

## CUBA

In the early years of the Cuban Revolution tribunals were set up in the countryside and later in the large towns too. The judges of these tribunals were chosen by and from the members of neighbourhood councils. This book describes these tribunals from their beginnings around 1962 to their integration within a revised legal system that was adapted to the changed social conditions of the 1970s.

The procedure of the first Base Tribunals had an informal structure. The salient characteristic was the strong and direct involvement of the neighbourhood in this form of administration of justice, which was designed to be uncomplicated and comprehensible. The integration of the tribunals within a new system of Judicial Organisation and the shift towards a greater emphasis on professionalism and efficiency in the 1970s have given the tribunals not only a new name, Municipal Popular Tribunals, but also an essentially changed character.

In this book an attempt is made to offer insight into these recent developments within the Cuban system of basic judicial administration and their antecedents. Their rise and later development are situated within the broader political context of the Cuban revolution. And the far-reaching transformations in Cuba's international orientation, system of economic organisation and politico-cultural tradition since 1959 are examined to see how they are reflected in the new tendencies within the administration of justice at base level.

Cuba has come to occupy a unique position in world history since the 1959 Revolution. Like other Latin American countries, Cuban history before then had been one of colonial and neocolonial exploitation.

When Cuba was discovered by Columbus on the 27th of October 1492, it was inhabited by Indian tribes. The island was a colony of Spain from the occupation in 1511 until 1898. The autochthonous population, the Indians, were virtually wiped out in a short time, according to the historical accounts of writers such as Bartolomé de las Casas. There were only a few survivors to come alive out of the compulsory hard labour as slaves in goldmines and elsewhere.<sup>1</sup>

The import of negro slaves from Africa to Cuba began officially in 1513. In the course of time they were mainly set to work on the sugar plantations. Cuba began to concentrate on sugar export from the end of the eighteenth century, resulting in the construction of a monoculture, sugar production, which is still the determining factor in the Cuban economy. It implied total dependence on the fluctuating sugar prices on the world market. This meant that Cuba became economically dependent on her northern neighbour, the United States.<sup>2</sup> As Cuba's national

hero and liberation fighter. José Martí, expressed it:

A country which buys gives orders; a country which sells takes orders. It is necessary to develop a balanced trade to safeguard our freedom. A country bent on suicide sells only to one buyer, a country which wants to survive sells to several parties.<sup>3</sup>

The year 1898 marked the end of Cuba's domination by Spain as the result of two wars of independence. There was as yet, however, no genuine independence. From 1898 to 1902 Cuba remained, against her will, under North American rule. In this period Cuba was forced to accept the Platt amendment, by which the Cuban Constitution gave the United States the right to intervene in Cuban affairs. This also implied the right of the United States to set up a naval base on the southeast coast of Cuba at Guantánamo.<sup>4</sup> As is described in the following chapters, it was only from 1959 that Cuba managed to get rid of the dominant economic influence of the United States.

To achieve this it was necessary for the United States puppet dictator, General Fulgencio Batista, who came to power by a coup d'état in 1952, to fall. The political group which was capable of this was the movement of the 26th of July led by Fidel Castro Ruiz. January 1st 1959, the day on which Castro and his forces entered Havana after years of guerrilla fighting in the Sierra Maestra mountains, is still celebrated as the birthday of the Cuban Revolution.<sup>5</sup> Famous guerrilleros from the movement of the 26th of July who are dead now, like the legendary Che Guevara and the popular Camillo Cienfuegos, are still treated in Cuba as heroes.

The successful revolution of 1959 made of Cuba a model for many liberation movements, both in Latin America and in other parts of the world. This accounts for Cuba's important position within the complex of contemporary North-South oppositions.

This is one of the reasons why the achievements and failures of the 27 year old Cuban revolution are of undoubted significance for all those countries which are striving to free themselves from a similar situation of underdevelopment and poverty. Cuba's geographical position close to the North American coast and her more or less forced orientation towards the Soviet Union have put this small country at the crossroads of present day oppositions between East and West. This was blatantly obvious in the crisis of October 1962, when the establishment of Soviet missiles on Cuba threatened to lead to a direct confrontation between the two superpowers. The never-ending stream of accusations levelled against Cuba by the United States of exporting her revolution to Central America provides a more recent example.

This book is primarily intended as a contribution to the modern historiography of Cuba. Compared with the quantity of publications which have appeared on Cuba, there has so far been little written about the Cuban system of judicial administration since 1959.<sup>6</sup> The present study of the Cuban Base Tribunals and Municipal Popular Tribunals is intended to help to fill this lacuna. Another aim of the research is to give some insight into the development of law within actual processes of revolutionary change.

The specific institution of base-level judicial administration is described as part of a wider social context. It is not abstracted from the social reality in which it functions at different periods in Cuban history. Similarly, the legal institution of the tribunals cannot be detached from the traditional Cuban legal system whose formation goes back to the period of Spanish colonial history. In the present case

study the post-revolutionary neighbourhood tribunals are described from below, using the observations made by one or more independent observers. The developments perceived are set against a background of more general processes of transformation within the revolution. In the historical description of these more general political developments, the state is viewed as dependent on specific people and groups which exert influence on it or participate in it.<sup>7</sup> Attention is also paid to the shifting international relations of power as an essential part of any attempt at explaining national processes of transformation. This notion has been further developed by, among others, the proponents of *dependencia* theory.<sup>8</sup> Underlying the method followed in this book is the assumption that law cannot be analysed without taking into account the social and economic forces which lie behind it -- a Marxist tenet.<sup>9</sup>

I hope that this historico-analytical approach will offer some insight into the relation between law, society and revolutionary development. The particular selection of the Cuban base level judicial administration can be seen in this light. Of all the legal institutions it is the one closest to the Cuban people themselves. It has played a more important role than any other legal institution in Cuban history since 1959 as far as the fundamental political and social transformations of Cuban society are concerned. More than any other legal institution, it was the experimental base tribunals which were embedded in the Cuban policy of mass mobilisation in the 1960s.

Besides, the Cuban Base Tribunals, as they functioned in Cuba in the 1960s, appealed to the imagination of many jurists as well as lay persons. Law in the hands of the people. Informality. Alternative sentences instead of the customary imprisonment. This study faces both the positive and the negative sides of the experiment, by comparing them with more general, fundamental legal concepts which underlie different legal systems.

A limitation of this study is the lack of a comparison with primary judicial administration in the Soviet Union, the People's Republic of China and other socialist developing countries, such as Mozambique.<sup>10</sup> There was no time to take this on.

For studies like this access to sources is never without its problems. If one wants to go beyond secondary sources or the official reports presented in Cuban newspapers such as *Granma*, access to Cuba is a necessity. However, even when one is able to hold discussions with Cuban jurists and to spend some time in Cuban libraries, lecture halls and court hearings, the fact that one is only exposed to the events for a brief time, and that as an outsider, remains problematical. It is not just the language which in the first instance raises problems, but also the gap created by cultural differences. The interviewees may certainly do their best to give an honest answer to the questions posed, but difficult problems with which they are wrestling are not always openly discussed in the presence of an outsider. There is a risk that they will be explained in terms of the official ideology or in harmony with the most recent declarations of high party officials. This is by no means always the case -- I have experienced too many exceptions --, but it is a factor which has to be taken into account in a study like this one.

A different problem concerns the use of secondary sources. Given Cuba's place at the centre of important contemporary political contradictions, a good deal of the literature on Cuba is marked by a strong political preference or by animosity. In this book I have used the available literature on Cuba from left and right. For data on the more general political developments in Cuba, for example, I have utilised both North American and other Western sources, mainly publications by recognised

experts on Cuba, as well as speeches by Cuban leaders and other post-revolutionary Cuban literature. This is a justifiable procedure since I refer on each occasion to the sources used.

For my account of the Cuban Base Tribunals in the 1960s I have included in my sources the work of foreign researchers who carried out research on this theme in Cuba in this period. I have also used Cuban legislation, brochures and speeches made by politicians and juridical officials from the same period. I was able to consult many of these texts in the library of the Cuban Supreme Court in Havana and in the José Martí National Library. Some old laws were available from Cuban antiquarians. A particularly illustrative value can be attached to the interviews which I conducted with a number of Cubans in 1983 concerning their functions in Cuban primary judicial administration in the 1960s. The 1970s legislation on the new Municipal Popular Tribunals is freely available in Cuba. It is equally easy to gain access to textbooks which have appeared on Cuban criminal justice and other contemporary juridical literature in Cuba.<sup>11</sup> I tried to penetrate further than the formal regulations of the new system of Judicial Organisation and the new criminal procedure legislation by holding discussions with jurists actively involved in legal practice and by attending hearings. These interviews and observations may also be seen to have an illustrative value.

I visited Cuba in 1977, 1980, 1981 and 1983. In spring 1980 it was possible for me, along with some twenty other Dutch jurists, to hold a considerable number of discussions with members of the judicial apparatus, the Public Prosecutor and the Ministry of Justice, with lawyers and with lecturers of the Law Faculty of the University of Havana.<sup>12</sup> In 1981 I spent three months in Havana assisted by a financial grant from the Cuban Ministry of Education for foreign students and researchers. I attended lectures in criminal justice at the University of Havana, attended hearings and held discussions with jurists and other Cubans. I was also enabled to consult literature which is generally inaccessible to foreigners, stored in the dusty archives of the Supreme Court in Havana. In 1983 I visited Cuba for the last time and stayed in Havana again, this time for six weeks.

A weakness in my research is due to the fact that during my visits in 1981 and 1983 I was only able to investigate judicial practice in Havana city. I have thus not been able to do full justice to the emphasis which the Cubans placed in the 1960s on legal development in the countryside. The differences in this period between the practice in a large city like Havana and in the countryside will not show up in my findings.

Despite the variety of source material used for this study, I have tried to let the Cubans speak for themselves about the developments in their land. With a few exceptions, these are Cubans who are living in Cuba at the present moment. In other words, I have tried to match my account to reality as it is experienced and interpreted by the Cubans themselves. My reasons for this procedure are not only pragmatic: much of the information required came from Cuban writers, politicians and jurists who live in Cuba. I have deliberately adopted it because I believe that it is important for gaining an adequate view of the processes of transformation which took place in Cuba. As Berger and Luckmann pointed out in their *The Social Construction of Reality*, the experience of social reality is a construct which is created through a complex process of interaction, institutionalisation and internalisation. Social reality is a social product. Social processes of transformation like those in Cuba are accompanied by new forms of legitimation. To quote Berger and Luckmann:

The history of legitimating theories is always part of the history of the society as a whole.

Social transformations and 'ideas' are caught up in a dialectical relation:

No 'history of ideas' takes place in isolation from the blood and sweat of general history.[...] The relationship between 'ideas' and their sustaining social processes is always a dialectical one.[...] Consequently social change must always be understood as standing in a dialectical relationship to the 'history of ideas'.<sup>13</sup>

It is thus essential to take into account the 'ideas' which went hand in hand with the various transformations, including juridical transformations and the underlying legal theories on which they are based.

At the same time this approach involves a deliberate reserve on my part. Assuming that a given social reality will not be experienced and accepted by everybody in the same way, I have made the choice of letting the Cubans speak and using their interpretations to gain insight into their reality.

Of course, I have myself introduced a normative element into the study by the selection and ordering of the data which I have followed. I have already briefly indicated which theories have influenced my methodology. In addition, at various points in the book I refer to generally valid principles of justice. For instance, in the first three key years of the Cuban revolution I detect a collision of interests between the so-called fundamental social and economic rights and the more conventional fundamental individual freedoms. Similarly, my discussion of the informality of Cuban judicial administration at base level is couched in terms of the general concept of Due Process of Law. These general principles of justice, I fully recognise, are also a social product and form a part of the social reality constructed by men and women in a specific period and in specific circumstances.

