

Michigan Law Review

Volume 93 | Issue 6

1995

Revolution in the Balance: Law and Society in Contemporary Cuba

Eugene Whitlock

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Eugene Whitlock, *Revolution in the Balance: Law and Society in Contemporary Cuba*, 93 MICH. L. REV. 1835 (1995).

Available at: <https://repository.law.umich.edu/mlr/vol93/iss6/35>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

REVOLUTION IN THE BALANCE: LAW AND SOCIETY IN CONTEMPORARY CUBA. By *Debra Evenson*. Boulder: Westview Press. 1994. Pp. xiii, 235. \$21.95.

The average American knows little about the legal practices and laws of other countries. In *Revolution in the Balance*, Debra Evenson¹ removes some of the mystery surrounding socialist legal systems by presenting, in detail, the Cuban legal system.

Ever since Fidel Castro assumed power in 1959, the operation of law in Cuba has seemed, to the uninformed observer, unsystematic and dictatorial. Evenson's exhaustive research, however, reveals that Castro and his fellow revolutionaries have been working to develop a legal system that is faithful to the Cuban brand of socialism. To that end, the Cuban legal system has undergone continuous reform in an attempt to promote its ultimate goal: a perfect socialist democracy.

Evenson examines the accomplishments of Castro's socialist revolution by looking at the development of the Cuban legal system in terms of "the evolution of the framework of law and legal process that establishes and regulates the complex interrelationships between the structures of the state and the collective and its individual members" (pp. 2-3).

Evenson's objective seems rather ambitious; nonetheless, she reaches her goal through a thorough exposition of various fields of Cuban law, such as commercial, family, and criminal law, using examples and anecdotal evidence taken from statutes, journals, and even government officials. In the end, a picture emerges that is remarkably detailed and fully reflective of the impressive research Evenson conducted on trips to Cuba over the last ten years. With *Revolution in the Balance*, Evenson presents an excellent overview of Cuban law and the Cuban legal system.

* * *

Evenson begins with a brief legal history of Cuba from its independence after the Spanish-American War in 1898 to the defeat of the Batista government by Castro's revolutionaries in 1959. She discusses how the involvement of other nations in this history influenced the development of the Cuban legal system. For example, the Spanish influence manifested itself in Cuba's adoption of parts of the civil law tradition, while the United States's influence, through its participation in the Spanish-American War, was realized in the borrowing of certain American legal concepts such as the

1. Associate Professor of Law, DePaul University College of Law.

separation of powers. Evenson then traces the passage and subsequent demise of four national constitutions before the 1959 revolution and attributes their failure to their inability to create stable and legitimate political institutions.

Evenson next discusses the reorganization of the legal system that occurred during Castro's first years as leader of the revolution. She illustrates how the first laws passed by the new government, whose members were "appointed" by Castro, essentially "paved the way for consolidation of power in the hands of Fidel Castro and his supporters" (p. 11). Crucial to Castro's success was his establishment of parallel institutional structures, such as ministries and courts, to carry out his policies and to punish those who had collaborated with the previous regime.

In Chapter Two, Evenson shifts into a theoretical discussion of "socialist legality" — the ideological basis from which all laws in a socialist state are derived. Evenson reviews the different meanings given to socialist legality and concludes that the concept implies a system of law whose objective "is not only to regulate but to transform society" into a pure socialist society (p. 14). In order to attain this goal, Cuban jurists studied the legal systems of the then-Soviet Bloc countries.

After a summary of Cuban history and socialist objectives, Evenson focuses on the long process that led to the adoption of the Cuban socialist constitutions, the first of which was adopted in 1976 — nearly seventeen years after Castro took control. She highlights the limited role played by most Cubans in that process. The average Cuban could only participate in the constitutional "debate" through "mass organizations" such as the Federation of Cuban Women or the Federation of University Students. The Castro regime set up these organizations to give people an illusion of meaningful popular participation; in reality, organizational views were treated, at best, as general advice or nonbinding recommendations. In addition, Evenson details how the main provisions of the Cuban Constitution established Cuba as a "socialist democracy" and declared the freedoms, rights, and duties of its citizens as members of a socialist state.

Evenson proceeds to explain the meaning of "socialist democracy," particularly the notions of total equality among all citizens, collectively known as the proletariat, and the "dictatorship of the proletariat" (p. 24). She points out that Castro and his supporters, as the "vanguard of the proletariat," were to govern only *until* the proletariat had received the cultural and political education necessary to assume full political power themselves. In a rare criticism of Castro's regime, Evenson argues that the vanguard never has relinquished its power and, furthermore, has restricted political debate and popular participation in the formation of national policy.

