Report on Cuba's First Symposium on Politics, Ideology, and Law
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Report on Cuba's First Symposium on Politics, Ideology, and Law

Betty Elder

I. Introduction

What started out as an innocuous invitation to attend a conference on the Cuban legal system became a cause celebre as the constitutional right to travel for U.S. citizens was debated in the editorial pages of the New York Times, the Washington Post, and the Boston Globe. In April 1982, the Reagan administration, utilizing the Trading With the Enemy Act of 1917, imposed stringent travel restrictions to Cuba through the Department of the Treasury’s Office of Foreign Assets Control (31 CFR 1515.560). Travel for ordinary U.S. citizens was forbidden but allowed for journalists and persons engaged in professional research. As a result, only about 2,500 U.S. citizens had visited since April 1982. In September 1984, the government was trying to discourage even that limited group by subpoenaing the records of Marazul, a travel agency in New York City that arranges Cuban tours, including requesting the names and addresses of lawyers who had been sent the Marazul brochure advertising the legal conference in September. The program leaders had also been subpoenaed.

In the spirit of asserting our constitutional rights, 12 U.S. lawyers from various parts of the country assembled before midnight of September 16 in the Miami airport. As we boarded the flight to Havana along with 200 Cuban-Americans traveling to visit relatives, we learned that travel restrictions do not apply to Cuban-Americans and that since April 1982, over 40,000 have traveled to Cuba. Unfortunately, these arbitrary travel regulations, which distinguish Cuban-Americans, ordinary U.S. tourists, and U.S. professionals, were upheld by the Supreme Court in Regan v. Wald in June 1984 in a 5-4 decision. A Petition for Rehearing was denied on October 9, 1984.

Upon our arrival at the Jose Marti Airport, we were separated from the
other passengers, and warmly greeted by members of the International Committee for Friendship with the People (ICAP) who would act as our tour guides and interpreters, and by various representatives of the media. For the next three days, news of the American lawyers who had defied Reagan’s pressure was on Cuban radio, television, and in the press.

For some of us it was a first trip. For myself, it was my second trip after 10 years, a trip which had predated the new Constitution and the Family Code. In the interim, I had practiced law in New York, returned to school to obtain a LL.M. in International Legal Studies, and then moved with my husband, the Puerto Rican writer Piri Thomas, to Puerto Rico. For the past two years, we had lived in Puerto Rico, where I had become a member of the Puerto Rican Bar.

During the entire week in Cuba, I could not help comparing Cuba and Puerto Rico, which have so much in common historically and geographically, but which are pursuing such different roles: Cuba as a leader of the Third World and Puerto Rico with its hybrid status as a Commonwealth of the United States. Commonwealth means total subordination to and acceptance of the foreign policy of the U.S., including having its people subject to serving in the U.S. armed forces, and vast stretches of its land utilized for military purposes. Commonwealth means an economy which compares unfavorably with the poorest state of the U.S., an unemployment rate of 30%, with 70% eligible to receive food stamps, a public school system where only the poorest Puerto Rican children are pupils, a society where there is a pervasive undercurrent of physical violence on the streets, in the family, and in the prisons, and where I, as a woman, was constantly subjected to harassment by young Puerto Rican males, and rarely, if ever, felt comfortable enough to walk alone at night. Finally, commonwealth means the assimilation of Puerto Rican culture into the values and standards of corporate America.

By the end of my stay in Cuba, it was apparent that Cuban society offers a better quality of life for its citizens. Unemployment is minimal, since work is regarded as a right and a duty, education is given a high priority in the Cuban Constitution, and physical violence in the family, on the streets, in the prisons is a rarity rather than an accepted part of modern society.

II. Highlights of the Legal Conference

The legal conference was a historic event. For the first time since the revolution, lawyers, judges, government administrators, arbitrators, and law professionals from all regions of Cuba gathered to present philosophic papers and to approve the course of the Cuban legal system for years to come. That the conference was convened by the Ministry of Justice and the National Union of Cuban Jurists indicated that the country was ready to make such a commitment.