Chapter Two presents a brief, introductory account of the first three years of the revolution. These were key years for the post-revolutionary development of Cuba. They involved a political and economic break with the United States and a new orientation towards more remote, socialist trading partners. The domestic policy is characterised by an increasing polarisation as a result of the implementation of social reforms. In these years special 'Revolutionary Tribunals' were set up with wide powers to try the increasing numbers of counter-revolutionaries in Cuba. It was a time when many conservative jurists left the country. In fact, there was a clean sweep of the legal institutions. The scope of this study makes it impossible to go into the detention of political prisoners in Cuba in these and later years. It was in the ensuing period, in the middle of the 1960s, that the experimental Base Tribunals were first introduced.

Chapter Three begins with a short account of the predecessors of the Base Tribunals, the Correctional Judges. This is followed by a description of the first experimental Base Tribunals in the countryside. There is an outline of how 'revolutionary' students from the University of Havana began to work together with the local population from 1962 to develop a new type of basic judicial administration. There is a discussion of why the first Base Tribunals were set up in the isolated countryside rather than in the large cities of Cuba. The extension of this base level judicial administration to the large cities dates from 1966, when this experiment was at its height in the countryside.

In Chapter Four the general political developments of this period are presented.

It was a period of political idealism, marked by independence in both internal and external policy and by mass mobilisation. In foreign policy there was a difference of opinion and of practice between Cuba and the Soviet Union on the question of providing support for armed liberation movements in certain Third World countries, with Cuba supporting and the Soviet Union opposing this type of intervention. In domestic policy the main points were the building up of the nation's economy and the implementation of thorough cultural changes. 'New man' values were propagated: the politically conscious, self-sacrificing citizen who acted in solidarity.

Chapter Five details the attempts at this time to mobilise the Cuban people for this process of transformation. It is hard to overestimate the importance of the participation of the people in mass organisations like the Committees for the Defence of the Revolution (*Comités de Defensa de la Revolución*, CDRs). The revolution received important substantial support from the training and voluntary activities of organisations like the CDRs and their part in the fight against the counter-revolutionaries and the growing crime rate.

In Chapter Six there is a detailed account of the day to day functioning of the Base Tribunals in Havana in the same period. Drawing on the ministerial instructions issued in 1966 for the Base Tribunals, the markedly informal nature of the procedure is highlighted. To conclude the account of the Base Tribunals in the 1960s, the concept of 'informality', which has already been introduced, is analysed both in terms of the notion of 'social harmony' which underlies Marxist-Leninist legal theory and in terms of the legal position of the defendant. This analysis assumes that the concept of informal law can only be understood in terms of the specific historical context in which it finds its application.

The base level judicial administration as it was practised in Cuba in the 1960s went through fundamental changes in the following decade. In Chapter Seven the general political and economic developments underlying these changes are outlined. There is an analysis of the shift from the first phase of mass mobilisation in the 1960s to the second phase of institutionalisation. This second phase was introduced by a reversal in foreign policy in 1968. From 1968 on, the links with the socialist allies in Eastern Europe grew steadily tighter. In domestic policy, there was a radical change in 1970, when the economy was reorganised as the result of a failure in the sugar harvest. The emphasis of the 1960s on mass mobilisation and a morality of productivity gave way to an approach centred on efficiency and technique.

Chapters Eight and Nine describe the thorough and comprehensive reorganisation of the political and juridical system in line with the other changes mentioned. The political organisation of the 1960s was now viewed as provisional, and in the new process of institutionalisation it was replaced by a new system of popular power: *Poder Popular*. 1973 saw the introduction of a new Law on Judicial Organisation and a new Criminal Procedure Law, and in 1979 a new Penal Code was introduced.

The effects of these changes on the judicial administration of first instance of the 1960s are discussed in Chapter Nine. Differences between the daily procedure of the Municipal Tribunals in Havana and that of the Base Tribunals of the 1960s are highlighted on the basis of hearings I attended in Havana.

## Notes to Chapter One

1. Cf. Fernando Portuondo, *Historia de Cuba, 1492-1898*, Editorial Pueblo y Educación, Havana, 1965, pp. 54-102; *Historia de Cuba*, Dirección Política de las FAR (Clasificación Biblioteca Nacional), 3rd ed., 1967; Ramiro Guerra, *Manual de Historia de Cuba (desde su descubrimiento hasta 1868)*, Instituto Cubano del Libro, Havana, 1973, pp. 1-54.
2. Eduardo Galeano, *Open Veins of Latin America*, Monthly Review Press, New York & London, 1974, pp. 82-83.
3. José Martí, cited *ibid.*, p. 83.
4. Hugh Thomas, *Cuba, The Pursuit of Freedom*, Harper & Row, New York, 1971, pp. 449-455.
5. *Idem*, *The Cuban Revolution*, Harper & Row, New York, 1977, pp. 3-5, 247-248.
6. For the relevant non-Cuban literature see : Max Azicri, 'Crime and Law under Socialism: The 1979 Cuban Penal Code', *Review of Socialist Law*, Vol. 6, 1980, Issue 1 (March), pp. 5-31; *id.*, 'An Introduction to Cuban Socialist Law', 'Change and Institutionalization in the Revolutionary Process: The Cuban Legal System in the 1970s', 'The Cuban Family Code: Some Observations on its Innovations and Continuities', *Review of Socialist Law*, Vol. 6, 1980, Issue 2 (June), pp. 153-183; Jesse Berman, 'The Cuban Popular Tribunals', *Columbia Law Review*, Vol. 69, December 1969, No. 8; David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba'. Ph.D. thesis, University of Surrey, 1973; William Riquez-Iribarren, 'Derecho, Justicia y Ley en Cuba', *Actas Procesales*, 1975, Vol. 14, Nrs. 40-42, pp. 17-197; Luis Salas, *Social Control and Deviance in Cuba*, Praeger, New York, 1979.  
In 1980 I wrote an overview article on the Cuban Criminal Procedure Law of 1977: Adèle van der Plas, 'Cuban Criminal Procedure: An Overview', *Review of Socialist Law*, Vol. 6, 1980, Issue 1, March, pp. 31-51.  
See further the following note.
7. Cf. John Griffith, 'Recht en Ontwikkeling', *Recht en Kritiek*, Jrg.9, Nr. 2, June 1983, pp. 175-191. Griffith uses the term 'anthropological' approach to law in contrast to the so-called 'instrumentalist' approach. The latter totally neglects the context within which legal rules are observed.
8. Cf. in this connection the interesting overview article by Francis G. Snijder, 'Law and Development in the light of dependency theory', *Law & Society Review*, Vol. 14, No. 3, Spring 1980, pp. 723-804.

9. For a sample of literature on Marxism and law, see : Maureen Cain & Alan Hunt, **Marx and Engels on Law**, Academic Press, London & New York, 1979; Colin Sumner, **Reading Ideologies, an investigation into the Marxist theory of ideology and law**, Academic Press, London & New York, 1979; Norbert Reich, **Marxistische Rechtslehre, Recht und Staat**, J.C.B.Mohr (Paul Siebeck), Tübingen, 1973; Michel Miaille, **Une Introduction Critique au Droit**, François Maspero, Paris, 1978.
10. Cf., e.g. Barbara Isaacman & Allen Isaacman, 'A Socialist legal system in the making: Mozambique before and after Independence', ed. Richard L. Abel, Vol. 2, **Comparative Studies**, Academic Press, New York, 1982.
11. José A. Grillo Longoria, **Los Delitos en Especie**, Tomo I & II, Editorial Ciencias Sociales, Havana, 1982; Aldo Prieto Morales, **Derecho Procesal Penal**, Tomo I & II, Editorial Orbe, Havana, 1976-77; **Revista Cubana de Derecho**, Organo de la Unión Nacional de Juristas de Cuba, Havana, Cuba; **Revista Jurídica**, La Fiscalía General de la República, Havana, Cuba.
12. For a report of this trip see 'Justitie op Cuba', **KRI**, Maandblad Reklassering, Jrg. 10, Nr. 7, August 1980, pp. 11-14; Han Janse de Jong & Adèle van der Plas, 'Strafrechtspleging en Cuba', **Recht en Kritiek**, 1/1981, pp. 52-98; Willem de Haan, 'Institutionalisering van Volksrechtspraak in Cuba', **Delikt en Delinkwent**, 11, 1981, Afl. 5, pp. 345-363.
13. Peter L. Berger & Thomas Luckmann, **The Social Construction of Social Reality**, Penguin, 1973, pp. 145-146.

**TRANSITION 1959-1962:  
FROM GREEN REVOLUTION TO SOCIALIST REVOLUTION**

**CRIMINAL JUSTICE AS A WEAPON AGAINST COUNTER-REVOLUTIONARIES**

On January 1st the Movement of the 26th of July was victorious over the dictator Batista. The road was clear for carrying out the ideals and programme of the movement. The subsequent profound process of transformation through which Cuban society went was deeply affected by changes in the sphere of international relations. It was accompanied by various internal power conflicts. It left its mark on the existing legal system.

In this chapter the first three years of the revolution are considered, as well as the changes which took place in these years in the politically most sensitive area of criminal justice: the trial of political -- i.e., counter-revolutionary -- crimes.

The existing system of judicial organisation was left temporarily as it was in 1959. The main point in the programme of the opponents of Batista was the restoration of 'bourgeois democracy'<sup>1</sup> with the closely linked demand to give genuine implementation to the Constitution that had been introduced in Cuba in 1940.<sup>2</sup> As yet there was no question of the Movement of the 26th of July's having its own Marxist-Leninist ideology. It was not until spring 1961 that Fidel Castro first made explicit reference to a socialist revolution.<sup>3</sup> Nor had definite ideas been developed on the fundamental restructuring of the legal system. The profound transformation of Cuban society after 1959 was not primarily situated in the area of the administration of justice. There were other priorities in the 1960s. The main one was guaranteeing the safety of the revolution: developing the economy, organising defence against foreign aggression, and creating a politically conscious population. It was this last point in particular, I believe, which led to the experiments with tribunals at a neighbourhood level in the 1960s.

Temporarily leaving a mass of legal institutions intact after 1959 did not mean that the administration of justice remained unaltered. First of all there were the 'revolutionary' tribunals, which saw their area of jurisdiction extended to the whole territory of Cuba with the military success of the rebel forces. In early 1959 these tribunals tried only war criminals and others who had been in the service of the Batista regime.<sup>4</sup> In the autumn of 1959, however, they were also empowered to try counter-revolutionary crimes. This category was later extended via the traditional offences involving the security of the state to include certain malpractices and economic offences which had previously not had any special status.<sup>5</sup> Arising from the practices of guerrilla warfare, the revolutionary tribunals formed a sort of 'special' judicial administration beside the 'regular' one. As long as the threat of counter-revolutionary violence and aggression continued to grow, their existence was assured.

There were also changes within the 'regular' administration of justice. The rapidly changing political circumstances immediately after 1959 were reflected in conflicts within the legal profession. Cuban lawyers spoke of two tendencies: the liberal lawyers, and the lawyers who continued to support the revolution when it entered a more radical phase. The first group, the liberal lawyers, was initially favourably disposed towards the revolution in the fight for bourgeois democracy and the restoration of the 1940 Constitution. When the political events began to take a clearly socialist and Marxist-Leninist course, however, they found this development as unacceptable as the increasing hold which the government was gaining on the judicial administration.<sup>6</sup>

The first three years of the revolution were a climax in this respect. They were years of rapid and profound political change. In May 1959 Fidel Castro was still denying that the Cuban revolution was a communist one. 'The revolution was a democratic one,' he said, 'which gave the people not only food but freedom too'.<sup>7</sup> It was in April 1961 -- two years later --, that he called the Cuban revolution for the first time in public a socialist one.

