

# THE EMERGENCE AND DECLINE OF THE CUBAN POPULAR TRIBUNALS

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Cuban popular courts have been a subject of widespread interest among Western scholars. This paper analyzes the factors which led to the development of this judicial experiment as well as the reasons for its demise. The success or failure of this experiment was closely tied to long-term economic and political goals of the Cuban government, which eventually came to require an institutionalized bureaucratic cadre to operate its judicial system. This shift doomed the popular courts and led to the emergence of the legal profession as one of the most influential groups within Cuban society.

During recent years in the United States and other industrialized societies, there has been substantial interest in the creation of alternate dispute settlement mechanisms that deemphasize formalism and strive toward delegalization. Many advocates of less formal justice have looked closely at foreign models, paying special attention to socialist attempts. The Cuban model in particular has received a great deal of attention (Berman, 1969; Booth, 1973; Butterworth, 1980) and praise (Brady, 1981; Tigar, 1979; Hiken, 1969; Miseloff, 1972). Thus, it is ironic that as Western nations seek to develop forums similar to the Cuban model, Cubans have moved away from informality toward a system substantially more like traditional Western lower courts. In this paper I shall briefly discuss the well-documented history of the rise of the popular tribunals and then describe in more detail the changes these courts have undergone and the reasons for them.

## I. CHANGING PATTERNS OF JUDICIAL ORGANIZATION

Popular courts were first proposed by Fidel Castro in 1962 (Cuba, 1966). Commissions were directed to examine other socialist systems and solicit comments from national political

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and social organizations for ideas on the reorganization of inferior trial courts. The model of popular justice that eventually emerged reflected the strong influence of the Soviet Comrades' Courts (Cuba, 1963).

As originally conceived, these courts were to operate exclusively in rural areas, untouched by the traditional legal system. Although there were only thirty-five such courts in 1964, thereafter their numbers grew dramatically (Cuba, 1966). In 1966 the first popular courts opened in Havana, and by 1969 about 8,000 judges in more than 2,000 courts heard cases throughout the island (Villares, 1973).

The geographical area served by the courts closely resembled that of the Committees for the Defense of the Revolution;<sup>1</sup> each urban neighborhood had one such court exercising jurisdiction over twenty to thirty square blocks (Butterworth, 1980). These courts had as many as forty judges available for service, but only three served on each panel.

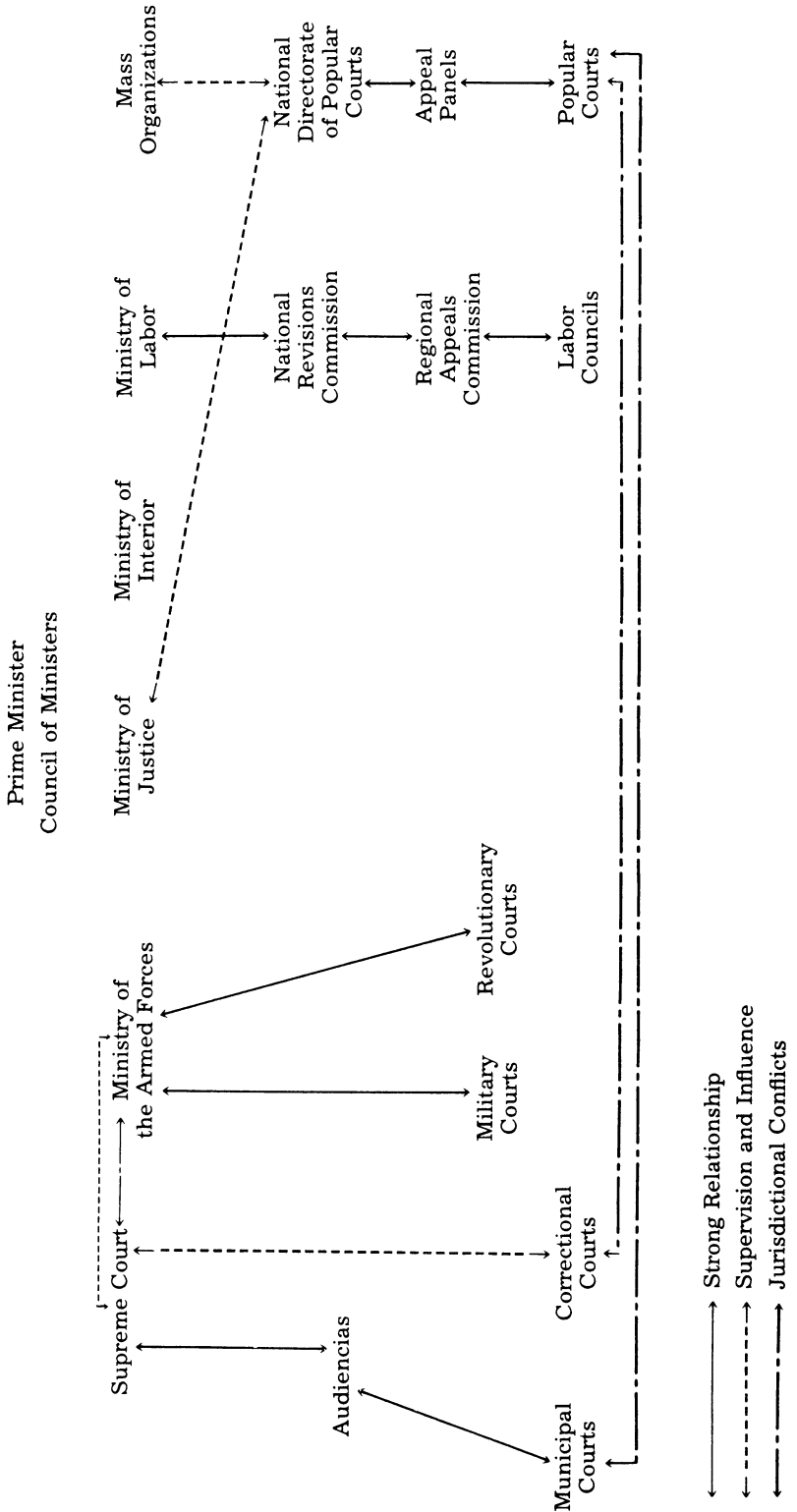
From their inception popular courts were staffed by part-time judges selected from the neighborhood or factory in which the tribunal was held. Lawyers had no institutionalized role in the tribunals since formal legal participation was confined to appellate panels in which an assessor, usually a law student, sat as a member of the review board (Berman, 1969). The part-time judges were nominated for their positions by the workers in the area served, and their candidacy was screened by local mass organizations to determine their moral fitness and revolutionary zeal (Cubellas, 1968). Thereafter, the candidates had to be approved by both the Commission of Popular Tribunals and local party functionaries. Upon selection, they attended a ten-day training course at which further screening was carried out (Janero, 1968). The survivors then faced forty-five days of advanced studies prior to taking office (Martí, 1977).