The three day conference, officially entitled the First Scientific Symposium on Politics and Ideology in Its Relationship With Law, opened in the modern Palacio de las Convenciones with 300 Cuban delegates, 40 foreign delegates,
and numerous observers. The Conference sponsors had invited two organizations from the U.S. to send official delegates: representing the National Lawyers Guild were Arthur Kinoy from Rutgers University School of Law, and Debra Evenson of DePaul University. Tony Platt represented the Institute for the Study of Militarism and Economic Crisis (ISMEC), San Francisco, on behalf of its Director, Marlene Dixon.

For the past year, over 700 Cuban jurists had been meeting to prepare papers on 15 major themes: socialist legality in the construction of a new society; the judicial system; the exercise of democratic socialism; the Communist Party as the leading force in society; rights, duties, and fundamental guarantees; comparison between bourgeois and socialist equality; penal law; treatment of delinquent minors; international law and its role in international relations; real property in socialism; juridical-economic relationship; the role of the state arbitration in the development of state enterprises; labor law; family law; the role of the lawyer representing state enterprises; and the role of the law in the formation of socialist consciousness.

Each theme was presented by an official commentator in synopsis form followed by a second presenter, either developing the theme further or raising some criticisms of the first paper. Interspersed between the papers, foreign delegates were called upon. Joe Nordmann, President of the International Association of Democratic Lawyers, greeted the delegates, followed by Guillermo Toriello, President of TANA (Antimperialist Tribunal of Our America). Toriello represented Guatemala at the 1945 signing of the U.N. Charter in San Francisco and has been living in exile since the CIA-sponsored overthrow of the Jacobo Arbenz government of Guatemala in 1954. TANA has chapters in Central and South America and has recently added a chapter in the United States. TANA holds peoples’ tribunals, such as the one in Caracas in October 1984 on the illegality of Reagan’s policies toward Nicaragua.

The paper on socialist legality discussed how legal norms develop from the revolutionary stage to reflect the economic, political, and social conditions of the society. Socialist legality establishes not only duties and obligations for all citizens but also rights of individuals which have to be fully developed.

Of particular interest to me as a specialist in international law were the various presentations on this topic. According to the Cuban perspective, the role of international law in international relations has as its main objectives: 1) to contribute to the cause of socialism and the unity of progressive forces; 2) to give militant solidarity support to national liberation movements; 3) to fight for peace and progress; 4) fraternity with socialist countries, especially the Soviet Union, including the integration of their economies; and 5) defeat of imperialism and elimination of retrogressive forces, colonialism, neocolonialism, and apartheid.

Cuban jurists disagree with traditional Western views in two major areas. One is over the interpretation of the right of self-determination as guaranteed in the U.N. Charter and the Covenants on Human Rights. This right, the Cubans
claim, is more than political liberation from colonialism. It includes the right to choose one's own economic and social system. Numerous General Assembly resolutions affirm this expanded view of self-determination, notably the declaration on the granting of independence to countries and colonial peoples (Res. 1514 of December 14, 1960). The second controversial position of the Cubans is the assertion of the right to development, a prerogative of nations and individuals to eliminate underdevelopment as a contemporary social phenomenon.

A paper on principles and fundamentals of international law declared it a historical necessity that all countries have normal relations based on mutual respect, the recognition of international laws, and the sovereign right of states. Cuban jurists maintain that the application of these principles to Cuba's foreign policy has resulted in the extension of diplomatic relations and diplomatic missions from 50 in December 1958 to more than 85 missions today, the existence of more than 40 commercial and banking offices abroad, the presence of Cubans in specific international organizations, respected and elected to responsible positions, and an important role in the Movement of Non-Aligned Nations, including the holding of the 6th Conference in Havana in 1979.

International law in its classic sense cannot remain indifferent to changing contemporary circumstances. Changes in the world since the 1917 Socialist Revolution and its repercussions in international relations are equivalent to the progress of international law in the 19th century, which responded to ideas of the bourgeois revolution in France. The cardinal principle which rules international law, including socialist and nonsocialist countries, is to preserve humanity from the scourge of war, now threatened by the escalation of war into outer space. Therefore, the principle of co-existence is the only way to avoid the destruction of humanity.

