

FJM 46: REPORT FROM A CUBAN PRISON XVI
Socialist Legality

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For twelve years-- since the Revolutionary Government took power--Cubans have been without a codified set of laws, or a constitution. Every law and government decree has been made ad hoc, as the time, circumstances and stage of the Revolutionary process required. Given the way the Revolution came to power and the conditions under which it evolved, this was understandable.

Since April 1969, however, when a Commission of Juridical Studies was formed, the Revolution has announced the "unification" of the administration of justice," the "codification" of Revolutionary law and the development of a new juridical system that complies with the principles of socialist legality.

Announcing the completion of the study on June 6, 1971, Fidel Castro said that the development of a new judicial system represented a further institutionalization of socialism in Cuba, a process that he and his coterie of ministers recognizes is necessary if the Revolution is to survive his death.

"We Revolutionaries are faced with the double role of being destroyers of laws in one phase of the Revolution and creators and defenders of the laws in another phase of the Revolution. This is very much in keeping with another law: the dialectics of history. It is thus our lot to live in these two dialectical phases: to destroy first and to create later. We have inherited this--from the first phase we got a certain spirit of illegality, of scorn for the law, and now the same scorn for the law is being applied to the Revolution's own laws. This reveals the fact that the new society needs an intelligent and scientific order. The role of legal experts as creators of laws, as advisors in legal matters, as appliers of the laws,

emerges clearly in this connection, and this also reveals the need for all the people to have an extensive knowledge of the laws. In the past, practically nobody was interested in the law--and then only in cases in which something affected a person very closely. But this is not the case now--we are all interested in the laws and the laws concern all of us."

The study, directed by Companero Blas Roca (member of the Central Committee; once leader of the Pre-Revolutionary Communist party, the P.S.P; and now one of seven full members of the Secretariat of the Communist Party of Cuba), was finally published in November, 1971, in the form of 131 Draft Proposals. Called "Basic Recommendations" for discussion, these proposals were distributed to lawyers, judges, legal experts and--as a means of mobilizing public opinion--to the masses.

Manuel Dominguez, a 60 year old judge from the People's Court, explained the essential provisions of the document to me over ice cream at the Copellia. Sitting on the edge of a flagstone patio at a table near the harbor, the breezes were fresh, untouched by land, smelling of the sea.

"As I understand it," he said, "the new judicial system will unify all four jurisdictions,¹ (the four Tribunals) under one authority, the People's Supreme Court. This Court, which will be responsible only to the Council of Ministers, will be the highest seat of judicial power. Its governing council is composed of the President of the Supreme Court plus the heads of each of the four branch Courts and the Attorney General of the Republic."

¹The four branches are the Criminal; the Civil and Administrative; the Military; and Revolutionary. This last, the Revolutionary Tribunal, is the one that presently handles crimes against State Security.

"Regarding the procedure for selecting judges, except for the President of the Supreme Court they will be elected to their positions. This, incidentally, is a provision that Fidel insisted on having because he liked the way elected judges in the Popular Tribunals have worked out. Not only that, but there is another aspect of the Popular Tribunals that has been incorporated into the new judicial system. Laymen or "non-technicos" (non-professional lawyers) will be serving as judges from the base all the way up to the Supreme Court level. On the Supreme Court, for example, three of the seven judges will be non-technicos. The same ratio will apply to the district courts as well. This is to guarantee the active participation of the people at every level of the judicial system, to make them feel as though the courts were their own. If justice is to be imparted in the interests of the people, then they must be responsible for enforcing the laws as well."

The role also changed when the new system went into full operation in March of 1973. Before the Revolution, lawyers were part of the elite, representing one of the three most prestigious professions (after business and medicine). Three quarters of the male students at the University of Havana were enrolled to study for one of these three high paying careers, a fact which left few interested in pursuing careers in technical or agricultural fields. Denio Camacho, Dean of the University's Law School explains:

"To work with your hands, to be a labourer producing machines or food was degrading as well as impoverishing. The status and best paying jobs were in business or the professions. This is no longer true. We are an underdeveloped nation in need of agronomists and engineers, not lawyers and businessmen. So we have closed down the business school (it's

now being used as a library) and reduced the numbers enrolled in Law School from the 750-800 levels we once enrolled to 80-90 this year."

Until the implementation of the new judicial system, the Government allowed lawyers to continue private practice. Now this too has changed. Lawyers must now work through the Legal Counseling Bureaus controlled by the Ministry of Justice while promoting the principals of Revolutionary ideology in their work. They are also "duty-bound to take part in activities of an educational nature aimed at promoting the broadest understanding of the law, the eradication of crime and anti-social behavior in general." (Basic Proposal 123). "Nevertheless a lawyer's duty is still to go all out in the defense of his client," says Dean Camacho; "but his allegiance must remain truth and Revolutionary justice rather than simply winning a case through technicalities."

A codification of laws reflecting the new order is also being prepared. According to the documents, new laws will be proposed that call for the punishment of "crimes against the national economy; against the normal development of sexual relations (rape, homosexuality, molesting); against the family order; and against the healthy development of children and young people." Other proposed laws involve crimes against the interests of the Revolution committed by intellectuals (Raul Castro has spoken of this recently) and a lowering of the age of criminal responsibility from 17 to 16 years of age.

