidel Castro*, HUFFPOST (last updated Dec. 05, 2016), [https://www.huffingtonpost.com/entry/the-remarkable-legacy-of-fidel-castro\\_us\\_5844342ee4b04587de5deaf0](https://www.huffingtonpost.com/entry/the-remarkable-legacy-of-fidel-castro_us_5844342ee4b04587de5deaf0).

<sup>17</sup> COUNTRIES QUEST, <http://www.countriesquest.com/caribbean/cuba/government/judiciary.htm> (last visited Oct. 23, 2017).

<sup>18</sup> CUBA CONST. art. 1 (amended 2002).

<sup>19</sup> MICHALOWSKI, *supra* note 2, at 2.

Key elements of Cuba's "socialist legality" are: (1) an emphasis on substantive rather than juridical measures of justice; (2) the use of law as a proactive tool for socialist development; (3) limited use of formal legal mechanisms for the resolution of private disputes; (4) the use of informal "social courts" to resolve conflicts such as housing and labor disputes; (5) direct citizen involvement in judicial and crime control procedures; and (6) a system of state-organized law collectives to provide low-cost legal services nationwide.<sup>20</sup>

## II. CUBAN POLITICAL SYSTEM

Cuba is a democratic, centrally controlled state organized according to socialist principals.<sup>21</sup> Cuba's constitutional objective is to build a communist society.<sup>22</sup> The Communist Party (*Partido Comunista de Cuba*) is the principal political party in the country.<sup>23</sup> Other parties exist but are not very significant and are restricted in their affairs.<sup>24</sup>

The Cuban government is divided into executive, legislative, and judicial branches.<sup>25</sup> The executive branch consists of the Council of State and the Council of Ministers.<sup>26</sup> The president of the Council of State serves as the president of Cuba.<sup>27</sup> The Council of Ministers is the highest-ranking executive and administrative organ of the government.<sup>28</sup> The Council of Ministers consists of the president, the first vice president, five vice presidents, the ministers, the secretary, and other members as established by law.<sup>29</sup> The Council of Ministers exercises what are typical

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1-3.

<sup>22</sup> CUBA CONST. pmb. (amended 2002).

<sup>23</sup> *Id.* at art. 5.

<sup>24</sup> *See generally id.* at art. 5-7 (stating that the "Cuban socialist State recognizes and encourages the mass and social organizations that have emerged in the historic process of our people's struggles" should incorporate their specific interests into the construction of the socialist society).

<sup>25</sup> MICHALOWSKI, *supra* note 2, at 1.

<sup>26</sup> *Id.*

<sup>27</sup> CUBA CONST. art. 74.

<sup>28</sup> *Id.* at art. 95.

<sup>29</sup> *Id.* at art. 96.

executive governmental functions and, through the various ministries, conducts the day-to-day functions of the government.<sup>30</sup>

In Cuba, governmental power emanates from the people through elected representatives to the National Assembly of People's Power (*Asamblea Nacional del Poder Popular*).<sup>31</sup> Representatives, or deputies, run in 614 single-member districts.<sup>32</sup> Cuban election law provides that candidates run individually and not as representatives of a political party.<sup>33</sup> The National Assembly then elects, from its own members, the Council of State which consists of: a president, a first vice president, five vice presidents, a secretary, and twenty-three additional members.<sup>34</sup> The president of the Council of State serves as both the head of state and head of government.<sup>35</sup> The Council of State exercises wide authority as a combined executive, legislative, and judicial body.<sup>36</sup> Each of the provinces also has a Provincial Assembly of People's Power with jurisdiction over more local affairs.<sup>37</sup>

The Cuban Constitution provides for a functionally independent court system and that the court system is one of the organs of the state.<sup>38</sup> The National Assembly of People's Power elects the judges of the People's Supreme Tribunal (*Tribunal Supremo Popular*), or Supreme Court.<sup>39</sup> Lower courts and judicial institutions are established by law.<sup>40</sup> The judicial system is subordinate to the National Assembly of People's

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<sup>30</sup> *Id.* at art. 98.

<sup>31</sup> CUBA CONST. art. 3, 71, 133.

<sup>32</sup> *Id.* at art. 71, *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/fields/2101.html>.

<sup>33</sup> Ello Delgado Legon, *The Reality of the Single-Party System in Cuba*, HAVANA TIMES (Feb. 25, 2012), <http://www.havanatimes.org/?p=62926>.

<sup>34</sup> CUBA CONST. art. 73-74.

<sup>35</sup> *Id.* at art. 74.

<sup>36</sup> *Id.* at art. 90.

<sup>37</sup> See *La Historia de Cuba* at <http://www.historiadecuba.info/map-of-cuba/cuban-provinces/>; see also <https://www.britannica.com/place/Cuba/Local-government> (illustrating there are now fifteen provinces and one special municipality in Cuba because in 2010, the province of Havana was split into two—Artemisa and Mayabeque).

<sup>38</sup> CUBA CONST. art. 120.

<sup>39</sup> *Id.* at art. 75.

<sup>40</sup> *Id.* at art. 120.