The U.N. Charter, to which 159 nations have acceded, establishes a series of principles which must be recognized by all members: self-determination of all peoples, peaceful mediation of disputes which endanger peace, abstaining from the threat or use of force against the territorial integrity or political independence of a state, international economic, social, and cultural cooperation, respect for human rights and fundamental liberties for all, and the fulfillment of international obligations. In addition to these well-established principles in the Charter, international law has evolved new principles for this epoch—the new international economic order, national sovereignty over natural resources, and the law of the seas, which proclaims living and nonliving resources as the common heritage of mankind.

Socialist countries like Cuba perceive proletarian internationalism and the fraternal help to socialist countries and workers of all countries as consistent with the generally accepted principles of international law. Cuban aid and construction contracts in Angola, Viet Nam, and Nicaragua are the living examples of these principles.

Miguel A. D'Estefano, Distinguished Professor of International Law at the University of Havana and the President of the Cuban Society of International Law, raised legal objections to the expulsion of Cuba from the Organization
of American States. This occurred in 1962 at a meeting of the Foreign Ministers of the OAS on the ground that adherence to Marxism-Leninism is incompatible with the inter-American system. In his book, *Cuba, the United States and Contemporary International Law*, D’Este'sano declared illegal the U.S. occupation of the naval base at Guantánamo, based on general principles of international law, the bilateral treaties between the United States and Cuba, and the Vienna Convention on the Law of Treaties (1969). He cites *jus cogens* and *rebus sic stantibus* as two concepts applicable to the continued military presence of foreign troops in opposition to the wishes of the sovereign state.

When I was in Puerto Rico, I was a member of the Commission for the Demilitarization of Puerto Rico. In this context, I had prepared a study of the Treaty of Tlatelolco, which declares Central and South America a nuclear free zone. Cuba had not acceded to the treaty. In conversations with Cubans, it was my impression that Cuba had not signed because of the continued presence of U.S. troops on Cuban territory.

The paper on democracy under socialism proclaimed the right to work and the right and duty of education. The right to strike is not provided for because it is not considered necessary since the means of production are in the hands of the workers. However, the right of assembly and demonstrations is in Article 53 of the Constitution, which allows associations of workers, peasants, women, and students and all sectors of working people.

In a paper delivered by the law faculty of Camagüey, the first university created by the revolution, there was a comparison between bourgeois and socialist rights. In bourgeois society, since there is exploitation of the working class and economic inequality, rights are formal but do not exist in reality. The Cuban Constitution of 1940, for example, had two important norms, the Declaration of Independence of the U.S. and the Declaration of the Rights of Citizens of 1789 from the French Revolution. Various articles proclaimed the equality of all Cubans before the law. But this was only bourgeois hypocrisy. The new Constitution of 1976 established equal rights and equal duties. Discrimination based on color, race, sex, or national origin was forbidden and punished. To facilitate the enjoyment of these rights by women, paid maternity leave before and after birth and state-run daycare centers were provided.

A broad spectrum of human rights is guaranteed in the Cuban Constitution. Political rights include freedom of speech and the press in keeping with the objectives of socialist society. All organs of the mass media are state or social property and can never be private property (Article 52). There is freedom of conscience and the right of everyone to profess any religion and to practice it within the framework of the law. The law regulates the activities of religious institutions. The rights of an accused include inviolability of his personal integrity, the right to be tried and sentenced by a competent court. *Ex post facto* laws are only applicable if they favor the defendant. The inviolability of the home and of correspondence is also guaranteed.

Economic, social, and cultural rights are covered in Articles 44 through 51 of the Constitution. One has the right to personal property, savings, earnings,
legal title to a dwelling, and ownership of personal or family work tools. Work is a duty and a right with an eight-hour day, annual paid vacations, and a social security system. The Constitution also embodies the rights in the Universal Declaration of Human Rights, approved by the U.N. General Assembly in 1948.