The popular courts were first placed under the direction of the Ministry of Justice but were subsequently removed from the judicial structure and transferred to a newly formed National Directorate of Popular Tribunals (Cuba, 1966). Figure 1 is a schematic representation of the Cuban government at the end of the 1960s. The main characteristic of this design is the duplication and conflict among the organizations represented.

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<sup>1</sup> Committees for the Defense of the Revolution (CDRs) were first established as a vigilance apparatus in September of 1960. Their tasks have subsequently been expanded to cover a variety of other activities such as education, health, and sanitation. Throughout their history they have remained a locally based institution with membership open to all Cubans (Dominguez, 1978).

Figure 1. The Politico-Judicial Structure of Cuba at the End of the 1960s



The minimal crossover from the new courts to the traditional court system is characteristic. There is some difficulty, however, in delineating exact functions because of the interrelationships among the major organizations. The diagram also illustrates some of the principal areas of conflict among the different structures. The Party has not been included because of the difficulty in determining its exact role and place.

Jurisdiction of the popular courts was at first ill-defined and limited largely by territorial boundaries. Thus, courts located in rural areas were primarily concerned with redistribution of land and agricultural disputes while those in the urban areas tended to concentrate on fights, domestic disputes, and quarrels among neighbors (Berman, 1969).

Cases could be initiated by one of four parties: private citizens, the CDR, the police, or in some cases, the court itself. Except when the court acted on its own initiative, the proceeding commenced with a formal complaint lodged with the local police (Butterworth, 1980). The complaint did not necessarily specify the violation of some legal rule since these courts operated without the guidance of legal codes. Indeed, it was not until 1966, when an initial draft of a Judge's Manual was introduced, that the functions and duties of the courts were set forth (Berman, 1969). In the absence of specific legal rules, the tribunals were expected to act spontaneously on the basis of collective needs and "common sense" rather than procedural requirements.

The adoption of the Manual may be seen as marking the end of the initial period of experimentation in that the courts' jurisdiction was thereafter explicitly delineated. It included: torts in which the amount in controversy did not exceed one thousand pesos, minor crimes, juvenile delinquency, health matters, and personal quarrels (Berman, 1969). While official statements continued to classify these courts as mediation tribunals, primarily dedicated to the settlement of civil disputes, criminal cases came to constitute the bulk of their caseload.<sup>2</sup>

Cases before the popular courts were heard by a panel of three lay judges. Broad public participation was encouraged. To maximize attendance, trials were often scheduled during the evenings and in public places. The purpose of trials was

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<sup>2</sup> Official figures reveal that in 1966 out of a total of 2,289 matters processed by popular courts, 2,015 were criminal and 274 were classified as civil (Cuba, 1966). This could be due to the way cases were classified rather than the nature of the dispute involved.

not primarily to determine guilt or innocence. Rather, they were regarded as tools which through embarrassment and peer pressure helped rehabilitate offenders and deter others. Spectators played a vital role in the educational process, participating and expressing their opinions at will (Martirena, 1971; Berman, 1969; Cuba, 1966).

One of the most significant changes introduced by the popular courts was the array of innovative sanctions that they applied. The most prevalent were: public admonishment, educational improvement, and the prohibition of specified activities. They also commonly resorted to fines, a matter of some controversy since many argued that the fine was a quintessentially capitalistic penalty. Fines remained popular, however, perhaps because they were exacted as quotas (e.g., two days' earnings) rather than as specified peso amounts and so took into account the ability of the parties to pay (Villares, 1973; Cubellas, 1968). The use of quota fines was just one way in which sanctions were individualized. Judges were also encouraged to take into account the defendant's past criminal record, personal and family needs, health, employment, and institutional needs (Butterworth, 1980).

Shaming, although not considered a sanction, was also common. The formal proceedings often concluded with a public admonishment by the judges and/or neighbors, and judges usually required offenders to attend "study circles" at which they discussed the nature of their behavior and received comments from their neighbors (Butterworth, 1980).

The adoption of the Manual in 1966 was only the first step in curbing the discretion enjoyed by popular court judges and rendering their proceedings increasingly formal. By 1973, the year which saw a dramatic change in the system of popular justice, regulations had been enacted which restricted the places in which trials could be held and emphasized the formality of judicial proceedings. For example, trials were banned from outdoor public places because it was felt that such show proceedings engendered disrespect for the law (Villares, 1973). Also, the popular courts had shifted away from the loose and varied sentencing schemes, which seemed so promising when introduced, and toward traditional judicial sanctions. Thus, by 1973 the sanctions most commonly employed were: 1) incarceration, which could only be imposed in cases involving serious crimes or in sentencing recidivists; 2) fines; and 3) public censure, which was to be inflicted with as little humiliation as possible. Secondary sentences included:

1) forfeiture of the goods employed during the commission of the crime and 2) supervision by organizations of public order or mass organizations, when the sentence imposed had been public admonishment or a fine. This form of probation was limited to six months (Villares, 1973).