Although she praises recent attempts to improve the democratic process, she admits all the same that the reforms fall short of the ideals embodied in the Cuban Constitution.

In her discussion of individual citizens' freedoms, rights, and duties, Evenson briefly describes the Cuban government's quarantine of its HIV-positive citizens. Despite the fact that this policy severely limits individual freedoms and has been condemned by many Western governments, Evenson defends it as consistent with the socialist belief that the collective is more important than the individual. As such, this controversial policy benefits the collective by preventing the spread of disease.

Chapter Three describes the practice of law within the Cuban legal system. In order to create a basis for comparison, Evenson first elaborates on the practice of law in other socialist countries. Her in-depth analysis of the present practice of law contains numerous references to the "delay, inefficiency and ineptness in the court system," a systemic problem caused by a lack of resources and by inadequately trained personnel (p. 52). The discussion of the superficial role played by lawyers for state enterprises in Cuba's planned economy highlights a particularly intriguing point: there are no adversarial disputes between Cuban businesses because they all operate under the direction of the state. Chapter Three concludes with a comparison of the postrevolution decline of the legal profession — due to the perception that lawyers facilitated the abuses of capitalism — with the current efforts to improve the quality of lawyers because of their renewed importance as Cuba gradually incorporates capitalist ventures into its economic plan.

Chapter Four, which focuses on the evolution of the judicial system since the 1959 revolution, continues the discussion of the practice of law in Cuba. Cuba's postrevolution judicial structure took form with the establishment of a parallel court system and the Revolutionary Tribunals, whose purpose was to further Castro's policies and to punish the supporters of the previous regime. Evenson outlines the courts' present structures and operations, emphasizing the fairness and impartiality of the courts as illustrated by the fact that professional and lay judges work together in most cases. Although she notes the weaknesses as well as the strengths in the court system, she avoids the issue of corruption in the courts and the potential for their use as political instruments, stating, rather dismissively, "[c]learly judges in all societies, socialist or otherwise, are influenced by the social and political environment in which they live and work" (p. 78).

Chapter Five reviews the Cuban government's attempts to achieve gender and racial equality. Evenson centers this discussion around the improved role of women in Cuban society, most of which is due to the lobbying efforts of the Federation of Cuban

Women. The primary result of those efforts is a provision in the Cuban Constitution which “expressly granted women ‘the same rights as men in the economic, political and social fields as well as in the family’ ” (p. 97). Evenson then explains how the broad wording of the Cuban Constitution’s equal rights clause translated into specific promises by the government to improve women’s lives, for example by guaranteeing employment in certain male-dominated industries, as well as equal pay for equal work.

The section on racial equality is more superficial than other sections of the book due to a lack of information, but Evenson nevertheless puts together a summary of the treatment of ethnic and racial minorities in Cuba, concluding that, although some improvements have been made, “[s]ubtle forms of bias linger in the national culture” (p. 113). For example, she contends that Cubans of African descent are still victims of racism at the hands of the wealthier Cubans of European descent in a society where “‘blackness’ [is] undervalued” (p. 113).

In Chapter Six, Evenson discusses the Cuban Family Code, the most significant provision of which declares equality in marriage to be a national policy. Equality in marriage requires that both the husband and wife “undertake obligations to contribute equally to the maintenance of the home and the care of children” (p. 123). Evenson correctly points out that the significance of this and other aspects of the Family Code does not lie in a creation of legally enforceable duties or an immediate change in daily family life, but in the message that within the ideal socialist family, men and women share equally in the household chores and the raising of the children.

Chapter Seven surveys past and present codes and statutes to deliver a comprehensive description of Cuba’s substantive criminal law, procedural criminal law, law enforcement, and penal system. This chapter is notable in that it fails to address the allegations from the outside world that human rights abuses and other improprieties are taking place in Cuba. Instead, it describes a seemingly sympathetic criminal justice system that is constantly improving itself and implementing reforms, such as increasing the number of conjugal visits allowed to prisoners. Evenson does, however, pay special attention to the questionable “Social Dangerousness” law which prohibits three categories of conduct: habitual drunkenness, drug addiction, and antisocial behavior. The criminalization of antisocial behavior has proved most controversial because the term is subject to broad interpretations that permit law enforcement agencies to detain people for many types of undefined conduct. Evenson also discusses public prosecution, criminal defense, the rights of the accused, judicial sentencing, and the prison system.