A month earlier he had characterised the earlier aspirations of the Movement of the 26th of July as *petit bourgeois* in an interview with the Italian paper, *L'Unità*. His comments on the Cuban Communist Party in this interview were as follows:

It is the only party that has always clearly proclaimed the necessity of a radical change in the structure of social relationships. It is also true that at first the Communists distrusted me and us rebels. It was a justified distrust, an absolutely correct position... because we of the Sierra... were still full of *petit bourgeois* prejudices and defects, despite Marxist reading... Then we came together, we understood each other and began to collaborate.<sup>8</sup>

The difference between these statements of Castro stems from the complicated process of radicalisation which the Cuban revolution has undergone through the years. In fact, an acceleration in this process could be dated to the first Agrarian Reform Law of May 17th 1959. As we shall see, this law, which had as one of its consequences the nationalisation of foreign concerns, marked the beginning of the eventual break with the United States of America. On the domestic front, this law and other measures led to a political power struggle which finally resulted in a defeat for the so-called liberals. In the spring of 1959 political power in Cuba was in the hands of three groups: the rebel army under Castro, the communists and the liberals. By the spring of 1961 the liberals had left or had disappeared from their positions of importance. The new government consisted of an alliance between members of the Movement of the 26th of July and the communists.<sup>9</sup> Resistance to this process on the part of members of the Movement of the 26th of July and others was repressed with an increasingly harder hand.<sup>10</sup> The political power struggle at work behind this process of change was also clearly visible in the relations between the government and the judiciary.<sup>11</sup> Furthermore, it led to all kinds of conflicts within the legal profession itself.

What exactly took place in this period in the sphere of the administration of justice? What was the relation between these changes and other significant events of these years? What was the reaction of the legal profession to these transformations?

## THE SPECIAL ADMINISTRATION OF JUSTICE FOR WAR CRIMINALS: THE TRIAL OF THE PILOTS OF BATISTA

Immediately after the victory of the revolution on January 1st 1959 the new government kept its promise and reintroduced the 1940 Constitution. However, in the same month this Constitution was amended in a number of important ways. A major problem in the first months was that of the trial of all those who had carried out crimes against the people while in the service of the dictator, Batista. The offences involved here were tried by a special Revolutionary Tribunal according to regulations issued by the rebel army in 1958.<sup>12</sup>

This trial was conducted in principle by members of the armed forces.<sup>13</sup> No legal expertise was required of them.<sup>14</sup> The procedure was largely based on a Criminal Procedure Law, revised to match the war-time conditions, which had been promulgated in 1896 by the resistance during the Cuban war of independence against Spain.<sup>15</sup>

The other main constitutional amendments which were passed by the new Council of Ministers in January 1959 were also intended to facilitate the trial of the followers of Batista. For example, in the middle of January the constitutional ban on applying penal legislation retrospectively was lifted in the case of offences which had been committed in the service of the defeated dictator. At the same time, the penalty of confiscation of all one's goods was declared applicable for crimes committed during the Batista dictatorship which were against the national economy and the general interest. The ban on the death penalty was lifted for the exceptional cases of members of Batista's army or their allies.<sup>16</sup> In early February a number of important procedural and constitutional safeguards, including the right of *habeas corpus*, were denied to the same category of persons.<sup>17</sup> The Fundamental Law (*Ley Fundamental*), which replaced the Constitution on February 7th 1959, included these exceptions or continued them on a temporary basis via new amendments.<sup>18</sup> These constitutional amendments were later justified by the government, when it called a temporary halt to the revolutionary tribunals on July 9th 1959, in the following terms:

With the success of the Revolution it was necessary to try the most serious offenders of the Tyranny, in accordance with the penal regulations laid down by the High Command of the Rebel Army, to ensure the course of justice and to prevent the mourners of the innumerable victims of the official terror of the overthrown regime from taking the law into their own hands.... It is certain... that the judicial administration was in an obviously disorganised state at that time, which was the reason why the Government organised the Revolutionary tribunals...<sup>19</sup>

The temporary powers which the government assumed in order to dismiss judges and other public officers probably had the same motivation: the reorganisation of the judiciary and the elimination of the pro-Batista elements from its ranks.<sup>20</sup> In the eyes of the new government, the judiciary was one of the few old state institutions to survive the victory of the revolution, despite the fact that a large number of its members had compromised themselves in the pre-revolutionary period by aligning themselves with the interests of the overthrown tyrant.<sup>21</sup>

Although the trial of supporters of the preceding regime caused *few* political problems in Cuba, the way in which some of these trials was carried out did cause some consternation.<sup>22</sup> A striking example is the trial of ex-pilots of Batista held in

February and March 1959.<sup>23</sup> On February 13th forty-five members of Batista's air force stood on trial before a revolutionary tribunal in Santiago de Cuba. They were accused of genocide, murder and a number of other crimes associated with the carrying out of six hundred air raids on inhabited areas of East Cuba in late 1958. These air raids had cost the lives of eight civilians; there were sixteen wounded and considerable material damage had been done. The prosecutor called for the death sentence for forty of them, and a sentence of ten years for five technicians. The president of the tribunal was an army major, while two other judges were officers in the army. The seven members of the defence were led by an army captain.

The trial took up a relatively great amount of time in view of the large number of statements by witnesses. The verdict, reached on March 2nd 1959, was a dismissal of the charges for all concerned. The tribunal had arrived at this decision on a number of grounds. First of all, it was claimed, Castro's forces were in the villages which came under attack. The raids had thus been directed not against civilian but against military targets. Secondly, there was no evidence for any attempt to destroy racial, religious or national groups, i.e. there was no proof of genocide. In addition the prosecutor had been unable to prove murder with premeditation. Last but not least, the tribunal found the individual guilt of the various accused not proven. It proved impossible to ascertain which individuals were responsible for the deaths and damage for which they collectively stood on trial.

The reaction of the new revolutionary government to this verdict was one of censure and indignation.<sup>24</sup> The very next day, March 3rd 1959, Fidel Castro made the following statement:

The revolutionary tribunal has made a big mistake by acquitting these criminal pilots. Such an action renders Batista a good service and it is a way of encouraging other pilots to work for Trujillo and other enemies of the Revolution. These pilots would then be in a position to bombard anew the civil population of Cuba.

It would be an act of extreme ingenuousness for a people and for a revolution to set free precisely those who were the most cowardly assassins in the service of the dictatorship. The revolutionary tribunals do not need any proofs other than the cities and towns that were devastated and the dozens of corpses of children and women that were produced by bullets and bombs. Or are we going to give a new opportunity to those miserable creatures to resume flying against Cuba and let them write once more their sinister history of mourning and tragedy from some base in the Dominican Republic or any other country where friends of tyranny have been given asylum? The Revolution was not made for that, and those of us who are leading it cannot permit such an error to be made.

This is a matter pertaining to the security of the citizenry and for this reason we are obliged to intervene in this problem, since we cannot remain silent after such a venture.

The people of Santiago de Cuba should not become restless, because the sentence will be appealed, and a just tribunal shall try the case anew.<sup>25</sup>

Castro announced a retrial. This was a decision which met with gigantic protests from abroad, especially from the United States of America, and which was also criticised from within Cuba itself, though the latter criticism was mild by comparison.<sup>26</sup> Cuban bar associations, for example, expressed their concern that in this way

the government was failing to respect the principle of *ne bis in idem*. Nevertheless, on March 7th the case came up for review. This time the tribunal consisted of five new members, all of whom were majors in the army. The prosecutor and the head of the defence were the same as in the first trial.<sup>27</sup> In this hearing forty-three out of the forty-five accused were found guilty of the charges. Twenty of them received prison sentences of thirty years, nine received twenty years and two were sentenced to two years. There was no doubt that these sentences met with the approval of the new government. On March 23rd Castro publicly expressed his approval:

We shall be respectful of the law, but of the revolutionary law: respectful of rights, but of revolutionary rights -- not the old rights, but the new rights we are going to make. For the old law, no respect; for the new law, respect. Who has the right to modify the constitution? The majority. Who has the majority? The revolution.<sup>28</sup>

While the first tribunal had presented an extensive juridical motivation against an ill-considered condemnation on the basis of the charges, the second tribunal had more or less unconditionally capitulated. Only the plea for capital punishment was watered down in the final verdict.<sup>29</sup>

The criticism from Cuba itself was thus relatively mild, compared with that from the United States of America, for instance.<sup>30</sup> One reason for this lies in the difference between the Latin American legal cultural tradition and that of the Anglo-American world. In the former, 'justice' tends to be situated in terms of a moral norm, the definition of what is right and legitimate in terms of content, rather than in terms of guarantees of legal procedure. Justice is more concerned with the content of doing right than with formal procedure.<sup>31</sup>

There is another factor, of a more political nature, that is relevant in this context. The intervention of Castro seems to have increased his popularity among the Cuban population rather than to have diminished it.<sup>32</sup> The trial concerned defendants who were seen as supporters of a corrupt and tyrannical regime that had now been overthrown. The cavalier fashion in which certain constitutional and juridical restrictions were swept aside in these proceedings had little influence upon public opinion. The Cuban people's involvement in the pre-revolutionary institutions and official legislation had been limited, and they had not had much benefit from them anyway.<sup>33</sup>

Besides, despite all the guarantees of human rights and legal procedures provided by the Constitution, the period before 1959 was marked by an appalling lack of justice. First of all, except for a brief period, the Constitution had been put out of action since 1952. Corruption ran riot in the state apparatus.<sup>34</sup> The overwhelming majority of the population lived in extreme poverty without educational facilities, adequate nutrition and housing. The costs of legal aid were in such circumstances simply unthinkable. Only a small percentage of the population was rich. It is thus hardly surprising that the Cuban people raised no objections to the course of events described above. On the contrary, the new revolutionary government, identified with the person of Fidel Castro, was very popular. This popularity was not due to Castro's charismatic leadership alone.<sup>35</sup> The revolutionary government stood in the first instance for the guerilleros who had driven out the corrupt Batista regime. Moreover, the programme of the Movement of the 26th of July promised to put an end to all kinds of social evils, a promise which seemed to have been made seriously. Rents of less than 100 dollars had already been cut by half; purchasing power in the towns had risen by a third; telephone prices had been cut; farmers with small

holdings or no holdings at all in Pinar del Rio had received land grants.<sup>36</sup> In the eyes of the Cuban public, Castro's intervention in the trial of Batista's pilots was just one more proof of his intention to treat 'practical justice' more seriously than constitutional and procedural red tape.

A number of Cuban lawyers, however, viewed the events with professional disapproval. An example is provided by the protest of the bar association in Santiago de Cuba against the course of the trial.<sup>37</sup> Criticism of this kind was later to lead to open conflicts.

## INCREASING INFLUENCE OF THE COMMUNIST PARTY

The exceptional legislation and the 'special criminal justice' were not restricted to the group of Batista supporters. As has already been mentioned, the first Agrarian Reform Law of May 17th 1959 heralded the start of an accelerated process of radicalisation in Cuba. The agrarian reform is held to be the first and most important class issue of the revolution.<sup>38</sup> The first Agrarian Reform Law, which had already been promised in the programme of the Movement of the 26th of July, concentrated on the implementation of changes in the structure of land ownership. It affected around 40 per cent of the Cuban land which was in use for agriculture and cattle farming. Large landholdings (more than 1,000 acres) were confiscated and passed into the hands of agricultural cooperatives or were divided among small farmers or those who had previously held no land. The agricultural cooperatives were provisionally run by the National Institute for Agrarian Reform, the INRA.<sup>39</sup>

The declaration of this law led to a wave of protest from home and abroad, particularly from the United States of America. After all, 70 per cent of Cuban agricultural land was in North American hands at the time of the revolution. The conflict between the various economic interests of the United States of America and the implementation of socio-economic reforms in Cuba eventually led to a definitive rift in relations between the two nations. During 1960 all North American concerns were nationalised, while the United States imposed a total economic boycott on Cuba. Finally diplomatic relations between the two countries were broken and the United States of America proceeded to support acts of aggression against the Cuban revolution. The deterioration of relations with North America ran parallel with a tightening of the economic and political links with the Soviet Union.