As Cuba moved during the early years to a model of economic development in which revolutionary commitment and innovation were more highly prized than technical skill, the country began to encounter severe problems of internal order (Domínguez, 1978; Mesa-Lago, 1978; Salas, 1979). A "National Forum of Internal Order" was called together in 1969 to examine the problems of social control. The discussion was broad-ranging and all organizations charged with the administration of justice took part (del Valle, 1969). Because of their primary role, the popular courts came under close scrutiny.

Criticism of the popular courts focused on: 1) the lack of clear guidelines demarcating jurisdictions, which often resulted in conflicts with the traditional legal system; 2) the almost unbridled discretion exercised by judges in imposing sanctions; 3) the informality of the proceedings, encouraging disrespect for the legal system; and 4) the lack of institutional control over the courts (Salas, 1979; Rodríguez, 1975; Roca, 1974; del Valle, 1969). These criticisms were raised in portions of major addresses by the President of Cuba and the Minister of the Interior, so we know they reflected institutional concerns debated at the highest levels.

As a result of the criticisms voiced at the "Forum" and thereafter, the regime established a number of law commissions to examine the judicial structure and recommend changes. Preliminary commissions, however, had already been established as early as April of 1968 (Morales, 1976). This first commission was presided over by the Minister of the Interior, Sergio del Valle, and with the exception of del Valle consisted entirely of lawyers. Thereafter, a Secretariat, under the leadership of Blas Roca, undertook the process of rewriting the existing legislation (Morales, 1976). While the chairpersons of these committees were nonlawyers, the membership was confined to members of the bar and the judiciary with no participation by popular court officials.

As their first action the commissions drafted proposed laws on court organization and a code of criminal procedure. Upon completion, the drafts were submitted to the judiciary and the legal profession for their study and comments. Thereafter, they

were debated at work centers and local offices of the CDRs. They were finally adopted in June of 1973 (*Ley de Organización del Sistema Judicial*, 1973; *Ley de Procedimiento Penal*, 1973). Fidel Castro ratified these innovations when he commented that “here it is made clear that the ‘new society’ needs scientific and intelligent order,” adding that mass organizations and the Communist Party must maintain close contact with the judicial system in order to ensure proper order (Santrayll, 1974: 18). These events marked the end of the popular courts and the renewed institutionalization of the lowest level tribunals within the judicial system.

Among the provisions of the new law on the organization of the judicial system were ones which: 1) unified the judicial system into a pyramidal structure consisting of base courts, regional courts, provincial courts, and the Supreme Court; 2) integrated the judiciary into the political-administrative structure by placing it directly under the supervision of the Council of Ministers; 3) mandated a mixed bench consisting of lay and professional judges for the higher level courts; 4) provided for a bench of lay judges, the majority of whom would be elected by local constituencies; 5) extended a right of appeal to all cases; 6) reorganized prosecutorial institutions and redefined their functions; and 7) abolished the private practice of law by requiring legal practitioners to join legal collectives. As a result of these changes, provincial and regional courts became the primary trial courts for offenses, with the potential penalties exceeding six months, while the base courts had responsibility for petty crimes and other minor matters (Morales, 1976; *Ley de Organización del Sistema Judicial*, 1973).

These were not, however, the last changes the judicial system was to undergo. By 1976 Cuba was well on its way toward institutionalization of the Revolution. A new Constitution was adopted that modified the political structure of the country, eliminating regions and bases. It was therefore necessary to reorganize the judicial system to accord with the new structure. Thus, in 1977 base and regional courts were abolished and replaced by municipal courts which had criminal jurisdiction over cases in which the maximum sentence could not exceed nine months, over “indexes of precriminality,”<sup>3</sup> and

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<sup>3</sup> Precriminality is a concept carried over from the Social Defense Code, under which certain potential offenders could be removed from society even though they had not yet committed a criminal offense on the belief that if left alone their behavior would eventually escalate. Prostitutes, vagrants, drunks, drug addicts, and some insane persons are included within this class.







Figure 2 depicts the present judicial structure, still without a locus for the Party, which is therefore not included in the diagram. The lower courts are directly responsible to the provincial courts for day-to-day operations. Their staff is provided by the Ministry of Justice, but their immediate supervision rests with a provincial court. Judges are also directly responsible to the body which elected them and can be summarily dismissed by it at any time.

Newly devised election and removal procedures further enhance political control over the judiciary. Municipal judges, for example, are elected by their local legislative assemblies, Municipal Assemblies of Popular Power. Names of candidates for election are submitted by the Ministry of Justice after an initial screening. Professional judges at the municipal level are expected to have at least three years of legal experience, demonstrate active revolutionary "integration" (usually measured by membership in political and mass organizations), and be of good moral character (*Ley de Organización del Sistema Judicial*, 1977: Articles 66-67). Lay judges must be at least twenty-one years of age, be well integrated, display good attitudes toward work, and be of good moral character (Articles 76-77). Professional judges serve full-time while the lay judges must hold other full-time employment and may only serve for two nonconsecutive one-month terms during each year (Article 77).

A major innovation of the new system is the reporting procedure made applicable to the judiciary and the Procuracy. All of the courts must report yearly both to the legislative body which elected them and to their superior court (*Ley de Organización del Sistema Judicial*, 1977: Articles 68-69). A committee of the corresponding assembly reviews the reports and makes recommendations to the appropriate body. The electing assembly may revoke the office of any lower court judge upon the recommendation of the Supreme Court or the Ministry of Justice (Article 91), and superior courts may impose sanctions, ranging from public censure to suspension for a period of time, on inferior judges (Articles 88-90). These measures are apparently applied in cases of blatant violations of procedural norms.