Chapters Nine and Ten describe the abolition of private property, with exceptions for some personal property, and the consolidation of the means of production in the hands of the state. In these chapters, Evenson compares and contrasts the Cuban economic system with those of other socialist states as well as capitalist states. The section on “planned” contracts — contracts between state enterprises — and the operation of a centrally planned economy is especially enlightening in that it clearly presents one of the fundamental differences between socialist and capitalist economies, and the legal effects of such differences. Evenson concludes with a discussion of how the need to earn hard currency from abroad has led the government to change its economic policy so as to permit the formation of profit making joint ventures with foreign participants.

* * *

In *Revolution in the Balance*, Evenson calls upon an impressive variety of Cuban sources, such as published legal codes, articles from academic journals, and members of the government, to support her arguments. Evenson skillfully pieces that information together to present a complete and detailed survey of nearly every aspect of the Cuban legal system. The reliability of some of these sources, however, is questionable insofar as they were produced by people close to, and sympathetic to, Castro’s government. Evenson does not have adequate evidence from independent sources to support many of her more important claims. For example, Evenson relies solely on an interview with the President of the Cuban Supreme Court to support the proposition that no one has been convicted and executed for nonviolent political crimes since the 1960s (p. 154). Although it would be difficult to confirm such a fact, it seems improper for Evenson to present it as an *undisputed* fact. Even though Evenson concedes at the outset that she is “sympathetic with the humanistic goals of the revolution” (p. 1), she should not treat her admission as a license to neglect responsible reporting.

The problem with her primary support is symptomatic of a deeper problem with *Revolution in the Balance*: Evenson fails to examine her sources with analytical rigor. She presents an immense amount of information about Cuban law and the structure of the legal system without much consideration of how the law really operates. For example, Evenson makes much of the fact that judges function independently of the rest of the government and are not required to be members of the Cuban Communist Party (p. 77). She chooses, however, not to explore the possible conflicts inherent in Cuba’s judicial appointment process, through which judges are chosen for five-year terms by the legislature, which is composed almost entirely of Party members (p. 77).

Evenson similarly fails to perform the necessary analysis in her discussion of limitations on freedom of expression and the absence of an objective political debate in the Cuban media (pp. 36-37). Nowhere does she recognize that the silence of the media could be due to repression or fear of punishment. The lack of such critical analysis throughout the book instills skepticism in the reader. Indeed, *Revolution in the Balance* reads in places like an official handbook of Cuba's law and legal system as authorized by the Cuban government.

Furthermore, nearly all of Evenson's information comes from offices run by relatively high-ranking Cubans with vested interests in the success and good image of Cuban socialism. A more balanced picture of Cuban law *and* society would undoubtedly have emerged had Evenson sought out information from sources beyond the Cuban elite. Thus, to the extent that this book seeks to present a fair picture of Cuban society, it ultimately does not succeed.

Interestingly, Evenson never misses an opportunity to criticize the United States' policy towards Cuba.² Although eminently reasonable in many respects, these critical efforts only highlight the glaring absence of criticism of Cuba, the country that is the subject of her book. From stating that U.S. military operations at the beginning of the twentieth century prevented Cuba from establishing a stable democracy (p. 10) to blaming the current economic embargo for Cuba's inability to accomplish necessary reforms and create a viable economic system (p. 4), Evenson links U.S. policy to Cuba's worst problems. The United States has indeed been hostile to Cuba; certainly, however, many of Cuba's failures are of its own making. Evenson does not even consider the possibility that socialism and centrally planned economies are fundamentally flawed methods of societal and economic organization, a possibility suggested by the demise of the Soviet and Eastern European socialist systems.

In many respects, *Revolution in the Balance* does not live up to its promise of presenting a picture of law and society in contemporary Cuba. The law itself is very well presented, and that alone makes for interesting reading and provides many points of departure for future research. Unfortunately, there is little useful information regarding the actual operation of law in Cuban society. Despite this flaw, for a person who is curious about the law, lawyers, and legal system in Cuba, and in socialist and communist states generally, *Revolution in the Balance* is definitely worth reading.

— Eugene Whitlock

2. I began to count the negative references made to the United States but stopped when the total reached fifteen.