An Introduction to Cuban Socialist Law

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The Historical Ideological Identity Dilemma

An almost constant feature among historical accounts tracing the origins of the Cuban revolution has been the way in which scholars have been intrigued by the ideological and political identity of its roots and founding years. It appears, as a matter of historical record, that within the first three years, the revolution was already recognized as being socialist (May 1961), and, moreover, that Fidel Castro had acknowledged his commitment to a Marxist-Leninist ideology (December 1961).

Twenty-one years after the revolution came to power, however, the question, whether the social changes brought about from the outset were part of a long-range scheme of socialist transformation or, more accurately, just a convenient foundation which proved to be rather helpful in ensuing stages of socialist development, is academic rather than practical. Hence, regardless of the actual motivations behind the revolutionary leaders' early actions, the definite effect has been that, stemming from those political, social, economic, and legal changes, a socialist polity has emerged— notwithstanding the impact that such international events as hostile actions (i.e. the United States' Cuba policy) and friendly support (i.e. the Soviet Union's and other socialist countries' Cuba policy) have had upon domestic political developments. Briefly stated, the hectic social changes of the 1960s made possible the current stage, initiated in the early 1970s, which is generally known as the institutionalization of the revolution.

Generally speaking, a trend similar to the one discussed above is discernible regarding legal development under the regime, even though the record is somewhat more confusing in terms of the sequence and nature of the changes experienced in Cuban jurisprudence. In this regard, there are central questions which are relevant to commonly held concerns among legal historians and comparative law scholars, particularly those specialized in the growing field of socialist law. For example, was the juridical foundation of Cuban socialist law established at the same time that the revolution underwent a politico-ideological mutation towards Marxism-Leninism? How was the transition from civil law to a socialist legal family accomplished? Was the socialist legal system meant to mirror a fast changing society (the legal system being a by-product of social
change), or was it meant to become an originator and accelerator of social change on its own capacity (the legal system functioning as an agent of social change)? Furthermore, what is the most lasting contribution made by the Cuban experience of socialist legal development to the more general body of socialist jurisprudence?

Three Stages of Legal Development

In terms of its socialist juridical development, the 21 years of the Cuban revolutionary process could be subdivided into three major periods: first, from 1959 to 1963; second, from 1964 to 1969; and third, from 1970 to the present. The first period represents a founding stage of profound social change which was underscored by a series of revolutionary laws aiming at political and economic goals, such as the redistribution of wealth, agrarian reform, nationalization of private enterprises (including foreign owned land, businesses, and banks), and the transformation (state control) of the educational system. Notwithstanding their social significance, these laws were basically populistic in nature; although profoundly revolutionary for Cuban standards, these legal and social changes were not by themselves sufficient to build and deliver a socialist polity. Nevertheless, as indicated earlier, they were able to provide legal and socio-economic ingredients which were needed in ulterior stages of socialist development.

During 1964 to 1969, parallel to the ongoing process of social transformation, some important judicial initiatives were undertaken. First of all, Cuban jurists provided some of the intellectual groundwork needed to conceptualize the philosophical foundation of a socialist legal system. At a more concrete level, the first Popular Courts started to function, and had a significant impact upon the population, creating an awareness of the new meaning of revolutionary (socialist) justice (this experience would set the framework for the reorganization and institutionalization of the judicial system). Also, collective legal offices (bufetes colectivos) were organized with the purpose of providing legal counselling to needy population groups. Later, collective legal offices would become a permanent feature of the legal profession, with lawyers' fees officially set by the government.

The third stage, 1970 to the present, is a period of major judicial and political reorganization of the institutionalization of the judicial and political system. The compounded effect of more than a decade of intensive social change and revolutionary legislation demanded some ordering; thus, finally, more stable and permanent institutions were erected. Also, this stage of institution-building was based on socialist modalities. The 1976 socialist Constitution, and the 1973 and 1977 reorganization of the judicial system (see Appendix A below), provided a proper structure for developing and institutionalizing the socialist legal system.