The law commissions also developed a code of criminal procedure for the provincial and municipal courts. As one would expect, procedures are less formal in the municipal than the provincial courts. Because there is no investigating magistrate in the municipal court, the preparatory phase of the

formal proceedings is shorter. Also because of the nature of the offenses heard in the lower courts and the penalties that can be meted out, there is no right to appointed counsel. In both courts, defendants have a number of procedural rights that would be familiar in Western democracies. There is a right to appointed counsel in serious cases, a right to be brought before a magistrate within forty-eight hours after arrest, the opportunity to be released on bail or under some form of pretrial supervision, the right to a speedy trial if incarcerated pending trial, a privilege against self-incrimination, a right in the case of most crimes to a public trial,<sup>4</sup> and for those ordered incarcerated by a municipal court, the right to appeal to a provincial court (*Ley de Procedimiento Penal*, 1977: Articles 255, 312, 320, 362-363, 381). In addition, the State may appeal any decision felt to be in error, asking for either the reversal of an acquittal or a higher penalty than the lower court imposed.

The processing of civil cases in municipal courts is also of a more summary nature than that which occurs in the provincial courts (*Ley de Procedimiento Civil*, 1977: Article 357). Speed is thought to be of special importance, and the law requires that a decision be rendered within twenty days of the date the action is filed. However, unlike the earlier popular tribunals, the municipal courts acknowledge the utility of counsel, and litigants are required to proceed through attorneys except when the amount in controversy does not exceed five hundred pesos (Article 66).

The 1973 and 1977 changes in the rules regarding trial courts reveal a striking trend toward formalism and bureaucratization. The trend is reflected in style as well as substance. Previously, trials had been held in public places or work centers and were presided over by judges dressed in their work clothes. Today, courtrooms are formal and austere settings with the various functionaries attired in suits and attendant regalia. The stylistic difference perhaps best captures the new attitude toward formalism.

## II. THE RISE OF THE POPULAR COURTS

The changes in Cuban jurisprudence over the past twenty years of revolutionary rule did not occur in isolation but can only be understood within the context of the political, economic, and historical events which preceded them.

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<sup>4</sup> The exceptions are matters that offend public morals, that involve minors, or that pose a danger to either State security or the honor of a victim.

Concepts of justice and the role of the judiciary evolved from and were consequences of these events.

### *Emergence of the Courts*

Both pragmatic and ideological factors were associated with the creation of the popular courts. The implications of these concerns have varied over the years. They have not always been complementary. Pragmatic concerns are the most readily identifiable and will be discussed first.

One of the primary factors affecting Cuban institutional development during the first years of revolutionary rule was the regime's distrust of existing institutions. Of special concern was the judicial apparatus that had been inherited from the Batista government. There were serious clashes between the judiciary and the leadership from the beginning. The most serious of these disputes centered on jurisdictional competence to try politically sensitive cases (Moreno, 1971; International Commission of Jurists, 1962). The most notorious case involved the trial of forty-five Batista aviators charged with genocide during the civil war. Shortly after a court acquitted all defendants, Castro personally disputed the verdict and called for a new trial. This time all defendants were convicted, a verdict that clearly violated Cuba's ban against double jeopardy and resulted in widespread condemnation by the organized bar and the Supreme Court (Moreno, 1971).<sup>5</sup> In order to avoid further confrontations, the regime established "revolutionary" tribunals for the trial of political cases. Thus, a dual court system was established. One was to handle ordinary civil and criminal cases and the other to handle both the trials and appeals of political cases.

The idea of avoiding existing institutions by duplicating them was not unique to the legal system. Rather than abolishing existing mechanisms, the regime chose to respond to potential conflict by establishing parallel organizations with unquestionable revolutionary commitment and loyalty to the

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<sup>5</sup> Conflicts continued, especially in those matters dealing with land reform (Dominguez, 1978). By the end of 1960 the government began to bypass the traditional judiciary. Whenever it would decide to take otherwise unconstitutional actions, it would amend the "fundamental" law. From January 1959 to August 1961, twenty-two amendments were passed (International Commission of Jurists, 1962). In reaction to the legal and political changes, a large portion of the Supreme Court abandoned their posts: between November 1960 and August 1961, twenty-one of the thirty-two justices resigned or were dismissed. A similar pattern followed throughout the court system. Purification of the judicial branch was complete by August 1961, with the adoption of a resolution redefining the role of the judiciary in a socialist society (Marimón Roca, 1981).

regime. Thus, the Army was bypassed by the militia and the police by the Committees for the Defense of the Revolution (Salas, 1979; Domínguez, 1978).

Another feature of postrevolutionary Cuba was the isolation of the remote areas of the country. The rural sector, in particular, was poorly tied to Havana. It is not surprising that the majority of popular courts established prior to 1964 were located in rural areas. These sectors had "found themselves judicially isolated, and in the few cases in which authority extended, its activity was alien to rural life, work, the miseries of the peasant and the social atmosphere surrounding it" (Cuba, 1963: 46). Political distance was not, however, a factor confined to the rural sector. Urban slums had likewise been ignored by prerevolutionary governments (Butterworth, 1980).

Staffing governmental organizations presented a serious problem due to the depletion of Cuba's professional classes. This problem was especially acute in the judicial sector, which through purges and flight had lost a substantial number of its trained personnel (Domínguez, 1978). Lawyers, too, were affected by the dislocation resulting from revolutionary politics, and by 1961 a substantial portion of Cuba's bar had fled into exile.