Power and the Council of State.<sup>41</sup> The national assembly, rather than a court, is the ultimate authority on the constitutionality of any law or legal matter.<sup>42</sup>

The Office of the Attorney General is recognized constitutionally as an organ of the state and represents the state.<sup>43</sup> The attorney general and deputy attorney generals are elected by the National Assembly of People's Power.<sup>44</sup> The attorney general is subordinate to the national assembly and the Council of State.<sup>45</sup> "The Attorney General . . . receives direct instructions from the Council of State."<sup>46</sup>

Fidel Castro was the president of Cuba from 1959 until 2006 when health issues caused him to transfer power to his brother, Raul Castro.<sup>47</sup> Raul Castro officially became the president of Cuba in 2008 and served two five-year terms.<sup>48</sup> He stepped down from office in 2018, and Cuba elected its first non-Castro president, Miguel Diaz-Canal, since the revolution in 1959.<sup>49</sup>

### III. THE CUBAN CONSTITUTION

Before the current constitution was adopted, Cuba operated under

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<sup>41</sup> *Id.* at art. 121.

<sup>42</sup> *Id.* at art. 75.

<sup>43</sup> *Id.* at art. 127; *see* Evenson, *supra* note 13, at 66. (providing more information on the role of the Attorney General).

<sup>44</sup> CUBA CONST. art. 75.

<sup>45</sup> *Id.* at art. 128.

<sup>46</sup> *Id.*

<sup>47</sup> Anthony DePalma, *Fidel Castro, Cuban Revolutionary Who Defied U.S., Dies at 90*, THE N.Y. TIMES (Nov. 26, 2016), <https://www.nytimes.com/2016/11/26/world/americas/fidel-castro-dies.html>.

<sup>48</sup> Linda R. Crane, *Cuba Revisited: From Revolution to Evolution*, Seattle Journal for Social Justice, Vol. 12, Issue 3, Article 6 (2014), available at <http://digitalcommons.law.seattleu.edu/sjsj/vol12/iss3/6/>.

<sup>49</sup> Michael Weissenstein and Andrea Rodriguez, *Miguel Diaz-Canal Selected as Next President of Cuba*, FORBES (April 18, 2018, 11:21 PM), <http://www.chicagotribune.com/news/nationworld/ct-cuba-presidential-election-20180418-story.html>.

the constitution adopted in 1940.<sup>50</sup> That constitution incorporated many progressive ideas, such as restrictions on the size of land holdings, land reforms, public education, and the minimum wage.<sup>51</sup> However, many of these ideas were not implemented.<sup>52</sup> Further, former Cuban President Fulgencio Batista suspended parts of the constitution after he seized power in 1952.<sup>53</sup> Against this backdrop, Fidel Castro and others in Cuban society led a revolution which toppled Batista in 1959.<sup>54</sup> A revolutionary government was introduced which ruled extraconstitutionally from 1959 to 1975.<sup>55</sup>

“Pursuant to the concept of socialist legality, . . . [t]he object of law is not only to regulate but rather to transform society.”<sup>56</sup> With this idea in mind, a new constitution came into being.

The new Cuban Constitution was adopted in 1976 by referendum of the people, which institutionalized the revolution.<sup>57</sup> It has been amended three times since then—most recently in 2002.<sup>58</sup>

As one author has stated: “The fit between theory and practice is rarely perfect in any system. In Cuba, the gap has been hard to narrow

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<sup>50</sup> Dimas Castellanos, *Cuba’s Constitution of 1976: An Historic Setback*, TRANSLATING CUBA (Apr. 11, 2016), <https://translatingcuba.com/the-constitution-of-1976-an-historic-setback-dimas-castellano/>.

<sup>51</sup> *1940 Constitution of Cuba*, REVOLVY, [https://www.revolv.com/main/index.php?s=1940+Constitution+of+Cuba&item\\_type=topic](https://www.revolv.com/main/index.php?s=1940+Constitution+of+Cuba&item_type=topic).

<sup>52</sup> *Id.*

<sup>53</sup> Rudo Kemper, *Cuban Memories: the Cuban Constitution of 1940, then and today*, UNIVERSITY OF MIAMI LIBRARIES CUBAN HERITAGE COLLECTION (Oct. 14, 2010), <https://library.miami.edu/chc/2010/10/14/cuban-memories-the-cuban-constitution-of-1940-then-and-today/>.

<sup>54</sup> *Fidel Castro*, A+E NETWORKS (2009), <http://www.history.com/topics/cold-war/fidel-castro>.

<sup>55</sup> Alexander Morato, Comment, *An Examination of Cuban Policy Affecting Domestic Human Capital*, THE FLORIDA STATE UNIVERSITY COLLEGE OF SOCIAL SCIENCES AND PUBLIC POLICY, 4, 35 (2016).

<sup>56</sup> Evenson, *supra* note 13, at 10.

<sup>57</sup> *Id.* at 16.