These shifts in international relations were connected with domestic political relations and affected them significantly. In what follows I shall try to throw some light on these connections and on their implications for criminal justice and the exodus of a large number of lawyers. An important factor in these developments is the position of the Cuban communist party. Why did the struggle between moderates and radicals in this period of the Cuban revolution rapidly take on the shape of a power struggle between liberals and communists?

To recapitulate: when the Movement of the 26th of July was victorious, there were three powerful political groups in Cuba - Castro's rebel army, the communists and the liberals. The communists, who were united in the Partido Socialista Popular (PSP), were not very popular with the rebel army at first. They had not made a great contribution to the defeat of Batista. The first negotiations between the PSP and Fidel Castro appear to have first taken place in the summer of 1958.<sup>40</sup> Although the PSP was the only one of the old parties which was allowed to exist after January 2nd 1959, it was not included in the newly created government. The Movement of the 26th of July viewed the communists with suspicion. In spring 1959

Castro was still adopting an anti-communist stance in public. On May 21st, for example, he said:

Our revolution is neither capitalist nor Communist!... What matters to us, who are attached to a humanist doctrine, are the people, and we mobilise all our energies for the good of the majority. We want to free mankind of every dogma; we want to make the economy and society free without terrorising or forcing anyone. Today's world situation confronts us with the choice between capitalism which starves people and communism which solves their economic problems but suppresses their freedoms which are dear to them...Capitalism sacrifices the human being, communism with its totalitarian conceptions sacrifices human rights. We agree neither with the one nor the other...Our revolution is not red but olive green. It bears the colour of the rebel army from the Sierra Maestra.<sup>41</sup>

Enzensberger calls the Movement of the 26th of July very radical left wing as far as strategy and tactics are concerned, but its programme was strongly coloured by the 'national bourgeoisie' and lacked a coherent ideology. Its main principles can be found in the speech which Castro once made before the Court of Santiago: 'History will absolve me'. The demands listed there concern the restoration of bourgeois democracy (I have already referred to the restoration of the Constitution); moderate agrarian reform; favourable treatment of the small farmers; the setting up of agricultural cooperatives; compensation for large landowners; reduction of rents; a programme for social housing; an attack on corruption in the state apparatus; educational reform; and nationalisation of the public services.<sup>42</sup>

After the military defeat of Batista's army, the Movement of the 26th of July was faced with new problems at the start of 1959. The vacuum which arose with the disappearance of the old state apparatus and all political groups, with the exception of the PSP, could not simply be filled by the Movement. The Movement of the 26th of July lacked a structured political organisation. Its active membership consisted of a relatively small, inexperienced rebel army. Moreover, the differences in political background within the movement soon began to become apparent with the first social reform measures to implement the basic programme. The implementation of the basic demands of the Movement, largely influenced by the shift in Cuba's international position which resulted from these measures, required a more sweeping radicalisation than the supporters of the Movement of the 26th of July were prepared to accept. In the first three years, the ensuing confrontation between so-called radical and moderate tendencies within the revolution assumed the form of a struggle between communists and liberals. This can be seen in the forced resignation of the President of the revolutionary government, Urrutia, in July 1959 after he had made anti-communist remarks on television,<sup>43</sup> or in the notorious trial of Hubert Matos at the end of 1959. Matos, the military governor of the province of Camagüey, had resigned his high position in protest against alleged communist infiltration.

By the end of 1959 the Movement of the 26th of July had in fact ceased to exist. Looking back in an interview with Simone de Beauvoir in March 1960, Castro said:

Why, we asked, doesn't the Revolution have cadres, no apparatus? Allowing for all differences, the replies coincided in the essential points: the Movement of July 26, which had carried the Revolution, did have an apparatus but it was a petit bourgeois apparatus which

could not keep up with the continuation of the Revolution, with its radicalisation and particularly with the progressing agrarian reform. That is why the Movement was dropped.<sup>44</sup>

In the meantime, more and more key positions in the state apparatus had been taken over by socialists. In July 1959 Osvaldo Dorticós replaced Urrutia as President. Nuñez Jimenez assumed the leadership of the INRA, Raúl Roa became Minister of Foreign Affairs and Raúl Castro, the brother of Fidel Castro, became Minister of Defence. All four were closely associated with the PSP. In the vacuum of political organisation, what the PSP had to offer -- a politically trained cadre and an organised party apparatus -- could no longer be ignored. The orientation of the communists towards Moscow was also important at a time of changing international relations. These were the main reasons for the fact that the so-called conflict between communists and liberals ended in a victory for the communists.

### LAND REFORM AND THE FIRST COUNTER-REVOLUTIONARY CRIMES

The process of radicalisation of the Cuban revolution certainly did not run smoothly. It was accompanied by an internal political power struggle, dismissals and opposition as well as growing armed resistance from home and abroad. It is obvious that the reactions to this unrest will have been apparent in the field of political trials, as can be seen in the examples presented below.

Partly in reaction to the declaration of the Land Reform Law of May 17th 1959 a chain of events was set in motion which illustrates this. Within Cuba, land-owners organised all kinds of protest actions against the law: buying transmission time, organising demonstrations, etc. The United States of America registered an official protest on June 11th 1959.<sup>45</sup> On the next day, Castro sacked a number of his ministers who were known for their moderate political opinions.<sup>46</sup> He then opened the attack on the domestic critics of the law. In a television speech he called them traitors to the revolution, who were only interested in their own well-being.<sup>47</sup> As a sort of direct answer to this speech a number of bombs exploded in Havana at the same moment.<sup>48</sup> The subsequent arrest of what were mainly supporters of Batista was the signal for the first direct confrontation between the government and the judiciary, as one of those arrested was a leading right wing lawyer, Enrique Llada Ortiz. When the Havana court (La Audiencia de Havana) ordered his release, the government tried to prevent this via the Ministry of Justice. The Supreme Court intervened and stated that the judges were within their rights: 'Was the right of *habeas corpus* not one of those very rights defended by the revolution?', it asked.<sup>49</sup> The result was that a conflict between the judiciary and the government concerning the handling of counter-revolutionary acts of violence in the country was for the time being settled in favour of the judiciary. These events did immediately lead to a significant amendment of the Constitution, however. A major amendment to the Fundamental Law increased the number of capital offences in July 1959. This category was extended to include 'counter-revolutionaries' and those who had harmed the national economy or the public interest.<sup>50</sup>

The broad term 'counter-revolutionary' was specified in terms of particular offences. As the commentary on a new law promulgated for this purpose indicated, failure to define the term would be an assault on the possession of individual liberty defended by the revolution.<sup>51</sup> In apparent contradiction with the increasing political tension which surrounded these events was the decision taken in the same period regarding the special 'revolutionary tribunals'. The same law which introduced

the new regulations on capital offences dismantled the revolutionary tribunals for the time being. The only reservation was that the council of ministers could call these tribunals to life again if they were required for the defence of the revolution.<sup>52</sup> It took only six months for this clause to be used.

The introduction of the broad category 'counter-revolutionary' together with its detailed specification, and the simultaneous dismissal and recall of the revolutionary tribunals are contradictions in this law of July 7th 1959. They spring directly from the conflicts and compromises between, on the one hand, radical lawyers and the government, and on the other hand, liberal lawyers. At a deeper level, this inconsistency was due to the process of radicalisation to which the Cuban revolution was subject. Legal rights such as the protection of individual liberty by the principle of legality, and guarantees for the procedure of criminal justice were important aims of the revolution. The fulfilment of certain other promises which the revolution had made, however, such as the carrying out of social changes for the benefit of the poorest sectors of the population, provoked such violent opposition that a choice between the two positions seemed under the given circumstances inevitable. The law of July 7th was the expression of a phase in this process.

### **THE TRIAL OF HUBERT MATOS BY A REVOLUTIONARY TRIBUNAL**

The political antagonisms quickly sharpened. The growth of internal and external opposition expressed itself in a variety of ways. The head of the air force under Castro, Díaz Lanz, left for the United States of America at the end of June 1959, where he stated before the Senate Internal Security Subcommittee that the communists had taken over power in Cuba. The first open acts of aggression from Florida started in the autumn with a bomb attack on a sugar factory in Pinar del Rio. After England had refused to deliver fighter planes in September 1959, Cuba began to hint openly at the possibility of other arms suppliers, such as the U.S.S.R. This was on 17th October 1959. The first bomb attacks on Cuba had been on the 11th of October. On the 15th of October Raúl Castro was appointed Minister of Defence.<sup>53</sup>

This had consequences for the administration of criminal justice. The government found that the situation had by now become so serious that it was necessary to make use of its authority to resort to the 'revolutionary courts'.<sup>54</sup> The 'special judicial administration' which had been used against the supporters of the defeated Batista regime was now reintroduced into the political struggle as a legal instrument. The opponents were no longer the Batista supporters, but the 'counter-revolutionaries': the Cubans who had gone into exile and were now acting against Cuba from bases in Florida, and the opponents of the new regime who were operating from within Cuba itself. The latter group included both those Cubans who had opposed the revolutionary changes from the first and those whose opposition dated from the increased radicalisation. Among the latter were a number of 'liberals', mainly members of the Cuban middle class, who were afraid of increasing communist influence, as well as some ex-members of the Movement of the 26th of July.

One of the most well known was Hubert Matos, whose trial in autumn 1959 attracted considerable attention. Matos had been a member of the rebel army in the Sierra Maestra. He was appointed military governor of the province of Camagüey in 1959. This was an influential and important position in an area which had to face considerable counter-revolutionary activities as a result of the agrarian reforms carried out there.<sup>55</sup> Matos' disapproval of the increasing communist influence came into the open in a speech that he made on June 8th 1959.<sup>56</sup> It also came out that

he had had contact with important figures in the underground opposition to Castro, such as the ex-Minister of Agriculture, Rogelio González Corso.<sup>57</sup>

The appointment of Raúl Castro as Minister of Defence on October 15th was the last straw for Matos. Four days later he offered his resignation.<sup>58</sup> The next day he and the officers who had joined him in resigning were arrested by Castro in person, accused of 'treason by opposing the agrarian reform'.<sup>59</sup> As a direct political consequence of this, the complete leadership of the Movement of the 26th of July in Camagüey resigned,<sup>60</sup> to be followed by the resignation of a new group of 'moderates' in the government a month later.<sup>61</sup> It may not be fortuitous that a day later a B-25 bomber dropped thousands of pamphlets over Havana stating that Castro was a communist. They were signed by Díaz Lanz, the exiled ex-chief of the air force.<sup>62</sup>

Matos' trial began on December 11th 1959 before a revolutionary tribunal. These tribunals had been in operation again since November 2nd 1959, some two weeks after the arrest of Matos, when the council of ministers had empowered these tribunals, which had temporarily disappeared from the scene, to try counter-revolutionary crimes.<sup>63</sup> The president of the tribunal which tried Matos was Major Sergio del Valle, head of the Cuban air force at the time. The other members of the tribunal and the Public Prosecutor held similar military positions or had a similar record in the rebel army.<sup>64</sup> Fidel and Raúl Castro appeared in person as witnesses in what was a blatantly political trial.<sup>65</sup>

Fidel spoke of a 'counter-revolutionary conspiracy' now that Matos had made his resignation public in an attempt to involve the military leadership and the population of Camagüey in his resistance to the government.<sup>66</sup> The verdict was twenty years imprisonment.<sup>67</sup> In his book *Cuba*, Suárez writes:

We know very little about the real aims of this (Matos) resignation. What we do know is that Fidel and his associates were certain that Matos was engineering a plot that would have taken most of his provincial military staff officers with him. Camagüey was a very sensitive region at the time, and Matos had made his move at a dangerous moment, before Fidel's power had been fully consolidated. Moreover, Castro was then working out his policy of 'unity', which was neither pro- nor anti-Communist, but which included the Communists in the power structure. Fidel, suspicious as always of the United States, feared that Matos was getting encouragement from the Americans. Anyway, as Castro said at the trial, Matos was 'a false revolutionary'.<sup>68</sup>

As far as criminal justice was concerned, this was a new escalation of events which led, among other things, to the reintroduction of the revolutionary tribunals. These were still military tribunals. The members were appointed by the Minister of Defence. If the prosecutor of the revolutionary army requested it, these military members could be joined by civilian members of the legal profession. The procedure was in accordance with a special legal regulation of the Criminal Procedure Law of 1896, i.e. a brief, summary and unwritten procedure.<sup>69</sup> There was a distinction between Revolutionary Tribunals and Review Councils or Appeal Councils. The defendant had the right of appeal against a sentence in the first instance. A death sentence was officially dealt with by an appeal court.<sup>70</sup>

At the end of December an extension took place of the category of persons liable to be subject to confiscation of all their goods. The new category included 'counter-revolutionaries' and others, such as those found guilty of conspiring

abroad against the government.<sup>71</sup> This marked a new and important stage in the process of radicalisation. Former allies could now be tried and sentenced as enemies of the revolution. Still, the popularity of Fidel Castro and his new government among the Cuban public kept on growing.<sup>72</sup>

## THE CUBAN REVOLUTION IS A 'SOCIALIST' REVOLUTION

The antagonisms described above became more acute in 1960 and 1961. The first official visit of a Soviet politician to Cuba took place when Mikoyan arrived on January 31st 1960. From the negotiations a trade agreement emerged, in which the U.S.S.R. pledged itself to buy sugar, to lend currency and to supply oil and other materials.<sup>73</sup> In June 1960 this eventually led to a serious conflict with the North American oil companies on Cuba. There had already been an attempt to control the activities of these companies by means of an Oil Law.<sup>74</sup> After Cuba had concluded an agreement with the Soviet Union to buy crude oil from the U.S.S.R. at a price below that charged by the oil multinationals' refineries on Cuba, the latter refused to refine Russian oil. This marked the beginning of a new escalation in the conflicts with the United States of America.

The Cubans reacted to the refusal of the refineries by confiscating them. A week later the United States of America cancelled their order for sugar, Cuba's main export product, for that year.<sup>75</sup> In the following months, the Cuban government proceeded to nationalise all North American and all large, private Cuban concerns. The Cuban telephone and electricity companies which were in North American hands<sup>76</sup> and the North American oil refineries and sugar factories were taken over in August. In October the large Cuban sugar factories followed suit.<sup>77</sup> In the meantime, the United States of America, Cuba's biggest supplier and customer, stopped all export to Cuba. Obviously, Cuba had to find new markets and new trading partners for her sugar if she was to survive. It is thus hardly surprising that a new trade agreement was made with the U.S.S.R. in December 1960.<sup>78</sup> This followed the pattern of trade relations that Cuba had already established with other socialist countries, such as the People's Republic of China.<sup>79</sup> Soviet tanks and armaments were publicly displayed during a military parade in Havana on January 1st 1961.<sup>80</sup>

At home, the resistance showed a sharp increase in intensity and violence. In the spring of 1960 the North American President, Eisenhower, had already given the CIA a free hand in Cuba. During that year Cuban refugees were trained in guerrilla and other types of fighting in Guatemala and Panama.<sup>81</sup> At the same time the CIA established contacts with the opposition in Cuba. One of the oppositional groups, the Movement of Revolutionary Liberation (MRR), was led by Díaz Lanz, the ex-chief of the Cuban air force, to whom reference has already been made. In April 1960 the MRR appeared to be the best organised opposition movement in Cuba, enjoying excellent relations with the United States of America.

Besides the familiar figure of Díaz Lanz, other members of the organised opposition had originally worked with Castro, such as Sergio Sanjenís, who had been head of intelligence in Havana for a short period.<sup>82</sup> By October 1960 some 1,000 rebels had assembled in Escambray, an inaccessible mountainous area in central Cuba.<sup>83</sup> There were also bomb attacks, arson, sabotage and threats in increasing frequency. Many of these active opponents appear to have been arrested and tried in the winter of 1960-61.<sup>84</sup> The decisive defeat of the counter-revolution supported by the North American government was the holding back of the invasion at the Bay of Pigs

on April 17th 1961.<sup>85</sup> On the 16th of April 1961 Castro had called the Cuban revolution 'socialist' for the first time.

## LAW AS INSTRUMENT THE BREAK WITHIN THE BAR AND THE JUDICIARY

The political tension and changes of these years made their presence felt in criminal justice and other areas of the law. The same can be said of the government's increasing need to tighten its grip on the economy and the public administration. The operation of the Revolutionary Tribunals led at the end of 1960 to a dispute over their competence between the tribunals and the Supreme Court. In the same year the conflict between so-called moderate and radical lawyers reached its peak. A large number of members of the legal profession left, while those who remained dedicated themselves to the development of a new ideology in terms of which their function could be situated.

The criminal legislation passed in this period reflected the bitter struggle against the counter-revolution and the huge extension of governmental control in the economy. Early in 1960 a law was promulgated which extended the category of economic offences. Malpractices in trade and industry could be defined as counter-revolutionary crimes under certain aggravating circumstances, such as serious national economic recess or hostile relations with another country.<sup>86</sup> In February of the same year the number of types of official misconduct was increased and the related sentences were made more severe. Misuse of public funds, for example, was now a counter-revolutionary crime and would be tried as such by the Revolutionary Tribunals.<sup>87</sup> The same applied to the civil offence of arson if it affected sugar plantations or other agricultural areas.<sup>88</sup> In July new economic offences were declared counter-revolutionary and in a number of cases the relevant penalties were increased.<sup>89</sup> The enormous increase of counter-revolutionary acts of violence in the autumn of 1960 was the reason for a law passed in January 1961,<sup>90</sup> which increased the penalties for counter-revolutionary offences such as bomb attacks and arson to include the death penalty. The commentary on the law referred to the necessity of repressing clandestine counter-revolutionary activities, which were in some cases financed and encouraged by foreign imperialist agents.<sup>91</sup> In November the government went even further and changed the death penalty from a maximum to a minimum for these offences, as well as for a number of others, such as the formation of armed groups for the purpose of committing crimes against the security of the nation or for gaining entry into the country.<sup>92</sup> The lending of assistance to saboteurs and other counter-revolutionaries could be punished with confiscation of all one's goods.<sup>93</sup>

In the same period the so-called struggle between moderate lawyers, on the one hand, and radical lawyers and the Revolutionary Government, on the other hand, became accentuated.<sup>94</sup> In July 1960 a conflict which had probably been going on for some time within the Cuban bar emerged into the open with actions in Havana.

The last elections for the Governing Board of the Bar Association of Havana, which had been in existence for a century, had taken place in August 1958. New elections were planned for spring 1961. However, a year earlier -- on July 5th 1960, to be precise --, an action on the part of 'revolutionary' lawyers had blocked this plan. In the night hours a group of lawyers occupied the organisation's office. They claimed to have taken over the running of the organisation and labelled the mem-

bers of the old board traitors of the revolution, calling one member at any rate by his full name.<sup>95</sup> In December of the same year a new General Meeting of the Association was held, at which new statutes were adopted and a new executive committee was chosen. A year later, in honour of a 'Lawyers' Day' held on June 8th 1961, the new Bar Association of Havana declared itself to be in solidarity with 'socialism', the People and the government party of that time, the *Organizaciones Revolucionarias Integradas* (Integrated Revolutionary Organisations, or O.R.I.):

What we can say about this of June 8 is that it has served to show that lawyers too are becoming impregnated with the new morality, that they are ready to combat tirelessly all tendencies towards favouritism and nepotism and all outrages to truth, that their device is one and one only: Towards socialism, with the People, under the guidance of the O.R.I.<sup>96</sup>

The old, displaced executive committee of the Havana Bar continued to hold meetings, at first outside the official offices of the association and later in exile. Like a large number of other lawyers, its members left the country. From Miami they issued declarations abroad sharply condemning the situation in Cuba.<sup>97</sup>

There were also conflicts between the government and radical judges, on the one hand, and the more liberal members of the legal profession, on the other hand. Looking back over the previous years on September 1st 1961, the Public Prosecutor of the Supreme Court, Dr. Santiago Cuba, accused the Cuban judiciary of having a counterrevolutionary attitude. By means of legal verdicts, so he claimed, the laws had been interpreted in an unfavourable way for the people. For example, the Court of Constitutional Guarantees had granted far too much compensation in cases of nationalisation: more than 15 million pesos in less than a year. This figure represented the compensation which the Cuba people had had to pay the big landowners, which were often foreign companies. Many more appeals were accepted by the Court from big landowners in this period than appeals which were lodged by the state body, the INRA. Dr. Santiago Cuba claimed that from the INRA's appeals fifty-one were turned down and only nine were accepted, while from the appeals lodged by big landowners and other proprietors sixty-four were accepted and only three were turned down.<sup>98</sup>

The conflicts with and within the judiciary escalated to become a dispute about the respective powers of the Revolutionary Tribunals and the Supreme Court. In October 1960 the Court for Constitutional and Social Guarantees gave a negative reply to the question as to whether it was constitutional for a verdict of a Revolutionary Tribunal to be reconsidered by the Supreme Court. The argument behind this decision was that the organisation of the Revolutionary Tribunals was independent of the Supreme Court according to the Fundamental Law. A minority within the Court disagreed, claiming that it was within the powers of the Supreme Court to decide whether an offence was counter-revolutionary or not and thus whether it should be tried by a Revolutionary Tribunal or not.<sup>99</sup>

Events followed one another in quick succession. On November 15th two members of the Supreme Court, Dr. José Morell Romero and Dr. Emilio Menéndez, the second of whom had been appointed President of the Supreme Court by Castro in January 1959, resigned from their function as judges and sought political asylum, the former in the Mexican embassy and the latter in the Argentinian embassy. Only a few of their colleagues in the Supreme Court were prepared to label them as 'traitors'. In December Castro opened a violent public attack on the judiciary. On December 20th the ban on the dismissal of judges was temporarily lifted (for the

second time since January 1959). This gave the President of the Republic and the council of ministers forty-five days in which to dismiss judges.<sup>100</sup> Via this procedure seventeen judges of the Supreme Court were dismissed on December 26th, nine of whom were already abroad. According to the International Commission of Lawyers, a good hundred other judges met the same fate in January 1961.<sup>101</sup> By 1961 the composition and ideological line of the Supreme Court were such that it could openly call the new revolutionary Cuban justice socialist:

Under a socialist regime the courts of law have the duty of protecting socialist legality and order with the specific methods which belong only to them.<sup>102</sup>

Ideologically at least, a big step had been taken in the direction of what was to be institutionalised in the 1970s as a new 'socialist' legality. In the same declaration of 21st August 1961 the Supreme Court continued:

The function of the Courts is that of deciding cases of Justice. This means that before making any judgement the legal norm to be applied to the concrete case under decision must be studied...But the socialist justice goes further. Socialist justice serves besides to build and improve socialism, because the courts, in deciding each case, are teaching the citizen to be loyal to the socialist motherland and its institutions...

The members of the judiciary cannot make an interpretation of the revolutionary legislation without a close regard to the social reality which supports this legislation. It must be understood that the revolution has drastically eliminated the former legal regime which has been replaced by a new regime, both in its formal basis and in its profound content. Only when judges and magistrates get fully acquainted with their true mission as active guardians of socialist legality, would it be possible to create a new pattern of adjudication of the fundamental laws of the revolution.<sup>103</sup>

In order to familiarise the Cuban judges who worked in different courts with the new socialist vision of legality, training sessions were organised at the instigation of the Supreme Court. The Court issued a special resolution for this:

Study and training courses will be organised at all tribunals and courts of law in socialism and the fundamental duty of socialist justice.