Furthermore, the legal profession was politically suspect since many of its members were viewed as defenders of the old class structure. In addition, ideological emphasis on popular participation and access was inconsistent with the idea that legal representation was necessary to achieve justice. Nor could those who fled be replaced by newly trained lawyers, for educational policies not only stressed technology and agriculture, they also downgraded legal education as a hobby for the rich and the enemies of the Revolution. As a result, law school enrollment at the University of Havana declined from a high of 2,853 in 1958-1959 to only 159 in 1971-1972 (Domínguez, 1978). The lack of trained personnel also contributed to increases in the workloads of traditional courts. Caseloads grew dramatically as litigation increased due to the new revolutionary legislation. At the same time, the number of judges was decreasing. One court in the Province of Havana, for example, handled 37,345 cases in one year with eight hundred trials daily (Cuba, 1963). Thus, Cuba in the early 1960s needed courts to deal with a myriad of disputes but lacked the trained personnel to staff them.

While these pragmatic considerations influenced the development of the popular courts, ideological considerations were also crucial in shaping the institution that emerged. Ideology is a difficult variable to quantify or even to identify at times. Nevertheless, it is evident that during different stages of Cuban development there were conflicting ideologies at work (Mesa-Lago, 1978). Of the principal contenders, one called for constant ideological and social revolution while the other argued that the revolution should culminate in a society that followed traditional Marxist lines of economic development. Ernesto Guevara and Fidel Castro were the primary exponents of the former view while various old-party functionaries espoused the latter.

Guevara's view of the new Cuba encompassed more than socialist policies for development. The central objective of the struggle was to be the creation of the "New Man" (Guevara, 1977). Guevara's version of Marxism argued that the reformation of traditional human values and consciousness was at the core of any economic transformation. Its dogma emphasized revolutionary zeal over competence; collectivization of the economy; the use of moral incentives to increase production; and the free distribution of goods, with little concern for salaries and wage scales (Bernardo, 1971). It was expected that structural changes could transform Cuban citizens into selfless, cooperative, and committed members of the group. Courts were to serve as models in the restructuring of traditional attitudes and beliefs, but this could only be done if they abandoned traditional models and devoted themselves to the reeducation of the citizenry by modifying behavior and, thus, attitudes.

For the exponents of traditional Marxist thought, achievement of Communism was to be a gradual and lengthy process with the ultimate aim being realized only after Cuban society had passed through a number of stages of economic development. Economic planning and centralization were critical to this process. Establishment of a trained and loyal bureaucratic cadre to operate the massive machinery required was a primary task of nation-building. Law had a central role to play in this scheme: ensuring stability and uniformity through formal proceedings. The primary goal of law was the legitimization of the economic and political system which it served.

The exponents of Soviet Marxism and Guevarism differed substantially in their view of the role of law. For followers of

Guevara, lawyers and judges were the consummate bureaucrats, acting as intermediaries between the State and the people. Until such time as the need for law would disappear, its primary function was to be education, characterized by mass participation, idealism, flexibility, and flux. Proceedings should be informal, with judges selected from the people and training held to minimal levels since substantial professionalism could result in a return to legal formalism. Sanctions were viewed as an educational tool, with public confessions and peer pressure serving as the primary instrument. The highest principles in any proceeding were to be those of the revolutionary morality aimed at the creation of a socialist consciousness and the "New Man" (Cuba, 1966).

Another feature central to this process was the concept of struggle or "lucha" (Fagen, 1969). Revolutionary history is permeated by themes of isolation and challenge. Capitalism is the enemy, and almost all events are viewed as aspects of a struggle with capitalist enemies or the remnants of capitalist domination. This sense of conflict was not limited to declared domestic and foreign enemies but also extended to potential enemies arising from within the ranks of the Revolution. As a result, competition between institutions and organisms was viewed as healthy and essential to maintaining the purity of the struggle.<sup>6</sup>

Popular courts functioned in direct opposition to correctional courts inherited from the prior regime. The latter courts had first been introduced by the U.S. Army about the turn of the century and possessed many of the features of American justice of the peace courts (Cuba, 1966). Due to their linkage with the United States and their reputation for representing the interests of upper classes, the preexisting correctional courts became one of the primary targets of revolutionary criticism.

Thus, in the ideological debate over how the Revolution should be institutionalized, the popular courts played an essential role. They embodied the vision of how law should function that was held by Guevara and his followers. The demise of Guevarism in the late 1960s removed the ideological underpinnings of these courts.

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<sup>6</sup> Conflicts between correctional courts and popular tribunals were the most prevalent since they had jurisdiction over some of the same minor crimes. Conflict between courts also occurred in remote areas of the country in which popular courts often heard more serious cases. The disputes became more serious as the traditional court apparatus moved into these areas.



### III. CAUSES FOR THE DEMISE OF THE POPULAR COURTS

The decision to terminate the popular court experiment was not a precipitous one but resulted from lengthy and thorough evaluations of the courts' performance. Ultimately, the issue for the Cubans was how this reform related to long-term revolutionary goals, which, as we have seen, changed over the years. The most important of the goals by which the success of the popular courts was measured were the goals of integrating the citizenry into the changing postrevolutionary order and, more generally, of socializing people to be good citizens. The Cubans were also, however, concerned with the costs of the system and its ability to adapt to political and ideological shifts.

#### *Integration*

The integration strategy proposed by the Cuban government sought to include all citizens in the revolutionary process while establishing a national socialist identity. Popular courts were thought to be instrumental in this task since, in many instances, they represented the only official linkage between the citizen and the State. Furthermore, they were an institution which allowed the public to play a leadership role since judges were nonprofessionals who were nominated and selected by mass organizations. But the idea that the popular tribunals could foster socialist solidarity among the masses ignored the ways in which the existence and activities of the courts might be disruptive factors.