<sup>58</sup> *Id.* at 18-20.

because the theory itself is new and unproven.”<sup>59</sup> The 1976 Cuban Constitution was an experiment in legalizing socialist ideals against the historical backdrop of Spanish colonialism, U.S. imperialism, and the influence of the Soviet bloc.<sup>60</sup>

In addition to setting forth the structure of the Cuban government as discussed above, the Cuban Constitution contains a number of rights and duties.<sup>61</sup> For example, the constitution guarantees freedom of religion, freedom of speech and the press “in keeping with the objectives of a socialist society;” the right of small farmers to legal ownership of their land and personal property necessary to exploit their land; the right to personal ownership of earnings and savings derived from one’s own work and right to ownership of one’s dwelling; the right to legal ownership of companies created as prescribed by law; and rights of inheritance to real and personal property.<sup>62</sup> The rights to assembly, demonstration, and association are not individual rights but are to be exercised by workers.<sup>63</sup>

Pursuant to the constitution, the state guarantees the opportunity to work, access to medical care, and schooling for children.<sup>64</sup> Education is considered a function of the State which is to be provided free of charge.<sup>65</sup> The constitution also protects the family, motherhood, and matrimony and recognizes the family as the main nucleus of society.<sup>66</sup>

Chapter VI of the constitution concerns equality.<sup>67</sup> It begins with article 41, which states that all citizens have equal rights and are subject to equal duties.<sup>68</sup> Article 42 prohibits discrimination because of race,

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<sup>59</sup> *Id.* at 13-14.

<sup>60</sup> *Id.* at 11-14.

<sup>61</sup> *Id.* at 33.

<sup>62</sup> CUBA CONST. at arts. 8, 19, 21, 23, 24, 53, 55.

<sup>63</sup> *Id.* at art. 54.

<sup>64</sup> CUBA CONST. at arts. 9, 50, 51. Article 50 of the Constitution also provides for free medical care and Article 51 provides the right to education.

<sup>65</sup> *Id.* at art. 39.

<sup>66</sup> *Id.* at art. 35.

<sup>67</sup> *Id.* at ch. VI.

<sup>68</sup> *Id.* at art. 41.

skin color, sex, national origin, religious beliefs, and any other form of discrimination harmful to human dignity.<sup>69</sup> Article 44 guarantees gender equality in the economic, political, cultural, and social fields, as well as in the family.<sup>70</sup> To be sure, women and Cubans of mixed race have gained much greater access to educational and economic opportunities since the revolution, but full equality has not been achieved in Cuba any more than in other places in the world.<sup>71</sup>

Workers' rights are addressed in articles 46-49 of the constitution and include rights to rest, annual paid vacations, and social security, among other rights.<sup>72</sup> Work is also considered a duty of every Cuban citizen, and nonpaid, voluntary work is recognized as playing an important role.<sup>73</sup>

Article 62 of the constitution limits all of these rights and freedoms by stating that none of the freedoms recognized for citizens can be exercised contrary to what is established in the constitution and by law, contrary to the existence and objectives of the socialist state, or contrary to the decision of the Cuban people to build socialism and communism.<sup>74</sup>

#### IV. LAW-MAKING IN CUBA

Laws may be proposed by the National Assembly of People's Power or its commissions, the Council of State, the Council of Ministers, the Cuban Trade Unions, the Supreme Court, the Attorney General, or Cuban citizens.<sup>75</sup> However, the National Assembly is the supreme body of State power which is invested with legislative authority.<sup>76</sup> It has only one chamber, rather than two, like the U.S. Congress and most parliaments. There are 614 deputies in the National Assembly who are

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<sup>69</sup> *Id.* at art. 42.

<sup>70</sup> *Id.* at art. 44.

<sup>71</sup> Evenson, *supra* note 13, at 97.

<sup>72</sup> CUBA CONST. at arts. 46-49.

<sup>73</sup> *Id.* at art. 45.

<sup>74</sup> *Id.* at art. 62.

<sup>75</sup> *Id.* at art. 88.

<sup>76</sup> *Id.* at art. 69-70.

elected for five-year terms.<sup>77</sup>

The powers of the National Assembly are broad and include deciding on constitutional reforms; approving, modifying, or nullifying laws; deciding on the constitutionality of laws; and approving the state budget.<sup>78</sup> The National Assembly is given the power to declare war and approve the general outlines of Cuban foreign policy, but the Council of State is given the power to make treaties and appoint and receive diplomatic missions.<sup>79</sup>

The National Assembly does not meet year-round; instead, it meets only twice a year—in July and December.<sup>80</sup> However, it can hold extra sessions when necessary.<sup>81</sup> When the National Assembly is in recess, the Council of State can issue decree-laws.<sup>82</sup> The Council of State is a permanent organ.<sup>83</sup> Therefore, when the National Assembly meets, it is often approving decisions and policies already adopted by the Council of State.<sup>84</sup> Provincial and municipal assemblies have administrative functions but not legislative functions.<sup>85</sup>

The National Assembly has adopted a number of codes that contain rules on specific topics, such as the Family Code, the Civil Code, the Labor Code, and the Criminal Code.<sup>86</sup> Some of these codes are discussed in more detail in Section VIII below on *Selected Issues in Cuban Law*.<sup>87</sup>

When new laws are proposed, there are lengthy, televised discussions of those new laws to educate the public as well as the

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<sup>77</sup> *Id.* at art. 71-74; Evenson, *supra* note 13, at 25.

<sup>78</sup> CUBA CONST. at art. 75.

<sup>79</sup> *Id.* at arts. 75 and 90.

<sup>80</sup> *Id.* at art. 78.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at art. 90.

<sup>83</sup> *Id.* at art.92.

<sup>84</sup> Evenson, *supra* note 13, at 29-30.

<sup>85</sup> CUBA CONST at arts. 70, 104-06.

<sup>86</sup> Evenson, *supra* note 13, at 28, 170, 244.