The judges were expected to be 'revolutionaries', or at any rate to be capable of showing some understanding for the 'social justice and brotherhood' which the revolution was attempting to realise. It was felt that this required ideological education.

It is thus necessary to raise the ideological level of our colleagues who are involved in the administration of justice. We must increase our efforts to familiarise those working in the legal profession and other workers too with the ideas of Marxism-Leninism and to convince them of the need for such study.<sup>104</sup>

We have seen how at particular times the government could go ahead with the dismissal of certain judges. In addition, in December 1960 the appointment of the President and other members of the Supreme Court and the presidents of the courts of law, the *Audiencias*, passed directly into the hands of the President of the Republic and the Council of Ministers. By an amendment to the Fundamental Law, it was no longer required for an electoral committee consisting of judges and others

to present the President with a list of proposals from which he could select the final candidates.<sup>105</sup> In this new situation, the criticisms which had been levelled against the judicial administration as it was practised in 1960 no longer applied. When Dr. Santiago de Cuba, the Public Prosecutor, made the following remarks in September 1961:

The other form of counter-revolutionary struggle was the revival of outdated theories on the separation of powers, the independence and apoliticism of the judiciary.<sup>106</sup>

he was criticising a system which no longer existed. In the middle of 1961 the first principles of a Marxist legal theory were introduced, such as recognition of the impossibility of an independent judiciary. In the words of Santiago Cuba:

Even the proponents of the separation of powers knew perfectly well that the so-called separation of powers does not exist in any country and never has done. Whatever the social and economic system of a state may be, there is only one power. This political power is in the hands of the people or of its exploiters.<sup>107</sup>

A new legal consciousness was required:

Under the previous regimes legal consciousness was expressed in the intransigent defence of the political power of the North American monopolies and the big national proprietors who exploited the labour of the people. The new legal consciousness must find expression in the defence of the new political state which provides and guarantees the social property of the whole people, the property for the workers and the economic, social and political rights for the workers, peasants and middle class.<sup>108</sup>

## THE CONFLICT OF VALUES

The most important counter-revolutionary crimes were introduced in 1961 and 1962. Later, in 1963, there was another legal amendment, by which the category of counter-revolutionary crimes was extended to include robbery and burglary. These offences were now to be tried by Revolutionary Tribunals and could be capital offences.<sup>109</sup> There were no further changes of importance in this field until 1973, the year in which the Revolutionary Tribunals as such were dismantled.<sup>110</sup> By 1961 the legal profession seemed to have entered a phase of relative calm for the time being. The discussion on the tasks and ideology of lawyers and legislators died down in the late 1960s. It was not until the 1970s that this discussion was reopened on a new ideological basis.

In this chapter an outline of the first stages of the Cuban revolution has been presented: the ideals at the beginning and the socio-economic reality which rapidly curtailed them. For instance, the programme of the Movement of the 26th of July had promised the restoration of the Constitution of 1940 *and* the implementation of all kinds of social reforms. In this phase of the Cuban revolution it was clear that these promises involved conflicting values. The implementation of the first social reforms, such as the redistribution of agricultural and grazing land in early 1959, met with such strong political and increasingly violent resistance that the measures taken to deal with this resistance themselves became more drastic. This escalation in the severity of the measures taken threatened a number of constitutional rights which protected the individual against arbitrary action by the state. The category of counter-revolutionary offences was extended, and the summary criminal procedure of

the military tribunals which tried them gave the defendants less protection than was normally the case. Those accused of such crimes were denied the right of habeas corpus and could face exceedingly severe penalties. Ideals taken from the bourgeois Constitution of 1940 had to make way for the 'different' political goals: a human minimum level of existence for the largest part of the Cuban population, the poor and the poorest. The Movement of the 26th of July's ambitions to fulfil both ideals after the victory failed in the difficult early years of the revolution, at any rate as far as the struggle against the growing group of enemies of the revolution was concerned, some of whom had been members of the Movement's own ranks.

The most rapid developments in the field of criminal justice were those affecting the struggle against counter-revolutionaries. Within a few years, the use of the law as an instrument of power against political opponents was a political fact. The difficult conditions under which the Cuban revolution struggled to achieve political and social transformations rendered it extremely difficult or simply impossible to retain the liberal constitutional principles intact within the revolutionary administration of justice.

This chapter deals only with political, or counter-revolutionary, offences.<sup>111</sup> In a number of socialist countries, such as the People's Republic of China in the 1950s and 1960s, this is expressed in a theoretical distinction, the so-called 'conflicts between the enemy and ourselves'.<sup>112</sup> So far, 'contradictions within the people', as they are called within this perspective, have been left out of account. These concern small misdemeanours and relatively light offences which do not directly threaten the revolutionary process and which are carried out by ordinary men and women. In what follows I shall describe how the treatment of these misdemeanours and offences in Cuba in the 1960s was incorporated in a wider policy of mass mobilisation and education of the people; how trial of these offences was put in the hands of the people itself by the establishment of neighbourhood tribunals throughout the whole land.

## Notes to Chapter Two

1. Hans Magnus Enzensberger, 'Portrait of a Party, Prehistory, Structure and Ideology of the P.C.C.', *The New Cuba, Paradoxes and Potentials*, Ronald Radosh, ed., New York, 1976, Morrow Paperback.
2. Fidel Castro, *La Historia me absolverá*, Editorial Ciencias Sociales, Havana, 1975, p. 165. *Cuba and the Rule of Law*, International Commission of Jurists, Geneva, 1962, pp. 55-57. After the seizure of power by Batista in 1952, the 1940 Constitution was suspended, except for a period of two years. It was only in force from 24th February to 2nd December 1955: *Cuba and the Rule of Law*, pp. 84-85.
3. In a speech held in Havana on April 16th 1961.
4. Articles 1 and 2 of the 'Regulation no. 1 of the Rebel Army concerning Criminal Justice' and 'Regulation no. 1 of the Penal Code of the Rebel Army', as amended in the laws: Law no. 33, *Gaceta Oficial*, ed. extraordinaria, no. 10, 30.1.1959 and Law no. 39, *Gaceta Oficial*, no. 16, 2.2.1959. Sources: Juan Vega Vega, *Legislación Penal de la Revolución*, Editora Universitaria, Havana, 1966, pp. 6-8 and 10; *Folleto de Divulgación Legislativa, Proclamas y Leyes del Gobierno Provisional de la Revolución*, I, 1<sup>o</sup>A, 31.1.1959, 3rd ed., Editorial Lex, Havana, 1959, pp. 81-83 and 99-105.
5. See the discussion later in this chapter.
6. As a Cuban lawyer put it in 1983, they had been opposed to the Batista dictatorship and in certain cases were anti-imperialist. However, the rapid changes in the direction of a Marxist-Leninist state proved unacceptable to a number of them. Source: interview on 17.2.1983 with Jesús Valdés García, judge of the criminal chamber of the Popular Supreme Court in Havana. Before 1959 he had been secretary to a court; in 1962 he became judge of the *Audiencia* of Havana and editor-in-chief of the Cuban legal journal, *Revista Cubana de Jurisprudencia*.
7. Cited by Hugh Thomas, *The Cuban Revolution*, Harper & Row, New York, 1977, p. 434, from *Revolución*, 10.5.1959.
8. Cited by Thomas, *ibid.*, pp. 534-535, from *L'Unità*, 1.2.1961.
9. For the disappearance of the liberal minister, see *ibid.*, pp. 446, 473, 512.
10. The trial of Hubert Matos, that began in December 1959, is a notorious example. See below.
11. Thomas, *op. cit.*, p. 569.

12. All the legislation of the Rebel Army was declared officially in force in Cuba on 30th January 1959: Law no. 39, *op. cit.* Article 1 of this law was as follows:  
 First Article: All the laws and penal, civil and administrative regulations promulgated by the High Command of the Rebel Army during the armed struggle against the dictatorship put down on December 31st 1958 will continue in force throughout the whole territory of the nation until the popularly elected Government has been installed, pending previous amendment or repeal.  
 The Regulation (no. 1 of the Rebel Army concerning Criminal Justice) was amended on 29th January 1959 by Law no. 33: *Cuba and the Rule of Law, op. cit.*, pp. 114-115; Vega Vega, *op. cit.*, pp. 10, 11, 6. Source: *Folletos, op. cit.*, p. 99.
13. Regulation no. 1 of the penal code of the Rebel Army, articles 2-6. Art. 2 was as follows:  
 The revolutionary military authorities will try all crimes and offences committed by members of the army in active service and the crimes of murder, homicide, maltreatment of those in prison or detention, violation, arson or damage, robbery or theft committed by members of the armed forces or by civilians in the service of the tyranny, applying the rules laid down in this Regulation and in the Penal Code of Cuba at War during the War of Independence. In addition their competence will extend to those crimes specified in articles 128-161, 170-213, 420-426 and 427-430 of the Social Defence Code. Crimes not included in this Regulation will fall under the jurisdiction of the ordinary courts.  
 Source: *Folletos, op. cit.*, pp. 101, 102. See Vega Vega, *op. cit.*, pp. 4 & 10; *Cuba and the Rule of Law, op. cit.*, pp. 131-133; and Francisco José Moreno, 'The Cuban Revolution v. Batista's Pilots', *Political Trials*, T.L.Becker (eds.), Indianapolis, Indiana, 1971, p. 95.
14. José García Alvarez, *Los Tribunales Revolucionarios, Primera Etapa, Legalidad y Poder Popular en Cuba*, presented and selected by Juan Rosales, Editorial Convergencia, Buenos Aires, 1976, p. 130 [first in *Revista Cubana de Jurisprudencia*, no. 1, January 1962].
15. This was the Procedural Law of Cuba in Arms during the War of Independence, promulgated by the resistance on July 28th 1896 during the war of independence against Spain (1868-1898). See art. 16 of Regulation no. 1 of the Penal Code of the Rebel Army as amended on 29th January 1959, *Folletos, op. cit.*, pp. 103-105; *Cuba and the Rule of Law, op. cit.*, pp. 134-135; García Alvarez, *op. cit.*, pp. 56-57.  
 Art. 9 of Regulation no. 1 was as follows:  
 All trials will follow the summary verbal procedure.
16. Constitutional Reform, *Gaceta Oficial Extraordinaria*, no. 5, 14.1.1959. Retroactivity of the Penal Code. Confiscation of Goods and Restoration of the Death Penalty: Vega Vega, *op. cit.*, pp. 1-2.  
 Article 21 of the 1940 Constitution, which includes a general prohibition on retroactive legislation, was supplemented as follows:

In the cases of crimes committed in the service of the dictatorship put down on December 31st 1958, those responsible will be tried in accordance with the penal laws which will be promulgated to this effect.

Article 24 of the same Constitution, which dealt with confiscation, was supplemented as follows:

The confiscation of goods is prohibited. However, it is authorised to confiscate the goods of natural or juridical persons responsible for crimes against the national economy or the public interest during the tyranny which stopped on December 31st 1958, of the tyrant and of his accomplices.

The prohibition of the death penalty in art. 25 of the same Constitution, with the exception of military crimes and certain forms of high treason, was supplemented as follows:

An exception is made in the case of members of the Armed Forces, the Repressive Organisations of the Dictatorship, the auxiliary groups organised by it and of spies for crimes of a military nature or crimes committed with the purpose or intention of restoring or defending the regime put down on 31st December 1958, and those persons guilty of treason or subversion of the institutional order or of espionage on behalf of the enemy in the course of war with a foreign power.

