Between Citizens and the Socialist State: The Negotiation of Legal Practice in Socialist Cuba

Raymond J. Michalowski

In 1973 the Cuban government abolished the private practice of law, replacing it with a system of law collectives known as *bufetes colectivos.* These law collectives were designed to provide low-cost legal services to the public in ways consistent with the ideology of a nonadversarial relationship between lawyers and the state. I examine both the relationship between the ideological and legal bases for the socialist practice of law in Cuba and the actual practice of law in one bufete colectivo. Using a combination of documentary and ethnographic information to reconstruct the day-to-day practice of law in the bufete colectivo, I examine the ways Cuban attorneys I observed sought to serve their clients' interests and to pursue their own professional goals within an ideological framework that stressed a nonadversarial model of lawyering. I give particular attention to criminal defense which, more than civil cases, often required attorneys to balance their clients' interests against the socialist ideal of nonadversarial lawyering. These attorneys, as intermediaries between citizens and the state, often found ways to utilize the formal framework of substantive and procedural laws to represent clients' interests despite an official ideology that emphasized nonadversarial lawyering.

Prologue

On a warm, rainy Monday afternoon in April 1989, Hermann Gutierrez[1] walked into a law collective in central Havana and asked to speak with an attorney who could defend him against a charge of *hurto*—common theft. The receptionist asked if he had any particular attorney in mind. When Gutierrez explained that he had no preferences, she told him he would be assigned an attorney and asked him to take a seat in the waiting room. About a half-hour later Gutierrez was approached by Ernesto Sanchez, a young criminal defense specialist. Sanchez di-

I would like to thank Dr. Nancy Reichman, Dr. Niel Websdale, Dr. Nancy Wonders and Dr. Marjorie Zatz for helpful commentaries on earlier drafts. Address correspondence to Raymond J. Michalowski, Professor and Chair, Department of Criminal Justice, Northern Arizona University, P.O. Box 15005, Flagstaff, AZ 86011-5005.

[1] To respect my research subjects' anonymity, I use pseudonyms for clients' and attorneys' names. I use actual names for government officials or those operating in administrative capacities.

Law & Society Review, Volume 29, Number 1 (1995)
© 1995 by The Law and Society Association. All rights reserved.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

rected his new client into a small cubicle that served as his office. Once inside, Gutierrez told his story. He had been accused of stealing five, five-gallon tins of cooking oil from the factory where he worked and of distributing the oil among his friends and family. A quiet man in his late 30s, Gutierrez was visibly shaken by his predicament, particularly the possibility of a prison sentence that could range anywhere from six months to two years. Gutierrez made no protestations of innocence. He had taken the tins of oil, he told his attorney. He could offer no explanation for his crime. "I don't know why I did it. It was an accident, an act of heaven," he said. The attorney listened with apparent sympathy to Gutierrez's tale, and to his explanation of how he had been not just a good worker but an "exemplary" one in his factory for the past seven years. When the contract for legal services had been signed and the 40-peso fee paid, the attorney assured Gutierrez that he would do everything he could to keep him out of jail. Later, after Gutierrez had left, the attorney expressed annoyance that the *fiscal* (prosecuting attorney) would request a prison sentence for someone like Gutierrez. "Sure, he took the oil," he said, "but the man is not a criminal. It's always the same with the *fiscales*, all they want to do is punish, punish, punish."

The case of Hermann Gutierrez and the stolen cooking oil embodies many of the daily experiences of Cuban attorneys and their clients. Gutierrez's ability to walk into a *bufete colectivo* and locate an attorney to handle his case for (what was then) a small fee reflected the easy public access to legal counsel that had been made possible by Cuba's system of law collectives. His illegal appropriation of an ordinary household commodity at the point of production was a typical black-market crime in an economic system where distribution by rationing often resulted in unmet demands relative to discretionary income. His prosecution, correspondingly, was indicative of the gravity attached to violations of Cuba's public distribution system. The emphasis Gutierrez placed on his character as a worker was an assessment replayed daily in the Cuban legal system. His attorney's frustration with the perceived overpunitiveness of the prosecutors was a frequent complaint of attorneys in the Bufete. Finally, the eventual defense Sanchez created for a client whose guilt was not in question—a defense to which we will return—is emblematic of ways in which attorneys in the Bufete used Cuba's legal framework to negotiate their way between official ideologies and the needs of their clients.