<sup>87</sup> See discussion *infra* part VIII.

workers' organizations and the assemblies.<sup>88</sup> For example, after Raul Castro took office, he began a process of significant change to Cuba's economy.<sup>89</sup> At his initiative, the Cuban government published a draft of 291 new regulations that were intended to encourage private entrepreneurship in many sectors of the Cuban economy.<sup>90</sup> Over the course of the next two years, the government sought input from Cuban citizens across the country on the new regulations. As a result of that consultation, 313 new regulations relating to private enterprise were adopted by the Cuban government in 2011.<sup>91</sup>

## V. THE CUBAN COURT SYSTEM

As noted above, the Cuban Constitution sets forth the structure of the court system.<sup>92</sup> There are three levels of courts in Cuba: the municipal courts, the provincial courts, and the national court, or supreme court, which is the highest judicial body in Cuba.<sup>93</sup> These courts have jurisdiction over civil and criminal matters.<sup>94</sup>

### A. Cuban Judges

There are two kinds of judges in Cuba: lay judges and professional judges.<sup>95</sup> Lay judges serve alongside professional judges at all levels of the Cuban legal system.<sup>96</sup> The Cuban legal system does not

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<sup>88</sup> LAURA PATALLO SANCHEZ, ESTABLISHING THE RULE OF LAW IN CUBA 16-17 (2003), [http://pdf.usaid.gov/pdf\\_docs/Pnacs986.pdf](http://pdf.usaid.gov/pdf_docs/Pnacs986.pdf).

<sup>89</sup> CRANE, *supra* note 48, at 883.

<sup>90</sup> *Id.* at 884.

<sup>91</sup> *Id.*

<sup>92</sup> CUBA CONST. art. 120-21.

<sup>93</sup> MNBENCH&BAR, CUBA'S LEGAL COMPOSITE: A BLEND OF THE FAMILIAR AND THE FOREIGN (2012), <http://mnbenchbar.com/2012/01/cubas-legal-composite/>.

<sup>94</sup> MICHALOWSKI, *supra* note 2, at 10.

<sup>95</sup> JAMES H. MANAHAN, IMPROVEMENTS IN THE CUBAN LEGAL SYSTEM (2000), [http://www.gc.cuny.edu/CUNY\\_GC/media/CUNY-Graduate-Center/PDF/Centers/Bildner%20Center%20for%20Western%20Hemisphere%20Studies/Publications/Manahan18.pdf](http://www.gc.cuny.edu/CUNY_GC/media/CUNY-Graduate-Center/PDF/Centers/Bildner%20Center%20for%20Western%20Hemisphere%20Studies/Publications/Manahan18.pdf).

<sup>96</sup> EVENSON, *supra* note 13, at 60.

use juries.<sup>97</sup> Lay judges participate in the discussion of the cases with the professional judges and have the same vote as the professional judges.<sup>98</sup> Judges may ask questions of the defendant and the attorneys during trial.<sup>99</sup> They also participate in sentencing. Lay judges are nominated by workers' councils or organizations.<sup>100</sup> They are elected by the appropriate assembly for a five-year term and serve a maximum of thirty days per year.<sup>101</sup> Thus, being a lay judge is a part-time job, and lay judges retain their usual jobs.<sup>102</sup>

After being selected, a lay judge will receive a certain amount of training in procedural rules and legal terminology from the Cuban Ministry of Justice.<sup>103</sup> However, the training is purposefully limited because the object of having lay judges participate is that they are to bring a sense of social and communal justice to the process and not expert legal training.<sup>104</sup> Having community members participate as lay judges also helps educate ordinary persons about how the justice system works.<sup>105</sup> Lay judges are paid similarly to jurors in the United States.<sup>106</sup> They can be removed if they misbehave.<sup>107</sup>

Professional judges have law degrees and enter the profession immediately after law school.<sup>108</sup> They are elected for a renewable term of years, but can be removed for cause, including criminal activity.<sup>109</sup> The Ministry of Justice does much of the training of judges.<sup>110</sup>

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<sup>97</sup> MANAHAN, *supra* note 95, at 277.

<sup>98</sup> MANAHAN, *supra* note 95, at 277; CUBA CONST. art. 124.

<sup>99</sup> MANAHAN, *supra* note 95, at 279.

<sup>100</sup> MNBENCH&BAR, *supra* note 93.

<sup>101</sup> EVENSON, *supra* note 13, at 60.

<sup>102</sup> MBENCH&BAR, *supra* note 93.

<sup>103</sup> *Id.*

<sup>104</sup> MANAHAN, *supra* note 95, at 277.

<sup>105</sup> EVENSON, *supra* note 13, at 51.

<sup>106</sup> MNBENCH&BAR, *supra* note 93.

<sup>107</sup> *Id.*

<sup>108</sup> EVENSON, *supra* note 13, 58.

<sup>109</sup> *Id.* at 59, 62.

<sup>110</sup> *Id.* at 57.