Unlike the common law system, judicial review as such does not exist. The supreme organ is the National Assembly, which also elects the judges to the Supreme Court.

The right to own real property is restrictive. The first agrarian reform in May 1959 eliminated foreign ownership of land, and the state occupied the land, taking over the large latifundios. State-owned land accounts for 90% of agrarian land. The remainder belongs to the small farmers and to cooperatives of small farmers. The Constitution recognizes the rights of small farmers to own land and the means of production and to establish agricultural cooperatives.

In addition to the Family Code of 1975, the Constitution provides protection for the family, equality of children in or out of wedlock, and establishes the institution of marriage as a voluntarily established union based on full equality of rights, equal respect for support of the home, and the education of the children.

The old Family Code of 1888 reflected a mercantile society which sanctioned the dower concept and marriage as a civil contract based on property considerations. Patria potestas is retained in the new code but the concern is for the social development of the minor not the power of the father over his children. Divorce does not depend on juridically determined grounds and is freely obtained. Alimony as such does not exist but there is the requirement that both parents provide for the support of the children during marriage and in the event of its dissolution.

On the last day of the conference, a Final Declaration of the Symposium was voted upon unanimously by the Cuban delegates. It reiterated the leadership role of Fidel Castro, the Communist Party of Cuba, and Marxist-Leninist philosophy. As jurists, it stated, sensitive to the dangerous world situation created by the aggressive policies of the Reagan administration, we condemn the numerous violations of the norms of international law. We condemn the aggressive war against Nicaragua and support the FSLN. We support the FDR/FMLN of El Salvador, and the activities of the Contadora Group. Cuban jurists consider the efforts of the Reagan administration to tie the removal of Cuban troops in Angola as a precondition for the independence of Namibia a manifest violation of the Resolution of the Security Council of the United Nations. (Resolution 435 is the legal basis for U.N. control over Namibia, the illegality of the South African presence, and the holding of elections under the supervision and control of the U.N.). Finally, the Declaration condemned the illegal invasion of Grenada and supported the struggle of Puerto Rico for its independence.
III. Cuban Society in Practice

In addition to attending the legal conference, I was fortunate in having the opportunity to observe some of the legal institutions first-hand and to see how theory is put into practice. The week’s activities included visits to prisons for men and women, a juvenile rehabilitation center, a criminal/civil trial, meetings with the Ministry of Justice on the new Labor Code, with the Federation of Cuban Women on the implementation of the Family Code, and with the State Arbitration System.

Ten years ago, requests to visit prisons were routinely denied, so the news that our first activity was a visit to a men’s prison was warmly received by the U.S. delegation. I had visited prisons in New York, Maryland, Delaware, and New Jersey and was prepared for heavy security measures, a tense and hostile prison environment, and an underlying sense of violence. The men’s prison is located outside Havana and is run by the Ministry of the Interior as a maximum security facility. It is made up of numerous small two-story buildings which can accommodate 3,000 prisoners. Accompanied by prison authorities, our group of 20 persons including jurists from Canada and South America moved freely through the various units of the prison, and those who spoke Spanish were able to converse with the inmates. There were few armed guards and sometimes only the difference in the color of the uniforms distinguished the prisoners from the guards.

We visited the prison hospital, workrooms for construction, workrooms for handicrafts, and the conjugal rooms for family visits. In the question period, we learned that there was an eight-hour day except for the sick and handicapped, that salaries are equal to pay outside prison, and that conjugal visits are the norm rather than the exception. Since the goal of the Ministry is to return the prisoner to society, regular contact is maintained with the family through conjugal visits whose frequency depends on the good conduct of the prisoner. Most of the men were there for sentences of four years or less, having committed robbery, appropriation of property, and a few cases of physical violence.

After lunching at the men’s prison, we drove to the rehabilitation center for boys between the ages of 9 and 16. The staff and boys were awaiting our visit and had prepared a presentation of poetry and songs. We also observed a science class and walked around the facility which more resembled middle schools in Cuba than prison grounds.