17. Constitutional Reform, *Gaceta Oficial*, no. 18, 4.2.1959. Source: Vega Vega, *op. cit.*, p. 3; *Cuba and the Rule of Law*, *op. cit.*, pp. 89-91. This constitutional reform concerned articles 27, 29, 196 and 197 of the Constitution as well as articles 174(d) and 182(a) of the Constitution, for a period of 90 days. The text was as follows:

First Article: The application of articles 27, 29, 196 and 197 of the present Constitution is suspended for the period of 90 days from the publication of this law in the *Gaceta Oficial* of the Republic with respect to those persons falling under the jurisdiction of the Revolutionary Tribunals, acting in accordance with the penal code of the High Command of the Rebel Army...

Second Article: The application of section (D) of article 174 and of section (A) of article 182 of the Constitution is suspended for a period of the same duration with respect to those cases in which questions of constitutionality are raised by the persons to whom the previous article applies.

18. See 'Fundamental Law of the Republic of Cuba' of 7th February 1959, art. 21 (retroactivity), art. 24 (confiscation), art. 25 (death penalty) and the transitional articles 3 (the suspension of the right of *habeas corpus* for certain groups for a further 90 days) and 4 (the suspension of the right of constitutional appeal for certain persons for a further 90 days). Regarding *habeas corpus*, art. 41 of the Fundamental Law added the exception clause that this right could be suspended temporarily for a period of not more than 45 days in a part or the whole of the country in the event of a threat to national security (war, invasion, etc.). This suspension had to be carried out by law: *Cuba and the Rule of Law*, *op. cit.*, p. 92.

Three months after the promulgation of the Fundamental Law a new suspension of the right of **habeas corpus** and the right of constitutional appeal for 90 days was effected by a Constitutional Reform Law, **Gaceta Oficial**, no. 80, 6.5.1959: **Cuba and the Rule of Law, op. cit.**, p. 98; Vega Vega, **op. cit.**, p. 28.

19. Introductory Clause, Law no. 425, **Gaceta Oficial**, ed. extraordinaria, no. 32, 9.7.1959: Vega Vega, **op. cit.**, pp. 31 & 32; **Cuba and the Rule of Law, op. cit.**, p. 137.

20. The constitutional irremovability of certain persons, including members of the judiciary and the Public Prosecution, as laid down in art. 200 of the Constitution, was suspended for a period of 30 days on 13th January 1959 by a constitutional amendment, in **Gaceta Oficial**, ed. extraordinaria, no. 4, 13.1.1959. See **Cuba and the Rule of Law, op. cit.**, p. 86. This was the first time since the revolution of January 1st 1959 that the irremovability of judges was lifted. This was brought about by the following constitutional amendment passed by the Council of Ministers:

Article I: For the purposes of reorganising the Supreme Court, the Public Prosecution and the Supreme Electoral Court, the judicial permanence established by article 200 of the Constitution will be suspended for 30 days; articles 180 and 208 are also suspended for the same period, as well as the irremovability of the Public Prosecutor and the provisions of article 187 and article 189, both of the Constitution. All constitutional or legislative regulations which stand in the way of the reorganisation with which the present law is concerned are likewise suspended for the same period.

Article II: The vacancies which occur for whatever reason during the stated period of suspension in the positions of President, President of the Chamber of Magistrates, Public Attorney and Attorney-General of the Supreme Court, as well as any positions in the Office of the Prosecution, the Audiences and the Judicial Divisions, will be filled by the President of the Republic assisted by the Council of Ministers.

Presidential Palace of the Republic, Havana, 10th January 1959.

21. García Alvarez, **op. cit.**, p. 128. The introductory clause to the constitutional amendment which temporarily suspended irremovability expressed this as follows:

Wherefore: It is a notorious fact that the large majority of the members of the Supreme Court, the Office of the Prosecution and the Supreme Electoral Court, in betrayal of their high office, supported the establishment and continuance of the oppressive regime which was set up on March 10th 1952; and disregarding their obligation to protect human rights, they stood by and watched the crimes committed to maintain the repressive system; they relinquished their own competence and permitted the transfer to military courts of the trial of those crimes whose victims were the underprivileged.

Wherefore: The rottenness of the high offices brought as its inevitable consequence the corruption of many magistrates, judges and

district attorneys.

Source: *Gaceta Oficial*, ed. extraordinaria, anual 4, p. 1, 13.1.1959.

22. An overwhelming majority of the Cuban people approved of the trials and executions. Even President Urrutia, a former judge and a stern critic of Fidel Castro, approved.  
Herbert L. Matthews, *Fidel Castro*, New York, Simon & Schuster, 1970, p. 145. [Matthews refers to Manuel Urrutia Lleo, *Fidel Castro & Company*, New York, Praeger, 1964, p. 215].
23. Another notorious trial was that of the Trujillo conspirators in June 1959. See Thomas, *op. cit.*, p. 683.
24. Moreno, *op. cit.*, p. 97; Thomas, *op. cit.*, p. 422.
25. Moreno, *ibid.*, p. 98.
26. *Ibid.*, p. 99.
27. *Ibid.*
28. Moreno, 'Justice and Law in Latin America: a Cuban Example', *Journal of Inter-American Studies and World Affairs* 12, 1970, no. 3, pp. 367-378. The citation on Moreno p. 373 is from *Revolución*, 23.3.1959.
29. An appeal could be filed against sentences passed by an Ordinary Council of War with the Council of Revision. In cases of capital punishment, public loss of honour, loss of rank or work and a declaration of unfitness for an unlimited period, appeal (*apelación*) was possible under article 100 of the Procedural Law of 1896. The Council of Revision instigated a new investigation of the facts in such cases (art. 101). In all other cases a review was possible (art. 100), without necessarily implying a new investigation of the facts, but only a review in terms of 'conflict with law' (art. 107). Unlike appeal, review could also be instigated at the request of the Public Prosecutor (art. 100). See García Alvarez, *op. cit.*, p. 56.
30. Matthews, *op. cit.*, p. 145; Moreno, *op. cit.*, 1970, p. 373.
31. Moreno, *op. cit.*, 1970, pp. 373-377; *id.*, *op. cit.*, 1971, pp. 101-104.
32. *Id.*, *op. cit.*, 1971, p. 104.
33. On more than one occasion it has been shown that in Latin America there is a gap between the official administration of justice and large groups of urban poor and of the rural population, who either have no legal forms or develop their own. See Kenneth L. Karst and Keith S. Rosenn, *Law and Development in Latin America*, University of California Press, Berkeley, 1975, p. 65.
34. Thomas, *Cuba, The Pursuit of Freedom*, Harper & Row, New York, 1971, p. 423 (based on the Brooke Report, p. 163).

35. See Lee Lockwood, **Castro's Cuba, Cuba's Fidel**, Bruna, Utrecht & Antwerp, 1968; Thomas, *op. cit.*, 1977, pp. 413, 479, 573, 574.
36. This took place on 1st March 1959: Thomas, *op. cit.*, 1977, pp. 420, 421.
37. **Cuba and the Rule of Law**, *op. cit.*, p. 191.
38. James O'Connor, **The Origins of Socialism in Cuba**, Cornell University Press, New York, 1970, p. 91.
39. Thomas, *op. cit.*, 1977, p. 436.
40. Enzensberger, *op. cit.*, p. 113.
41. *Ibid.*, p. 115 [from 'Guia del pensamiento político-económico de Fidel', **Diario Libre**, Havana, 1959, p. 48].
42. *Ibid.*, p. 116-117.
43. Thomas, *op. cit.*, 1977, pp. 454-455.
44. Enzensberger, *op. cit.*, p. 119 [from Wyatt MacGaffey & Clifford R. Barnett, **Twentieth Century Cuba: The background of the Castro Revolution**, New York, Doubleday, 1965, p. 209].
45. Thomas, *op. cit.*, 1977, p. 445.
46. *Ibid.*, pp. 446-447.
47. 13th June 1959. See Thomas, *ibid.*, p. 448.
48. *Ibid.*, p. 449.
49. *Ibid.* The (ex-)supporters of Batista had already been deprived of this right: see note 17 above.
50. Constitutional Reform, Modification of art. 25 of the Fundamental Law concerning Application of the Death Penalty, **Gaceta Oficial**, no. 122, 6.7.1959. This constitutional amendment was as follows:  
     The death penalty will not be applied...  
     An exception will also be made...in the case of those found guilty of counter-revolutionary crimes defined as such by law and of those harming the national economy or the public treasury.  
     Text in Vega Vega, *op. cit.*, pp. 28-29; see **Cuba and the Rule of Law**, *op. cit.*, p. 99.
51. Law no. 425, 7.7.1959, **Gaceta Oficial**, ed. extraordinaria, no. 32, 9.7.1959. Source: **Folleto**, **Leyes del Gobierno Provisional**, *op. cit.*, X, 1<sup>o</sup>A, 31.7.1959, pp. 7-25; Vega Vega, *op. cit.*, pp. 30-42. Counter-revolutionary crimes were defined in Chapters I, III and IV of Title I,

Book II, Social Defence Code (the Cuban Criminal Law of 1936), amended in articles 2, 3 and 4 of Law no. 425, as well as those defined in articles 5-12 of Law no. 425. As the Memorandum commenting on the law expressed it:

Wherefore: The general definition of that counter-revolutionary activity which it is necessary to suppress involves the possibility of damaging the invaluable good of individual liberty; it was to guarantee this liberty that the revolution has been fought.

For extensive discussion, see José A. Grillo Longoria, *Los Delitos en Especie*, Vol. I, Editorial Ciencias Sociales, Havana, 1982, pp. 31-34.

52. Article 14, Law no. 425, 7.7.1959.
53. Thomas, *op. cit.*, 1977, pp. 464-465.
54. Constitutional Reform, 29.10.1959, *Gaceta Oficial*, no. 207, 2.11.1959. See Vega Vega, *op. cit.*, p. 56; *Cuba and the Rule of Law*, *op. cit.*, p. 99.
55. See above, note 39.
56. Matthews, *op. cit.*, p. 153.
57. Thomas, *op. cit.*, 1977, p. 497.
58. In a letter to Fidel Castro dated 19.10.1959: Thomas, *ibid.*, p. 466.
59. *Ibid.*, pp. 466-467.
60. *Ibid.*, p. 467.
61. *Ibid.*, pp. 468, 474.
62. *Ibid.*, p. 467.
63. See note 55.
64. Thomas, *op. cit.*, 1977, p. 477.
65. *Ibid.*
66. Antonio Nuñez Jiménez, *En Marcha con Fidel, 1959*, Editorial Letras Cubanas, Havana, 1982, pp. 430-448.
67. Matos completed the entire twenty years of his sentence. See the interview with Hubert Matos by Daniel James in *New York Times*, December 1979, cited in *De Volkskrant* (Amsterdam), 1.12.1979.
68. Andrés Suárez, *Cuba, Castroism and Communism, 1959-1966*, MIT Press, Cambridge Mass., p. 76.