All judges are elected by the legislative assembly at the appropriate level.<sup>111</sup> At the municipal court level, the municipal assembly elects municipal judges; at the provincial level, the provincial assembly elects provincial judges.<sup>112</sup> Both the Council of State and the Supreme Court may propose judges for the Supreme Court, but they are elected by the National Assembly.<sup>113</sup>

At both the municipal and provincial court levels, there are usually two lay judges and one professional judge, who is the president of the court.<sup>114</sup> Each judge has one vote, so it is possible for the lay judges to out-vote the professional judge. If that happens, the professional judge can appeal to the provincial court, which can overturn the lower court's decision by the lay judges if it is contrary to law.<sup>115</sup> The Cuban Constitution provides that judges are independent and only owe obedience to the law.<sup>116</sup> However, Cuban courts are subordinate to the National Assembly in a number of ways described above, which may infringe on their independence.<sup>117</sup>

### ***B. Municipal Courts***

A municipal court can impose sentences of up to eight years and fines.<sup>118</sup> Both lay and professional municipal judges may request additional evidence, and they participate in decisions regarding evidence, such as its admissibility and weight.<sup>119</sup> Both the prosecutor and defense present evidence.<sup>120</sup>

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<sup>111</sup> *Id.* at 60.

<sup>112</sup> *Id.*

<sup>113</sup> MBENCH&BAR, *supra* note 93; Yamin Morais, A Guide to Legal Research in Cuba (2015), <http://www.nyulawglobal.org/globalex/Cuba.html>.

<sup>114</sup> EVENSON, *supra* note 13, at 60.

<sup>115</sup> Interview with Dorys Quintana, Secretary of the National Union of Jurists and Professor of Law, University of Havana, in Havana, Cuba (March 10, 2014).

<sup>116</sup> CUBA CONST. art. 122.

<sup>117</sup> CUBA CONST. art. 121.

<sup>118</sup> Interview with Dorys Quintana, *supra* note 115.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

### C. Provincial Courts

The next level up is the provincial court.<sup>121</sup> For many years, there were fourteen provinces, and thus fourteen provincial courts were created.<sup>122</sup> In more complicated or serious cases, such as those involving felonies, the provincial courts may have three professional judges and two lay judges.<sup>123</sup>

### D. Military Tribunals

Cuba also has military tribunals that try infractions by military personnel.<sup>124</sup>

### E. The Supreme Court

The Cuban Supreme Court has a president, a vice president, and forty-one professional judges.<sup>125</sup> It is organized into five chambers: criminal, civil and administrative, labor, military, and state security.<sup>126</sup> At the supreme court, there are usually five judges assigned to a case, but they can have seven in very complicated cases.<sup>127</sup> Professional judges are elected to two-and-one-half-year terms, and lay judges are elected to five-year terms.<sup>128</sup> Lay judges at the supreme court level tend to be more educated and to have served in a lower-level court before being elected to serve at the supreme court level. Judges can retire at age sixty-five for men and sixty for women, but retirement is not mandatory.<sup>129</sup>

All issues are appealable. If it is a case involving capital punishment, which is exceptional (there has been a moratorium since

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> MICHALOWSKI, *supra* note 2, at 8.

<sup>124</sup> *Id.* at 10.

<sup>125</sup> Yamin Morais, A Guide to Legal Research in Cuba (2015), <http://www.nyulawglobal.org/globalex/Cuba.html>.

<sup>126</sup> MICHALOWSKI, *supra* note 2, at 10.

<sup>127</sup> MANAHAN, *supra* note 95, at 277.

<sup>128</sup> MORAIS, *supra* note 125.

<sup>129</sup> Interview with Dorys Quintana, *supra* note 115.

2003),<sup>130</sup> the appeal process is with professional judges.<sup>131</sup> The supreme court can accept or deny the charge of capital punishment.<sup>132</sup> Capital punishment is for serious crimes such as crimes against the state, rape, and child abuse.<sup>133</sup> The Council of State can act on a particular crime and decide capital punishment cases only.<sup>134</sup> They approve or deny capital punishment cases from the courts.<sup>135</sup>

An example of a capital punishment case involved terrorists from Guatemala and El Salvador who had been hired by Cuban-Americans in Miami.<sup>136</sup> The terrorists set off bombs in hotels and killed Italian tourists.<sup>137</sup> They were sentenced to death, but the Council of State changed the sentence to life imprisonment.<sup>138</sup>

The supreme court can advise the National Assembly regarding the constitutionality of laws but cannot issue binding decisions declaring laws unconstitutional.<sup>139</sup> The National Assembly has the final word as to the meaning of the constitution.<sup>140</sup>

## VI. LEGAL EDUCATION IN CUBA

Students in Cuba who are interested in a legal profession must take a national examination and obtain a certain score on that examination to be accepted into the law program.<sup>141</sup> They may attend one of fourteen provincial law schools in Cuba, with the largest being the University of

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<sup>130</sup> DEATH PENALTY DATABASE, CORNELL CENTER ON DEATH PENALTY WORLDWIDE, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=cuba>.

<sup>131</sup> Interview with Dorys Quintana, *supra* note 115.

<sup>132</sup> DEATH PENALTY DATABASE, *supra* note 130.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> ANITA SNOW, U.S. PROBES 1997 CUBA HOTEL BOMBINGS (May 10, 2007, 7:58 PM).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> MNBENCH&BAR, *supra* note 93.

<sup>140</sup> *Id.*

<sup>141</sup> EVENSON, *supra* note 13, at 91.