Introduction

The replacement of Cuba's prerevolutionary legal system with one built expressly to suit the ideology, exigencies, and practices of an emergent socialist system was a central component of

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

institutionalizing the nation's new political order after the revolutionary victory of 1959.[2] As part of this reconstruction of Cuba's legal system, in 1973 the revolutionary government abolished the private practice of law in favor of a system of law collectives known as *bufetes colectivos*. These law collectives were designated as the exclusive mechanism for providing legal services to the public (Law of Judicial Organization No. 1250 (1973)). Since that time, the laws and codes governing the bufetes colectivos have undergone several modifications that have elaborated their role as "autonomous organizations" within the framework of Cuban socialism and refined the role of the advocates (*abogados*) who provide direct legal counsel to the public.[3]

I will first examine the ideology of socialist legal practice in Cuba and the legal and organizational framework for the bufete colectivo system. I do this to provide a context for exploring the ways in which attorneys working in one bufete colectivo negotiated an occupational landscape shaped, on the one hand, by socialist legal ideology and a legal framework for the practice of law and, on the other, by the actual cases and clients served within this ideology and legal structure.

My inquiry into the practice of law in Cuba explores the applicability of two propositions regarding legal systems to the Cuban context. The first is that *all* legal systems, regardless of the role they play in the reproduction of hegemonic power, must also constrain the arbitrary and random use of that power to some degree if they are to contribute to the maintenance of social peace and the legitimation of the political order. As E. P. Thompson (1975:262–63) observed:

> It is inherent in the special character of law, as a body of rules and procedures, that it shall apply logical criteria with reference to standards of universality and equity. . . . If the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class's hegemony. . . . [Law] cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion, by actually *being* just.

In Cuba, the express goals of the legal system are to promote the construction of socialism and to eliminate behaviors contrary to this goal (Diego 1979:100–102). As a formalized structure of substantive and procedural rules, however, the Cuban legal system is also a framework within which these goals can become

[2] For general histories of the development of the Cuban legal system under the Revolution see Azicri (1987), Brady (1981a, 1981b), Bogdan (1989), Cantor (1974), Evenson (1989, 1991), Gomez Treto (1989), van der Plass (1987), and Salas (1979, 1983).

[3] See, in particular, Law of Judicial Organization No. 4, arts. 143–53 (1977); Code of Ethics (1978); Resolution #938, Regulations Regarding Law Collectives (1978); Decree-Law No. 81, Concerning the Practice of Law and the National Organization of Bufetes Colectivos (1984); and Resolution #142, Regulations Concerning the Practice of Law and the National Organization of Bufetes Colectivos (1984).

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

contradictory. Constructing socialism requires, among other things, that the socialist state gain and maintain a degree of legitimacy in the eyes of citizens. Some of the ways that a legal system can contribute to the legitimacy of the socialist state, however, may make it more difficult for the state to use that legal system to repress unsocialist behavior.

State legitimacy requires, among other things, stability in the legal system. According to Hazard (1969:82), stability is the condition wherein laws are sufficiently specific to ensure that no judge can "act as a legislator in determining the basic characteristics, objective and substantive, of criminality." Specificity, however, limits legal flexibility and legal experimentation in pursuit of revolutionary goals. Thus, leaders of revolutionary states, if they wish to provide stability to law and legitimacy to the state, must eventually accept, or even promote, some degree of legal specificity, even though doing so constrains the use of state power to achieve revolutionary aims. Cuba's postrevolutionary legal history is no exception.

After the Castro government took power in 1959, the legal system experienced considerable experimentation in the quest for revolutionary forms of justice. The experimentation emphasized informalism and citizen participation in order to create a "people's justice" (Brady 1981b). Rather than generating stability in law, however, informalism and public participation resulted in considerable variability in Cuba's justice system (van der Plas 1987). In the early 1970s the Cuba government began to rein in these experiments with revolutionary justice in favor of a more institutionalized and stable socialist legal system (Evenson 1989). A series of laws were passed to increase both procedural consistency and substantive clarity.

Procedural consistency requires clear rules of due process and a judiciary with sufficient independence to follow, or at least appear to follow, these rules. According to Zatz (1994:72–90), leaders in both the Cuban legal community and the government devoted much attention in the 1970s and 1980s to developing and refining explicit socialist codes of criminal procedure and judicial organization. Central to this development was the passage of the 1973 Law of Judicial Organization, the 1976 Constitution, and the 1977 Law of Judicial Organization. The Constitution and the judicial organization laws increased legal stability by establishing a court system that was organizationally distinct from other institutions of government, that guaranteed judicial independence in dispensing sentences, and that gave courts the authority to administer their own sentences (Azicri 1980:203–7).