One of the proudest achievements of the popular court movement was the introduction of the judicial apparatus into areas of the country that never before had access to courts. As one of the judges explained: “[b]efore the People’s Courts arrived, many problems were not brought into the open. People never bothered to file complaints. Consequently their tensions kept festering until they finally came to a head in more serious crimes. Now people know their complaints will be taken care of more quickly, and they are more likely to ask the courts to intervene” (Butterworth, 1980: 126). This statement regards the existence of the courts as an unalloyed good. It implicitly assumes that people failed to resort to formal institutions only because of their unavailability or because of historical class biases. It ignores the possibility that many such disputes could have been settled informally or abandoned. Allowing all disputes, regardless of their seriousness, to be brought into an official and potentially



adversarial forum, the purpose of which is not mediation but education, has the potential to produce more community disintegration than would occur if no dispute could be brought to a State court.

Judicial selection mechanisms were devised so that panels would be truly representative. Yet minimal educational and political qualifications, along with traditional distrust of the criminal justice system, served to exclude from service large segments of most local communities. Democratic election could not obviate these barriers, and indeed in some cases residents turned to outsiders, believing that they were more likely than their own neighbors to be fair (Butterworth, 1980). Furthermore, while local judges may have tried to be sensitive to differences in neighborhood patterns of behavior, they often brought with them prejudiced views of lower-class life. Thus, a judge explained the actions of a defendant in the following way: "I understand that among those people of low culture, morality doesn't mean much. They don't even keep their children from seeing such things. They let their desires free and bring their lovers home with perfect ease" (Butterworth, 1980: 128).

The concern for integrating people into the new order transcended local issues. Individuals were expected to identify with national and international revolutionary ideals, with interest in local issues regarded as somewhat parochial and of secondary importance. Popular courts, however, were the only mass organization which was solely based on a neighborhood model and designed to reflect the concerns of a small area, something which might at some points conflict with national policies. The possibility of conflict was enhanced because the absence of national direction left these courts isolated from the national mainstream and outside the control of the leadership. Thus, there was the danger that an institution which served well to integrate individuals into the new order might itself be poorly integrated into the larger social system.

During the Guevara years this specter posed few problems. Institutions were allowed to engage in conflict, for competition was supposed to provide a check on potential bureaucratization and institutional supremacy. Popular courts were in the midst of one such struggle. Because the jurisdictional boundaries between the popular and ordinary courts were nowhere clearly specified, a great many disputes with other courts arose. For years they were tolerated. So when President Osvaldo Dorticós, speaking in 1968 at the opening session of the

National Forum of Internal Order, characterized the situation caused by the existence of diverse tribunals with conflicting and duplicative jurisdictions as chaotic and called for judicial reform, it marked a social, structural, and ideological watershed (Rodríguez, 1975).

The presence of parallel legal systems is not unique to Cuba, and it is clear that within a given society several legal systems may coexist “complementing, supplementing or conflicting with each other” (Nader and Metzger, 1973: 96). It is, however, surprising to find a totalitarian State encouraging coexistence and competition. Within the Cuban context this can be explained by two factors: mass organizations, such as the popular courts, served to check potential challenges to the new order from more established institutional actors; and they provided breathing time for the restaffing of traditional institutions whose ranks had been decimated by flight and purges of personnel.

While the popular courts introduced the judiciary into many traditionally isolated areas, this did not necessarily enhance the government’s efforts to integrate these areas into the postrevolutionary society. Many of the policies pursued during the early years of the new regime had dislocating effects on the population and so achieved unexpected and unwelcome results. Revolutionary legislation had gone beyond the transformation of economic and political relationships and had initiated changes at the core of long-held cultural values. Facilitation of divorce and marriage, elimination of racial discrimination, challenges to religious beliefs (both predominant and subcultural), and efforts to transform the role of women generated emotional and psychological strains, while other measures such as rationing and geographical dislocation served to aggravate the situation (Dominguez, 1978; Salas, 1979). These changes contributed to drastic increases in family disorganization, delinquency, and neighborhood disputes. Popular courts, rather than reconciling people to the social reforms, became the system’s primary mechanism for focusing the general discontent.

### *Socialization*

Transformation of bourgeois cultural patterns was a core goal of the popular courts. Deviance in a socialist setting is explained by reference to capitalistic values, primarily individualism and selfishness. Such values are thought to be learned through a process of communication among close

interpersonal groups (Salas, 1979). Since the acquisition of an incorrect value system is a product of learning, it follows that reeducation will produce correct attitudes and behavior. What was necessary was “educating workers in the fulfillment of norms of social behavior and the eradication of habits acquired in the years of exploitation, misery and abandonment” (Cuba, 1963: 46).

Socialization by courts was thought to take place by the following processes: transmission of knowledge about legal norms, the modification of negative behavior patterns, and the transformation of attitudes and values. Since the rules were constantly changing in the years immediately following the Revolution, there had to be some way to inform the populace of the new rules and secure public acceptance. Moreover, it was thought that once correct behavior patterns could be enforced, basic values would change.

The socialization task assigned to the popular courts was not an easy one. Teaching a sugar worker who is accustomed to being unemployed during the cultivation period that this is now vagrancy is difficult enough, but making him understand that vagrancy is counterrevolutionary is even more difficult. The primary tools in this reeducational process were the popular court proceedings and the sanctions to be imposed.

The concern for reeducation meant that the structure and procedure of popular courts had to be quite different from that of ordinary courts to ensure the success of their mission. Jurisdiction over minor transgressions allowed direct intervention at those points in which behavior could most readily be modified. Requiring the judiciary to be rooted in and cooperate with mass organizations increased both surveillance capacity and socialization potential. Thus, defendants before popular courts could be released to the custody of mass organizations and the supervision of sanctions turned over to them.