Havana.<sup>142</sup>

Lawyers in training attend university for five years to obtain a law degree.<sup>143</sup> Many of them attend part-time and work part-time, but they must finish law school within ten years.<sup>144</sup> Law schools in Cuba are integrating studies with career training. If a student finishes within five years, the government will find the graduate a job.<sup>145</sup> If a student takes longer, the government does not have to help with a post-graduation job.<sup>146</sup>

Attending law school is free, but graduates must work for three years after law school in a social service position both to gain experience and pay back the cost of their education.<sup>147</sup> Job offers are based on how well the student performed in law school.<sup>148</sup>

## VII. THE CUBAN LEGAL PROFESSION

Private practice by lawyers in Cuba has not been allowed since the 1970s.<sup>149</sup> Instead, lawyers are organized into collectives called *bufetes colectivos*—non-state organizations similar to a cooperative of lawyers.<sup>150</sup> Bufetes are supervised by the Ministry of Justice.<sup>151</sup> To join a bufete, a law student must obtain a law degree from a university in Cuba or a foreign university that is recognized in Cuba, have good moral character, and not be convicted of certain crimes.<sup>152</sup> Once admitted to a bufete, the lawyer may practice anywhere in the country.<sup>153</sup>

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<sup>142</sup> MNBENCH&BAR, *supra* note 93 (finding students in the special municipality of Juventud Island may also study law there).

<sup>143</sup> MANAHAN, *supra* note 95, at 281.

<sup>144</sup> Interview with Dorys Quintana, *supra* note 115.

<sup>145</sup> *Id.*

<sup>146</sup> Interview with Dorys Quintana, *supra* note 115.

<sup>147</sup> EVENSON, *supra* note 13, at 91-92.

<sup>148</sup> MANAHAN, *supra* note 95, at 281.

<sup>149</sup> MANAHAN, *supra* note 95, at 277; Evenson, *supra* note 13, at 53.

<sup>150</sup> MANAHAN, *supra* note 95, at 277.

<sup>151</sup> EVENSON, *supra* note 13, at 54.

<sup>152</sup> *Id.* at 76.

<sup>153</sup> *Id.*

Lawyers' salaries are paid by the bufetes—not by the state like most other workers—giving lawyers more independence.<sup>154</sup> Lawyers are paid set fees based on their case load.<sup>155</sup> Lawyers can make a good living depending on the number and complexity of cases they handle.<sup>156</sup> Currently, they are paid between 20 and 400 CUC<sup>157</sup> per case depending on the complexity of the matter.<sup>158</sup> They do not have to pay overhead, such as rent, utilities, computer access, and transportation to court, etc., as these costs are covered by the bufete.<sup>159</sup> The lawyers keep sixty percent of the fee; forty percent goes to the bufete.<sup>160</sup> Lawyers also receive a one-year sabbatical to obtain an advanced degree or other professional training, which ensures high-quality lawyers.<sup>161</sup> Defense lawyers have a separate bufete to assist in maintaining more independence from the State.<sup>162</sup> There also are bufetes that specialize in handling international work.<sup>163</sup> As of 2014, they were paid 150 CUC per hour for this type of work.<sup>164</sup>

The fee structure creates an inexpensive way to guarantee access to justice. If a client cannot pay, legal assistance is provided for free.<sup>165</sup> Cubans view the practice of law as serving a social function; it is not supposed to be lucrative, although lawyers are paid better than the average Cuban worker.<sup>166</sup>

About thirty percent of Cuban lawyers are legal advisors to state agencies, ministries, and commercial enterprises.<sup>167</sup> They do not work in

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<sup>154</sup> *Id.* at 75.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* (defining a “CUC” as a convertible unit of currency).

<sup>158</sup> EVENSON, *supra* note 13, at 75.

<sup>159</sup> Interview with Dorys Quintana, *supra* note 115.

<sup>160</sup> *Id.*

<sup>161</sup> EVENSON, *supra* note 13, at 85.

<sup>162</sup> *Id.* at 81.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 75.

<sup>166</sup> EVENSON, *supra* note 13, at 74.

<sup>167</sup> *Id.* at 87.

bufetes, and their salaries are paid by the State.<sup>168</sup>

There are a few important professional associations relating to the law in Cuba.<sup>169</sup> The National Organization of Bufetes Colectivos oversees the bufetes, including the adoption and implementation of a code of ethics.<sup>170</sup> The National Union of Jurists is a national bar association that was established as a nongovernmental organization in 1977 and holds consultative status at the United Nations.<sup>171</sup> The National Union engages in two kinds of work: developing and training lawyers and maintaining relations with universities in Cuba.<sup>172</sup> Lawyers from the National Union of Jurists teach seminars and train lawyers at the masters and doctoral level.<sup>173</sup> There is also a Scientific Society of International Law.<sup>174</sup> They also have separate organizations for different areas of law.<sup>175</sup> Only lawyers with graduate degrees may belong to the Society.<sup>176</sup>

### VIII. SELECTED ISSUES IN CUBAN LAW

The following subsections are short summaries of some key aspects of Cuban law in the areas of family, criminal, and property law.<sup>177</sup> These summaries are not intended to be comprehensive, but references are provided for further research.<sup>178</sup>

#### A. Family Law

Under Spanish colonial rule, family law in Cuba was a system of patriarchal right.<sup>179</sup> Progressive amendments to the Family Code were

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<sup>168</sup> *Id.*

<sup>169</sup> SANCHEZ, *supra* note 88, at 15.

<sup>170</sup> EVENSON, *supra* note 13, at 72.

<sup>171</sup> *Id.* at 93.

<sup>172</sup> *Id.* at 93-94.

<sup>173</sup> *Id.*

<sup>174</sup> Interview with Dorys Quintana, *supra* note 115.