69. Procedural Law of the Republic of Cuba at War, 28.7.1896; articles 1 and 6 of Law no. 634, 20.11.1959, 'Regulations for the transfer of cases and trials of counter-revolutionary crimes from the ordinary jurisdiction to the Revolutionary Tribunals', *Gaceta Oficial*, 23.11.1959. Source: *Folletos, Leyes del Gobierno Provisional*, no. XIV, 30.11.1959, pp. 20-25; Vega Vega, *op. cit.*, p. 57. Art. 1 ran (in part) as follows:  
 All cases and trials which have been started or which are to be started for counter-revolutionary crimes... will be tried summarily by the Revolutionary Tribunals and by the procedure laid down by the Procedural Law of the Republic of Cuba at War of 28th July 1896, with the amendments introduced by the present law.  
 This meant the introduction of a special, brief and unwritten procedure from articles 108-112 of the 1896 Procedural Law, as amended by Law no. 634 of 20th November 1959.
70. Articles 5, 7, 8 and 9, Law no. 634, 20.11.1959.
71. Constitutional Reform Law, 22.12.1959, *Gaceta Oficial*, ed. extraordinaria, no. 58, 22.12.1959 and Law no. 664, 23.12.1959, 'Establishing the Confiscation of Goods as an Accessory Sanction to be imposed for Crimes Classified as Counter-revolutionary', *Gaceta Oficial*, 23.12.1959.  
 Article I: In all cases of counter-revolutionary crimes the Tribunal will impose as an accessory sanction the confiscation of goods. Likewise it will impose the total confiscation of their belongings on those persons who leave the national territory in whatever way to avoid trial by the Revolutionary Tribunals. The same penalty will be imposed by the Revolutionary Tribunals with respect to those persons who, having abandoned the national territory, carry out conspiratorial actions abroad against the Revolutionary Government. See Vega Vega, *op. cit.*, p. 63.
72. Thomas, *op. cit.*, 1977, p. 573. An inquiry carried out in April 1960 demonstrated that the majority of Cuban urban residents (60% of the Cuban population) considered that they were better off under the new regime than they had been before.
73. Thomas, *ibid.*, pp. 487, 488.
74. O'Connor, *op. cit.*, p. 161. This was the Oil Law of 1959.
75. *Ibid.*, p. 165; René Dumont, *Cuba: Socialism and Development*, Grove Press, New York, 1970, p. 34; Thomas, *op. cit.*, 1977, p. 511; Cole Blasier, 'The elimination of United States Influences', *Revolutionary Change in Cuba*, Carmelo Mesa-Lago (ed.), University of Pittsburgh Press, 1971, pp. 65-67.
76. Blasier, *op. cit.*, p. 62; Gérard Pierre-Charles, *Génesis de la Revolución Cubana*, Mexico, 1976, p. 36. Cf. also Sweezy & Huberman, *Cuba, anatomía de una revolución*, 1960, p. 58 (Spanish edition).

77. Dumont, *op. cit.*, pp. 34-35; O'Connor, *op. cit.*, p. 165; Thomas, *op. cit.*, 1977, p. 513; Blasier, *op. cit.*, p. 62.
78. Thomas, *op. cit.*, 1977, p. 538.
79. A trade agreement was signed between Cuba and the People's Republic of China at the end of November 1960: *ibid.*
80. *Ibid.*, p. 536.
81. *Ibid.*, pp. 523-524 offers a detailed account based on Guatemalan and North American sources.
82. *Ibid.*, p. 497.
83. *Ibid.*, pp. 518-519.
84. *Ibid.*, pp. 570-571.
85. As is generally known, in this invasion some 1,300 CIA trained and armed Cubans who had left for the United States of America landed on the South coast of Cuba. Cuba was continually faced with the problem of various counter-revolutionary groups on Cuban territory until 1965.
86. Law no. 719, 22.1.1960, *Gaceta Oficial*, 28.1.1960. See *Folletos, Leyes del Gobierno Provisional*, no. XVI, 31.1.1960, pp. 142-149; *Cuba and the Rule of Law*, *op. cit.*, pp. 125-126.  
 A commentary on the law explained the reason for its necessity as follows:  
 The economic ambitions of the present revolutionary process, aiming to bring wide and positive benefits to the popular classes of the country, create circumstances which encourage those who find it hard to accept that limits are imposed on the gaining of excessive profits in trading, industrial and agricultural activities to commit such crimes. This situation has to be borne in mind with reference to the amendments.  
 Art. 4 of this law declared the crimes specified in article 557 A, B, C, D and E of the Social Defence Code (the Cuban Criminal Law of 1936) to be counter-revolutionary in cases where the circumstances mentioned in article 557 G (i.e. in the event that Cuba should be at war) were in effect.
87. Articles 1, 2, 3 and 5 of Law no. 732, 17.2.1960, *Gaceta Oficial*, 22.2.1960. Source: *Folletos, Leyes del Gobierno Provisional*, no. XVII, 29.2.1960, pp. 102-112. Law no. 732 was entitled 'Amendments to the Social Defence Code, Increasing the Penalties for the Crimes of Malversation of Public Funds, Fraud, Illegal Exactions and Others'. See Vega Vega, *op. cit.*, pp. 66-72; *Cuba and the Rule of Law*, *op. cit.*, pp. 126-127.
88. Art. 4 of Law no. 732 laid down that these crimes were also to be tried by Revolutionary Tribunals.

89. Law no. 858, 11.7.1960, 'Amendment of Regulations of the Social Defence Code for the Protection of the Popular Economy', **Gaceta Oficial**, 20.7.1960. Source: **Folletos**, XXII, August 1960, pp. 170-171. See Vega Vega, **op. cit.**, pp. 75-79; **Cuba and the Rule of Law**, **op. cit.**, p. 127.
90. Law no. 923, 4.1.1961, 'Amendment of the Social Defence Code for the Suppression of Terrorist Attacks and Counter-revolutionary Activities', **Gaceta Oficial**, 4.1.1961. Source: **Folletos**, **Leyes del Gobierno Provisional**, XXVII, January 1961, pp. 128-131.
91. Remarks 1 and 2 in the introductory clause to Law no. 923, 4.1.1961. Source: **Folletos**, p. 129; Vega Vega, **op. cit.**, p. 91.
92. Art. 1, Law no. 988, 29.11.1961, 'Sanctions with the Death Penalty for those who carry out counter-revolutionary acts', **Gaceta Oficial**, ed. extraordinaria, 29.11.1961. Source: **Folletos**, **Leyes del Gobierno Provisional**, XXXVIII, December 1961, pp. 44-45. See Vega Vega, **op. cit.**, pp. 98-100; **Cuba and the Rule of Law**, **op. cit.**, pp. 128-129.
93. Art. 2, Law no. 988.
94. As the Cuban legal journal, **Revista Cubana de Jurisprudencia**, put it:  
It is one of the problems of a genuine revolution to ensure that the judicial administration also applies the laws which come into being through the revolution itself. This is a problem that has been encountered in Cuba and it is not an easy one to solve.  
Source: Juan Marinello, 'Un Acuerdo Ejemplar', **Revista Cubana de Jurisprudencia**, year 1, January 1962, no. 1, p. 16.
95. This was Dr. José Miro Cardona: **Cuba and the Rule of Law**, **op. cit.**, p. 67.
96. **Cuba and the Rule of Law**, **op. cit.**, p. 68 [from: Bar Association of Havana, **Official Bulletin**, 16th Year, Second Period, June-November 1961, nos. 2, 3, 4, 5, 6 and 7].
97. **Ibid.**, pp. 67, 68, 76, 77.
98. It is undeniable that one of the organs of the state which has been particularly slow in adjusting to the revolutionary process is the judicial administration.  
Santiago Cuba, **Memoria, leída por el Fiscal General del Tribunal Supremo**, 1st September 1961, pp. 8-10.
99. **Cuba and the Rule of Law**, **op. cit.**, pp. 63-64 provides a brief account of this decision. It is the only relevant source known to me. For information on the court for Constitutional and Social Guarantees, see Eduardo Rafael Núñez y Núñez, **Ley de Enjuiciamiento Criminal**, Vol. II, Jesus Montero, Havana, 1954, pp. 363-397. The Court of Constitutional and Social Guarantees (**Tribunal de Garantías Constitucionales y Sociales**) was empowered to investigate the means of appeal against unconstitutional decrees, laws, judicial pronouncements and

decisions affecting the neglect of constitutional rights, such as the right of **habeas corpus**.

Article 160 of the Fundamental Law of 1959 is in this respect the same as Article 182 of the 1940 Constitution of the Republic of Cuba:

The Court of Constitutional and Social Guarantees is competent to deal with the following matters:

- a appeals of unconstitutionality against laws, judicial decrees, resolutions or acts which reduce, diminish, restrict or encroach upon the rights and guarantees provided in this Fundamental Law or which hinder the free functioning of the state institutions;
- b the deliberations of judges and courts concerning the unconstitutionality of laws, judicial decrees and other regulations which are applied in courts of law;
- c the right of **habeas corpus** when claimed by means of appeal, or when appeals to other authorities or tribunals has had no effect. etc.

100. Santiago Cuba, *op. cit.*, 1961, p. 10; **Cuba and the Rule of Law**, *op. cit.*, pp. 106-110; Constitutional Reform Law of 20th December 1960, Article 11, which was as follows:

The irremovability of the functionaries of the judiciary is suspended for a period of 45 days from the date at which the present law comes into force. Within this period, the President of the Republic, assisted by the Council of Ministers, will be free to dispense with the services of the aforementioned functionaries and to take back into service in the Supreme Court of Justice those who are not removed from this Court.

Source: **Folletos, Leyes del Gobierno Provisional**, XXVII, January 1961, pp. 19-25.

101. **Cuba and the Rule of Law**, *op. cit.*, p. 64 cites **The New York Times**, 4.2.1961. A brief, positive commentary on the measures taken can be found in **Bohemia**, 12.2.1961, pp. 73-74.

102. Pronouncement no. 783, 21.8.1961, of the Government Division of the Cuban Supreme Court, **Revista Cubana de Jurisprudencia**, year 1, January 1962, no. 1, p. 91.

103. *Ibid.*

104. Santiago Cuba, **Los Tribunales en el Período de Construcción del Socialismo**, Trabajo leído por el Fiscal del Tribunal Supremo, Apertura de los Tribunales, 1st September 1962, p. 18.

105. Articles 6 and 11 of the Constitutional Reform Law of December 20th 1960, by which Article 158 of the Fundamental Law of February 1959 was amended. Article 158 of the Fundamental Law, which was virtually the same as Article 180 of the 1940 Constitution, was as follows:

- 1 The Magistrates of the Supreme Court will be appointed by the President of the Republic from three candidates proposed by an electoral body consisting of nine members. Of these, four will be appointed by the plenum of the Supreme Court from its own ranks, three by the President of the Republic and two by the Faculty of Law of the University of Havana...
- 3 The President of the Supreme Court and the Presidents of the Chambers will be appointed by the President of the Republic on the basis of proposals put forward by the plenum of the Court. These appointments and those of the Magistrates of the Supreme Court must receive the approval of the Council of Ministers [in the 1940 Constitution this was the Senate].

The Judicial Administration Law of 1909 (**Ley Orgánico del Poder Judicial**, 27.1.1909) provided an elaboration of this via an amendment in its articles 59 and 60.

106. Santiago Cuba, *op. cit.*, p. 8.

107. *Ibid.*, pp. 9, 11.

108. *Ibid.*

109. Law no. 1098, 26.3.1963, **Gaceta Oficial**, 29.3.1963. See Vega Vega, *op. cit.*, pp. 108-110.

110. See Grillo Longoria, *op. cit.*, pp. 39-40.

111. For the difference between political and counter-revolutionary crimes, see the statement of the Cuban viewpoint in Grillo Longoria, *ibid.*, pp. 13-18. The principle is that set out by Fidel Castro in 1977:

Good. I am going to say the following. First, I disagree with what you said. Nobody is arrested in Cuba for political ideas. That is the first point.

Point number one. Point number two: we have a conception of political prisoners and of counter-revolutionary prisoners. In accordance with our conception of penal justice, a political prisoner is someone who is arrested and sentenced for wanting to improve society, for fighting for the good of humanity and for social progress. We do not think the same way about those who are fighting for social regression. And though we call them counter-revolutionary prisoners, they are arrested for committing specific serious crimes.

Source: **Granma**, 2.11.1977.

112. See for example Jerome Alan Cohen, **The Criminal Process in the People's Republic of China, 1949-1963. An Introduction**, Harvard University Press, 1968, pp. 22-23 and pp. 83-88; Stanley Lubman, 'Mao and Mediation: Politics and Disputes Resolution in Communist China', **California Law Review**, 55, 1967, pp. 1302-1306.