Following the tour, we spent over one hour in an intensive question and answer session with the staff. The general philosophy is that boys sent here for juvenile crimes need a strong sense of discipline. As a result, all the staff, including the teachers who were from the Ministry of Education, wear uniforms. On the question of the racial composition at the center, one official said it was in proportion to the Cuban population, i.e., one-third black in the population and one-third black in the center. My impression was that most of the youngsters came from poorer homes with low educational standards.
Recidivism was less than 10%. Of 155 boys leaving the center last year, only 10 had been returned to the center or to adult prisons.

The women’s prison with a capacity of 800 presently housed 700 prisoners in small units according to age and nature of the crime. The prison is run by a dynamic woman who was able to strike a balance between strict discipline and good-natured exchange with the women prisoners. She moved freely about the prison, locking and unlocking doors, with our group following right behind her. We observed the hospital, the beauty parlor, the maternity ward that housed two women with tiny infants, the conjugal rooms, and the textile factory with dozens of old-fashioned sewing machines of diverse makes. Here the women were producing denim jeans in various colors, including those with a Jordache label.

The same rights for women prisoners prevail as in the men’s prison: equal pay for work as outside the prison, conjugal visits, and the right to study to achieve a 9th grade education, which is also the national goal. Because of conjugal visits, women become pregnant and it is their decision if they wish to have an abortion. Abortion is not illegal but it is not encouraged. Women who give birth in prison are extended time with their infant after which the infant is generally given to the mother’s family for care until she is released.

The highpoint of the day was a cultural event put on by the prisoners, not especially for us, but as part of the regular prison activities. Our group entered an auditorium filled with about 400 women who gave us a standing ovation after the prison director told them of our fighting the travel restrictions. For the next hour, we were treated to a highly entertaining musical event.

All in all, the Cuban prisons I witnessed compared favorably with U.S. prisons I had visited in philosophical orientation, general atmosphere, and in the low rate of recidivism. Prisons in Cuba are not a business justifying a bloated crime-prevention superstructure. The goal is to return to society the prisoners as productive human beings.

Subsequently, we met with two women attorneys from the Ministry of Justice who were working on the Commission to draft a new labor code. This two-year process was scheduled to be completed in December 1984 when it would be submitted to the National Assembly for final approval. Cuba, a civil code country, had inherited its legal system from Spain, and apart from the Constitution of 1976 and the Family Code of 1975, the present Civil Code still reflects the pre-1959 social conditions.

The Commission had studied the International Labor Organization Conventions to which Cuba is a signatory party, the labor codes of socialist countries, and the labor laws which existed in Cuba prior to 1959. It produced a draft Code which was then discussed at the municipal, provincial, and national level in meetings of workers and government agencies. Their suggestions and recommendations were then forwarded to the Commission to produce a final draft which will be submitted to the National Assembly for final approval.

Serious problems to be addressed included absenteeism, lateness, drinking,
lack of respect, and abusive behavior. One innovation was to remove jurisdiction over questions of discipline from the workers' councils and to provide judicial recourse for a worker who has been fired or expelled for violating labor discipline. A worker would now have the right to file a complaint with the Municipal Court, appeal to the Provincial Court, and have an attorney from a bufete (law office) for a fixed nominal rate.

In the afternoon, we had an opportunity to discuss the effectiveness of the Family Code after 10 years with the head of the Cuban Federation of Women. Cuba is the only socialist country with a Family Code. It was considered a great step forward in the emancipation of women and of children born out of wedlock. The Code eliminated the concept of marriage as a social contract and defined it as full equality for both partners with equal rights and duties. The controversial provision which upset many men was the stipulation that equality included the care and upbringing of the children and the running of the household. Despite these legal advances, the Federation continues to urge women to be more assertive in claiming their rights, including the right to receive support for the children after divorce. Divorce is easily obtained since it is not dependent on defined judicial grounds, and, as can be expected, the divorce rate is high. The greatest social problem, however, is the housing shortage in urban areas. Newly wed couples are urged to relocate outside the urban areas and are given incentives to do so. Nevertheless, many wish to remain in Havana and find themselves involved in a system of permuta, barter or exchange of housing, a frequent subject of films, humorous commentary, and stories.