<sup>175</sup> EVENSON, *supra* note 13, at 83.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> Ecured, The Cuban Family Code, <https://www.ecured.cu/index.php/>

included in the 1940 Cuban Constitution and continued with the revolution.<sup>180</sup> The current Cuban Family Code dates from 1975.<sup>181</sup> It covers marriage, divorce, division of marital property, child custody and maintenance, and related matters.<sup>182</sup> The main objectives of this code are to:

Contribute to the strengthening of the family and the bonds of reciprocal help with respect to its members;

“Contribute to the strengthening of legally formalized or judicially recognized marriage,” based on the “absolute equality of rights of men and women;”

“Contribute to the most effective fulfillment by parents of their obligations regarding the protection, moral formation, and education of their children, so that they may fully develop in all respects and as worthy citizens of a socialist society;

Contribute to the full realization of the principle of the equality of all children.”<sup>183</sup>

The Family Code is quite progressive in its emphasis on the equality of men and women in marriage and in the duty to share in household chores and childrearing.<sup>184</sup> As a general matter, Cubans try to resolve family disputes through informal mediation.<sup>185</sup> If that does not work, the couple can obtain a divorce through the court system.<sup>186</sup> Divorces are relatively easy and quick to obtain, and there is no requirement to show cause.<sup>187</sup> In the event of divorce, custody of the

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C%C3%B3digo \_de\_Familia.

<sup>180</sup> *Id.*

<sup>181</sup> Evenson, *supra* note 13, at 137.

<sup>182</sup> Ecured, *supra* note 179.

<sup>183</sup> *Id.*

<sup>184</sup> Evenson, *supra* note 13, at 145.

<sup>185</sup> Lecture by representatives of the Cuban Women’s Federation, Viñales, Cuba, June 7, 2016.

<sup>186</sup> *Id.*

<sup>187</sup> Evenson, *supra* note 13, at 148-49.

children can be arranged by agreement of the parties or by court order in the absence of agreement.<sup>188</sup> In the latter case, mothers tend to be favored in child custody matters as long as the mother is a fit mother.<sup>189</sup> However, courts will consider what is most beneficial to the child.<sup>190</sup> The noncustodial parent will have rights of visitation.<sup>191</sup> Regardless of which parent has custody, both parents retain a duty to educate and care for their children and provide financial support.<sup>192</sup> Marital property is held jointly and divided evenly upon divorce.<sup>193</sup> Alimony is limited and may be awarded to a party who does not have a job or means of support but generally only lasts six months to one year.<sup>194</sup>

### **B. Criminal Law**

The revolution left Cuban criminal law largely unchanged.<sup>195</sup> Thus, it remains an essentially civil law system derived from its prior French and Spanish colonial powers but influenced by its contacts with the American system.<sup>196</sup> However, one emphasis of post-revolution criminal codes was the destruction of class privilege that was rampant in the pre-1959 legal system.<sup>197</sup> Uncharacteristic of Marxist-Leninist states, Anglo-American legal elements such as habeas corpus and separation between the courts and prosecutors remain in post-revolution Cuba.<sup>198</sup>

During the late 1980s, a “rectification” of earlier errors in the legal system took place.<sup>199</sup> Some aspects of this change were the decriminalization of many political offenses, reduced penalties for crimes overall, and the introduction of a broader range of alternatives to

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<sup>188</sup> *Id.* at 151.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Lecture by representatives of the Cuban Women’s Federation, *supra* note 185.

<sup>192</sup> *Id.*; see also Evenson, *supra* note 13, at 148-49.

<sup>193</sup> Evenson, *supra* note 13, at 114, 152.

<sup>194</sup> *Id.* at 150-51.

<sup>195</sup> Evenson, *supra* note 13, at 3.

<sup>196</sup> Ecured, *supra* note 179; see also Evenson, *supra* note 13, at 189.

<sup>197</sup> Evenson, *supra* note 13, at 167.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 13.

incarceration in the penal system.<sup>200</sup> This more modern approach uses incarceration as a last resort and encourages alternative sanctions.<sup>201</sup> Additional changes were made in the 1990s to address increased criminal activity that resulted from the severe economic crisis of the early 1990s known as the Special Period.<sup>202</sup> However, in 2000, the Governing Council of the Cuban Supreme Court issued a statement of policy that less severe sentences should be applied when reasonable to do so.<sup>203</sup> Accordingly, judges should look for elements that allow the imposition of the lowest sentence provided by statute.<sup>204</sup>

With respect to substantive criminal law, an act is considered criminal in Cuba if it is prohibited by law and is socially dangerous or harmful.<sup>205</sup> Crimes are generally divided into felonies—which carry a potential sentence of one year or more—and misdemeanor offenses.<sup>206</sup>

Cuba adopted two criminal laws in the 1990s directly in response to U.S. government laws and actions, specifically the Torricelli Law of 1992 and the Helms-Burton Act of 1996.<sup>207</sup> Cuban Laws Nos. 80 and 88 are intended to protect national security and punish those who support, facilitate, or collaborate with the objectives of the U.S. embargo, such as intentionally supplying information to U.S. agents to facilitate the application of Helms-Burton.<sup>208</sup>

With respect to criminal procedure, the Cuban constitution provides that accused have the right to a defense and to be tried and sentenced in accordance with the law.<sup>209</sup> In criminal cases, there is a presumption of innocence, bail is available, and the State has the burden of proof. Penal laws may only be applied retroactively if they benefit the

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<sup>200</sup> Michalowski, *supra* note 2, at 3.