The trial played a crucial role in the educational and socialization functions of the popular courts. Judges were encouraged to inquire into the background of participants to determine the causes of their behavior. The scope of the inquiry extended beyond what was necessary to determine guilt or innocence. Such characteristics as socioeconomic status, educational levels, and political integration were investigated and taken into account. The preferred sanctions were personalized sentences that brought offenders into direct contact with the masses rather than some specialized

correctional institution. Public reprimands became an essential part of all judicial proceedings, for such reprimands and the accompanying public embarrassment were viewed as likely to deter potential offenders along with the scolded defendant (Cuba, 1966). Another common sentence required offenders to participate in labor activities or to attend educational classes. These sentences were couched in ideological terms and officially viewed not as penalties but as opportunities given to offenders. The following description of a commitment to a work farm is illustrative:

The work in this case is not a punishment but is rather an opportunity offered to a young man who is on the road to trouble to join with the working masses of our glorious people so that as a result of daily work and triumphs they may help him to view our society as one of creators (Janero, 1968: 14).

Participation at trials was crucial to the educational role since this was the only means of popular legal education available to the courts. This resulted in trials sometimes becoming public spectacles. The Director of the Havana Province Popular Tribunals admitted to Berman in 1969 that spectators "are attracted to the Popular Tribunals because they view the trials as a substitute for the other ceremonies which have declined since the Revolution" (Berman, 1969: 1350-51).

Spectators played a vital role in the educational task: "they generally pay close attention to the proceedings, reacting with 'oohs' and 'ahs' at appropriate intervals" (Berman, 1969: 1343). The ultimate in audience participation was the emergence of witnesses from the audience or a statement by one of the lay judges of what he personally knew about the facts of the case. On the other hand, both the accuser (even, at times, the State) and the accused might sometimes have trouble securing witnesses to testify because there was no right of compulsory process.

The primary danger inherent in the informal nature of the proceedings was the prospect that this very informality could have an adverse effect on popular concepts of the judicial process and socialist legality. As Berman and Spindler pointed out in their review of Soviet "Comrades' Courts," there "is a strong likelihood that the persons participating in Comrades' Courts' proceedings, whether as members of the tribunal, persons charged with offenses, complainants, or spectators, will think of the proceedings as embodying correct legal methods for reaching just decisions" (1963: 902). Thus, it is not surprising that as the educational mission of the popular courts

became less important, both outdoor show trials and "spontaneous" witnessing from the audience were banned on the ground that they brought the judicial system into disrepute (Villares, 1973).

One of the main innovations introduced by popular courts was the adoption of varied and informal sanctions, some of which I have already mentioned, as reeducational tools. Judges had broad discretion in the variety of sanctions they could impose. The lack of uniform sentencing guidelines, combined with the poor educational background of judges, resulted in the application of different sanctions for the same offense. This led the Minister of the Interior to complain that:

The existence of different organisms for the administration of justice and the lack of uniformity in the sanctions applied is an important factor influencing and affecting our judicial system. The diversity in sanctions being applied to similar offenders and the differences in application must be considered in all projects to combat delinquency. These factors also have a strong effect on programs for the reeducation of convicted offenders (del Valle, 1969).

At the same time, the most appropriate sanctions might be unavailable to the judge. This was sometimes the result of economic problems, as in cases where the most appropriate response was the relocation of one of the disputants, which could not be carried out due to housing or labor shortages.

Another problem associated with the informality of the popular courts was their capacity for arbitrary, puritanical, and sometimes corrupt behavior. Sexual offenses, for example, constituted a significant share of the caseload of popular courts. Homosexuality, alcoholism, and vagrancy were often severely prosecuted by these tribunals. Since, for many citizens, involvement in or observation of such trials was their most direct contact with revolutionary justice, the image of the Revolution suffered accordingly.

Perhaps the most difficult goal for the courts to achieve was that of transforming popular culture. The premise that modifications in behavior will result in the alteration of basic value systems is largely unproven. The attempt to bring about value change while pursuing a path separate from and uncoordinated with other institutions charged with meeting basic needs not only failed, but in retrospect its failure appears inevitable.

*The Reemergence of Socialism*

While all of the preceding problems contributed to the abandonment of this experiment in revolutionary justice, it appears likely that the courts' fundamental incompatibility with the policies and ideology that developed as the Cuban situation stabilized was central to their demise. In retrospect, it appears that these courts were only feasible during the early stages of revolutionary development in which the primary goals were destruction of the old and survival of the new. Once the Revolution entered a stage of institutionalization, those qualities which were the mainstay of the popular courts became anathema as a new formalism and more systematic accountability were sought by the State (Castro, 1971).

In August of 1970, Castro announced that Cuba was now "entering a new phase; a much more serious, profound phase" (Castro, 1971: 5). He admitted to having made a great many mistakes attributable to revolutionary zeal and called for reformation of the economic and political model in line with accepted Marxist thought. From that point on, decisions would be made on the basis of pragmatic considerations rather than revolutionary standards. Planning became the watchword of the new system, and the judicial system took on a new position of importance. Jurists would be "called upon to play a more important role with the advancing perfection of our State and the new mechanisms of the Economic Direction System. We shall need more jurists, better prepared and specializing in the different branches of Law" (Castro, 1976: 177).

The decision that the Revolution was ready to enter a new phase was, of course, a response to changed social conditions. It is not surprising that by the time this period of institutionalization was reached, many of the conditions contributing to the emergence of the popular courts had disappeared. The regular court system had been purged, and its reliability was no longer in question. Ideological shifts demanded solutions to immediate problems and postponed abstract goals such as creation of the "New Man." In addition to these changes, which were common to all mass organizations, two other factors served to undermine the popular courts: the existence of multiple judicial structures and the professionalization of legal actors.