When questioned about physical or sexual abuse of women or children, the response indicated that this is not the social problem so prevalent in the United States. Rape, for example, is very rare and when a person is convicted of this crime of violence, there is a very severe penal sentence.

Next day, we visited a Provincial Court outside Havana. This court hears claims of more than 1,000 pesos in its civil side and crimes punishable by more than nine months in jail. The courts serve the province of Havana, outside the city proper, and its population is mostly rural. Common crimes are stealing of crops and animals. Crimes of violence are rare. Attorneys are required in all matters except cases of alimentos (support), where more rapid resolutions are desirable.

We were able to witness an entire trial for criminal and civil charges of drunken driving and personal injuries. The court has three professional jurists, elected for five years, and two lay persons, also elected, who serve two months at a time. There is no jury. The defendant had been charged with drunken driving resulting in injuries to a woman sitting in a rocking chair on the sidewalk. During the course of cross examination of the state’s witness, the defense attorney, an experienced and spirited lawyer, was able to establish that there were no traces of alcohol in the defendant’s blood after the accident. The fiscal (the prosecuting attorney) asked for a recess and then returned to reduce the charge to a lesser count. On the defendant’s behalf, his attorney
produced two character statements from the local Committee for the Defense of the Revolution and the Association of Small Farmers attesting to the good moral character of the defendant, thereby hoping to avoid a prison sentence.

After a recess, the court returned to find the defendant guilty of negligent driving, imposed a fine, suspended his license for 150 days, and awarded compensatory damages to the woman and her husband for apparent loss of his wife's services. There was no prison sentence, which appeared to satisfy all the parties. The entire proceeding took about three hours and was completed and off the calendar within 5 months of the accident.

Our meetings concluded with the leading jurists of the State Commission of Arbitration. It is this agency which guarantees that economic controversies do not bog down the Cuban economy, a type of arbitration typical of socialist countries where there is a centralized economy. The State Commission along with 14 provincial commissions arbitrates economic disputes between state enterprises relating to the completion of contractual obligations. Because of the crucial nature of these disputes, the arbitration process is considerably shorter than the civil judicial process. Decisions of the commission are final and are only subject to rehearing on the basis of error, law, fact, or unearthing of new evidence. All commission members are experienced attorneys who utilize advisers from various industries as consultants.

IV. Conclusion

Cuba defines itself as socialist, Third World, and emerging from underdevelopment. Over the 25 years since the revolution, its many achievements in improving the living standard of its citizens have made it an example to other Third World countries. It was my overall impression that Cubans regard themselves as the makers of their society, acknowledging their own progress and recognizing their own shortcomings.

In the 10 years since I last visited Cuba, it was apparent that the society had progressed substantially in its theoretical posture, as evidenced by the successful legal conference, and in the implementation of theory into everyday practice.

The Reagan administration alleges that Cuba is a terrorist country, a totalitarian society, and international trafficker in drugs. The U.S. government is able to promote the big lie because there is a virtual news blackout from Cuba, and U.S. citizens are prohibited by travel restrictions from finding out the truth for ourselves. Over 200 North American law professors have protested the restraint on free inquiry and travel, asserting that the right of Americans to travel anywhere in the world is "deeply etched in the First and Fifth Amendments to the U.S. Constitution" (New York Times, January 20, 1985).

Judicial recourse to challenge the travel restrictions has been all but exhausted since the Supreme Court denied the Petition for Rehearing. Political pressure on Congress and the administration is needed to pursue a policy of normalization of relations with Cuba. The successful negotiations between the
two countries in December 1984 on immigration of Cuban nationals to the U.S. and the return of Cuban nationals who left during the Mariel exodus is an excellent precedent to dispel the myth that one cannot negotiate with the Castro government. It is my strong belief based on personal contacts with Cubans that they welcome increased exchange with U.S. citizens to show their achievements since the revolution and to promote peaceful cooperation between all nations.