That Cuba is instituting a new judicial system, codifying laws and re-writing its constitution indicates a new phase in the Revolution is being formulated. In the past, it was recognized that the Cuban Revolution was largely the work of one man--Fidel Castro--and that with his removal the whole process would collapse.² After fourteen

²Unconfirmed rumors in Cuba, some from very informed people, say that Castro has contracted cancer and that this is, among other reasons, why "institutionalization" is being pressed. Cancer may also account for his giving up cigar smoking.

years, however, the Government believes that Cubans have been sufficiently politicized so as to play down the cult of Castro and develop more solid foundations for the development of a Communist society. Blas Roca, the president of the Commission of Juridical Studies confirmed this in an interview. In his office, decorated with only one picture--that of Angela Davis--the 65 year old dean of old line Communists agreed that it was necessary for the Revolution to institutionalize itself. He saw the work of the Commission in this context:

"I believe that the work that has been entrusted to the Commission of Juridical Studies will renovate, perfect and bring up to date the institutions and laws of our country. In that sense, we can say that it is part of the larger process of institutionalizing the Revolution--of renovating and perfecting the work that was initiated by the Revolutionary Government with Commandante Fidel Castro at its head. Together with the laws being examined now by the Commission of Juridical Studies, laws that are examined in light of the realities, advances and development made by the Revolution, together with these laws and precepts, there will be a new socialist constitution for Cuba."

Roca also explained why he thought the codification of socialist legality was so important.

"In the first place, I believe it's necessary to bring our laws up to date. We must adjust our reality and the necessities of our society to the struggle against economic underdevelopment and toward the advance of socialism. We cannot leave important questions like these without legal norms that will regulate them. The old laws in many respects are inapplicable and contain contradictions that undercut their validity in the eyes of the people. In the second place, we must start an intense campaign of strict compliance to the new laws, Revolutionary laws, now that our society is free of the exploiters.

In our society we have no need to and should not tolerate disrespect for the laws. If the laws must be changed, we will change them; but to act against the law is out of the question."

The central question--how free are the courts to act independently of political controls--is answered simply. None. The courts cannot operate independently of the Revolutionary Government. They are considered an instrument of Socialist State, established to protect the interests of the Revolution which, in turn, represents the interests of the people. Actually the courts operate under the direction of the Council of Ministers, the Revolution's chief executive having executive, legislative and constitutional powers all in one.

"We reject entirely the notion of the separation of powers. That the judicial, executive and legislative branches should be independent of each other is a bourgeois concept that conceals the real class power existing in capitalist society. In a capitalist society, separation of powers is a myth that we understand all too well. In pre-Revolutionary times, when we were a so-called Democratic Republic, to speak of power, we didn't look toward the Palace of Justice or the Capital Building that housed the Congress. We looked first toward the Presidential Palace, to President Battista and then to Camp Colombia, the Military Garrison on the outskirts of Havana. After that, if we really sought the true source of power, we turned toward the American embassy and the economic sector controlled by Americans: the banks, sugar, and the cattle industry. It's the same in your country now. Real power exists only with capital" Comacho rubbed his thumb and index finger together "Capital is class power translated into political power."

"But", I asked, "don't you operate a class system too? And one that has a hierarchy ending at the top with Fidel?"

"We have established a single power structure, yes; but not hierarchical as you describe. Ours is a class power structure that operates in the interest of the working class, the masses who control power now; not the cattle ranchers, sugar barons or banks. To protect this class power, to ensure the maintenance of the socialist economic structure and its political and social superstructure, we have instituted a socialist system of justice. That is what we mean when we use the term 'socialist legality.' To be more precise, 'socialist justice' protects the rights of and operates in the interests of the people and the state that represents them. Socialist legality also means that the state must exercise, when necessary, its coercive powers to re-educate those found guilty of counter revolutionary activities.

"As regards the independence of the judiciary, it is a matter of perspective. No judiciary is really independent. All systems of justice are bound to enforce the laws as they are. Our Judges, therefore, administer justice in keeping with our laws, the principles of Revolutionary Power. If a judge doesn't uphold the law, he is removed. Our laws are very specific about that.

"Something else you must consider," Comacho continued. "The roots of our judicial system are Roman, not Anglo-Saxon. And the difference is important. Roman law was a codification of how men ought to live, rather than a systemization of communal customs, traditions and precepts of life as it was. Read Cicero, Seneca, and other Roman lawyers, and you'll find that law for them was an attempt to determine how man should live in the ideal. Anglo-Saxon law did not do that. It legislated on the basis of social custom and real experience.

"The point I'd like to make is that Cuban law is derived from Rome via Spain. Therefore, it is easier for us to identify with a system that idealizes justice and legislates in accordance with how men ought to live rather than legislate as men do live. We are building a new society, one which we believe is more just and more humane than the one we destroyed. Our ideal is Communism. That is the kind of society we are trying to construct. Our system of laws is subordinate to the achievement of that goal."

Frank M. Donald



Blas Roca