As I have noted, dual and sometimes conflicting court systems had been encouraged to coexist during the initial period. Ultimately, the popular courts had difficulty in competing for cases because they were not as well tied to other



institutions as the formal courts, and as a mode of dispute settlement, were no more deeply rooted in basic cultural patterns. Their diversity, which was one of the institution's prized assets, placed the popular courts at a distinct disadvantage when they had to compete with an integrated and unified opponent. The police, for example, were reluctant to refer cases to the popular tribunals because they had no routine working relations with them. The popular courts had had no occasion to establish such relationships because they had been set up to rely on the CDRs and citizen complaints to generate cases. As the regular police recaptured their predominant role in the maintenance of order, the case flow to the popular courts diminished. Furthermore, as the penal system regained its preeminence in the sanctioning structure, dissatisfaction with the popular courts increased since the lack of uniformity among the popular courts made it difficult for the penal system to anticipate the flow of new entrants.

One of the most striking aspects of the popular courts was the absence of attorneys and legally trained judges. Arguably, it is this feature, more than any other, that made them "popular." It is not surprising that the final nail in their coffin was the revitalization of the legal profession.

The criticisms of the early years had demoralized the legal profession, but the new emphasis on socialist legality, combined with the adoption of a complex centralized planning apparatus, led to burgeoning demands for legal technicians. As the need for rule drafting and interpretation increased, so did law school enrollments. The final steps in the reprofessionalization of this class were the establishment of a national bar association, the National Commission of Jurists, with membership limited to lawyers; the adoption of a code of ethics; and the limitation of professional status to the educational elite. This professionalization of the bar inevitably spilled over to the judiciary, with a renewed emphasis being placed on education and loyalty to law rather than to the particularistic concerns of other institutions. Professionalization almost inevitably brings with it hostility to the idea that lay counterparts should exercise traditionally professional functions. Usually the justification is that the laity is not competent; in Cuba some felt compelled to add that lay involvement was not necessary. To loosely quote one Cuban law professor whom I interviewed, "While lay judges were essential during the initial period, all judges are now integrated and aware of popular needs." Whether one accepts this



justification or not, it is clear that the bar developed the attitude that it was time for those who were trained in the law to assume control of the judicial function. At the same time, lawyers were reoccupying positions of power that gave them some say in such matters.

While other mass organizations, such as the CDRs, were able to adapt to the new order, the popular courts were not. They failed, first because of their ideological base in Guevarism and the informalism this implied; second, because they were independent not only from each other but from other institutions as well; and third, because no constituency existed to argue for them. In short, those qualities which had first brought them into prominence became fatal weaknesses.

#### IV. CONCLUSION

The above is my analysis of why the popular tribunals arose and the reasons for their demise. It is interesting to note the reasons that Cuban officials give for their retreat from "popular" justice. The first official public criticisms of the courts emerged during the Forum of Internal Order in 1969. These focused on their lack of uniformity, their procedural informality, and the lack of institutional control. More recently, Berman and Whiting (1980: 478) were told by Cuban officials that the experiment failed due to the decline of the legal profession and "general hostility to formality and objectivity of law, [which] left the Popular Tribunals without the kind of legal supervision that was necessary for their success."

These official descriptions of the shortcomings of the popular courts are interesting because each focuses on a feature that was part of the *raison d'être* of the popular courts in the first instance. What changed rationales for the tribunals into rationales for their demise is, as we have seen, structural and ideological changes associated with the institutionalization of the Revolution. Perhaps if the courts had been rooted originally in existing cultural patterns rather than revolutionary ideology, the story would have been different.

In passing judgment on the fate of popular justice in Cuba, it may, however, be an error to examine the popular courts as isolated institutions. In Cuba, or indeed in any state, the diversity of organizations and institutions which have some responsibility for maintaining order makes isolated reviews especially dangerous. Cuban writers have pointed this out. They do not locate popular justice in a single institution; rather they speak of popular participation. This in itself can lead to

misconceptions since “popular participation cannot be limited to the individual act of justice but is rather the formation, integration, and control of the judicial apparatus. . . . [R]eal popular participation is not reached with the participation of lay judges in individual judicial acts but rather with the participation of all the people throughout the process that culminates in the judicial act, in the formulation and application of the laws” (Duque Estrada, 1981: 562).

While it is still too early to judge the impact of the popular courts, it is clear that justice in Cuba has now entered a new phase. The earlier informal bodies meeting in plazas that so fascinated foreign observers are gone. Judges in the lowest courts, now clothed in traditional robes, preside over proceedings that are unmistakably those of a court of law. Yet two lay judges sit with the professional judge in all municipal courts, and education is by law part of the mission of the Cuban courts. We cannot say what the Cuban judicial system would have looked like if its lowest tribunals had never followed the popular justice model. The system, while rejecting the form of the popular tribunal, still aspires to many of its goals.

In the introduction to this paper I referred to the interest of Western scholars in the Cuban popular courts and other attempts at neighborhood justice. The question now is whether their demise holds any lessons for the “alternative dispute settlement forum” movement in the United States. Several lessons are readily apparent from the Cuban experiment. First, courts do not operate in a vacuum and cannot by themselves solve core issues of the economic, social, and political system. Second, judicial models cannot be easily transplanted from one culture to another that lacks the cultural underpinnings for it. The problems are similar if new modes of dispute settlement are rooted in ideology rather than experience. Finally, legal professionals are understandably resistant to changes that threaten their special place in the social structure. Resistance can arise even among those who receive their legal training after the changes have apparently been institutionalized.

It is difficult, if not impossible, to compare the American system of “neighborhood” courts with its socialist counterparts, especially since the American system has no clearly defined goals other than to serve as an expeditor of cases unwanted by the traditional courts. Perhaps the most critical lesson to be learned is to recognize the limitations of this experiment, both as it operated in Cuba and as it might be replicated elsewhere.

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