<sup>201</sup> Manahan, *supra* note 95, at 277; *see also* Evenson, *supra* note 13, at 168.

<sup>202</sup> Evenson, *supra* note 13, at 166.

<sup>203</sup> *Id.* at 175.

<sup>204</sup> *Id.*

<sup>205</sup> Michalowski, *supra* note 2, at 3.

<sup>206</sup> *Id.*

<sup>207</sup> Evenson, *supra* note 13, at 177.

<sup>208</sup> *Id.* at 178.

<sup>209</sup> CUBAN CONST. art. 59; *see also* Evenson, *supra* note 13, at 189.

defendant.<sup>210</sup>

There is no requirement for Miranda-type warnings on arrest and plea bargaining is not permitted.<sup>211</sup> Police can question a suspect for up to seven days before the accused must be brought before a court or see a lawyer.<sup>212</sup> The defendant can choose to be the first witness at trial.<sup>213</sup> Judges actively question witnesses, and lawyers do not routinely engage in cross-examination.<sup>214</sup> If the defendant chooses not to testify, the court may draw a negative inference from his or her silence, which may have implications for the presumption of innocence.<sup>215</sup>

### C. Real Property Law

Contrary to popular belief, private ownership of property continued in Cuba following the revolution.<sup>216</sup> Ownership rights to private property, including inheritance rights, are protected by the Cuban constitution in articles 19-24.<sup>217</sup> However, the revolution was fundamentally about changing property ownership and usage.<sup>218</sup>

Shortly after the Cuban Revolution, the government targeted agricultural land—with the exception of small farms—for expropriation and redistribution.<sup>219</sup> Likewise, major industries and oil refineries were nationalized, thus placing the means of production under State control.<sup>220</sup> With respect to residential properties, landlords were prohibited from evicting their tenants, rents were lowered, and the commercialization of

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<sup>210</sup> CUBAN CONST. art. 61; *see also* Evenson, *supra* note 13, at 189.

<sup>211</sup> Michalowski, *supra* note 2 at 9.

<sup>212</sup> Evenson, *supra* note 13 at 191-92.

<sup>213</sup> *Id.* at 192.

<sup>214</sup> Manahan, *supra* note 95 at 279.

<sup>215</sup> *Id.*

<sup>216</sup> Kevin J. Fandl, *Foreign Investment in Cuban Real Property: The Case for American Investors*, 45 REAL ESTATE L. J. Fall 2016, at 166, 170-71.

<sup>217</sup> CUBA CONST. arts. 19-24.

<sup>218</sup> Fandl, *supra* note 216, at 166, 171.

<sup>219</sup> Evenson, *supra* note 13, at 205-06.

<sup>220</sup> *Id.* at 206.

housing was prohibited.<sup>221</sup> Cubans maintain ownership of their private homes, however, as long as they remained in Cuba.<sup>222</sup> If they emigrate, the home is considered abandoned, confiscated by the government, and sold or rented to another family or converted to social or governmental uses.<sup>223</sup> The theory behind these changes is that private property should be used in ways that serve social goals rather than for private gain.<sup>224</sup>

Although Cubans have maintained ownership of their homes since the revolution, prior to 2011 they were not able to freely buy and sell their private homes.<sup>225</sup> Until then, Cubans could only swap their homes for an existing home of equal value.<sup>226</sup> If the trade were not equal, sometimes a buyer or seller would add cash or another item of value, such as a car, to make it work out more evenly, although this was not technically legal.<sup>227</sup> Some home sales were made on the black market, which meant no legal protections if something went wrong.<sup>228</sup> In 2011, President Raul Castro announced a new policy pursuant to which Cubans may buy and sell private homes.<sup>229</sup> This policy change is limited to Cuban citizens and lawful residents, so foreigners still may not own private homes in Cuba.<sup>230</sup> Pursuant to this new policy, Cuban citizens and residents may own up to two homes—one principal residence and one vacation home.<sup>231</sup> Parties set their own prices without State involvement.<sup>232</sup> Housing disputes are resolved through administrative procedures.<sup>233</sup>

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<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 208.

<sup>224</sup> *Id.* at 206.

<sup>225</sup> Fandl, *supra* note 216, at 166, 172.

<sup>226</sup> *Id.* at 171-172; *see also* David Luhnnow, *Cuba Legalizes Sale of Private Property*, THE WALL STREET JOURNAL, Nov. 11, 2011.

<sup>227</sup> Fandl, *supra* note 216, at 166, 172.

<sup>228</sup> *Id.*; *see also* Luhnnow, *Cuba Legalizes Sale of Private Property*, *supra* note 226.

<sup>229</sup> Fandl, *supra* note 216, at 166, 172.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 172-73.

<sup>233</sup> Evenson, *supra* note 13, at 215.

## **IX. CONCLUSION**

The Cuban legal system is a unique blend of remnants of European colonialism, American individualism, Soviet socialist influence, and Cuba's own innovations. It is also a work in progress. Cuban jurists, politicians, and society regularly examine the legal system and suggest changes and improvements. With the advent of a new president and other leaders who were not necessarily part of the Cuban Revolution, it is likely more changes are in store. Thus, Cuba will remain a fascinating place of study for the foreseeable future.