Cuba's penal codes also underwent a process of increasing stabilization. The first full socialist penal code was approved in 1979 (Vega Vega 1981). While it was somewhat punitive in terms of sentences prescribed for various crimes, it also brought in-

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

creased specificity to the designation of criminal acts under Cuban socialism. A new penal code approved in 1987 further refined the constituent elements of crimes and eliminated most remaining instances of vague or ill-defined "socialist" crimes (Michalowski 1992).

The stability achieved within the Cuban legal system during the 30 years that spanned the revolutionary victory and the beginning of my research there in 1989 meant that much of the informality and flexibility of Cuba's earlier "people's justice" had been replaced by a system of due process that had expanded the legal avenues available to lawyers. I am not suggesting that Cuba (or any other state) adheres to its rules of due process without exception. Rather, my points are (1) that the Cuban state, like other political states, must follow, or appear to follow, its own laws to some degree or risk delegitimation, and (2) that the procedural and substantive laws that emerged as part of the institutionalization of the Cuban Revolution provided a terrain on which attorneys were able to assist their clients against the claims of the state.

The second proposition guiding my inquiry is that attorneys, whether in socialist or capitalist societies, operate in the space between citizens and the state, particularly where criminal defense is concerned. Attorneys must always maneuver through contradictory expectations posed by obligations to the law and the ideological canons of the state, on the one hand, and by the interests of their clients and their own professional goals, on the other. The challenge attorneys face is to negotiate, or appear to negotiate, a balance between the collectivist goals prescribed by ideology and law and the individualistic goals of serving clients and self. To the degree that attorneys are seen as favoring ideology and law, they risk being perceived as either naive or complicit tools of the state—the stereotypical image of the attorney under communism. On the other hand, should they be perceived as overly concerned with serving their clients and themselves, the polity will increasingly view attorneys as unprincipled mouthpieces-for-hire who have little concern for the general wellbeing—as the "lawyer jokes" now in vogue in the United States suggest.

The ideological canons and legal framework within which attorneys must balance collectivist and individualist goals in socialist societies differ in some fundamental ways from those in capitalist ones, particularly for criminal law. Although socialist defense attorneys are positioned between citizens and state, they are positioned differently from their counterparts in capitalist societies. Nevertheless, while the substantive character of operating between state and client may have distinct characteristics in Cuba, it retains a similarity of form with legal practice in nonsocialist states. Like their free-market counterparts, the Cuban at-

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

torneys I observed had to constantly balance competing demands to live up to the ideological standards of socialist lawyering, to facilitate the operation of the law, to serve their clients' interests, and to advance their own personal and professional goals. In providing a portrait of the day-to-day activities of attorneys in one bufete colectivo in Havana I want to show, among other things, how these attorneys negotiated their way between the needs of their clients and the ideology of socialist lawyering.

The analysis presented here is based on a multimethod ethnographic approach suggested by Agar (1986). Specifically, I draw on four sources of data. Information concerning the ideological and legal framework within which Cuban attorneys operate is derived from (1) laws and other published documents regarding legal practice in Cuba and (2) interviews with officials of Cuba's legal system. Between 1985 and 1993 I interviewed or had discussions with officials of the Cuban Ministry of Justice, the Office of the Attorney General (*Fiscalía General*), and the National Assembly of People's Power (Cuba's constituent assembly), and with faculty at the Law School of the University of Havana.

Information regarding how Cuban attorneys practice law is based on (1) participant observation in a bufete colectivo in Havana and (2) on quantitative data compiled from the case archives of this law collective.[4] I refer to the particular bufete colectivo observed simply as "the Bufete," just as do those who work there. During my periods of research in Cuba, I spent most working days with attorneys from the Bufete. These attorneys gave me access to their activities and their deliberations.[5] This

[4] The participant observation reported here took place in a Cuban bufete colectivo in Havana between February and June of 1989, and during follow-up trips in November 1989 and May–June of 1990, 1991, and 1992. I also made four shorter visits between 1985 and 1988 to gain familiarity with the Cuban legal system. The city of Havana is divided into 15 municipalities (*municipios*), and each is served by at least one bufete colectivo. The bufete colectivo discussed here was chosen because of its proximity both to the School of Law at the University of Havana and to one of the municipal courts for the city of Havana.

[5] The choice of any ethnographic research site raises questions of generalizability. Because the bufetes colectivos in Cuba are organized according to a nationwide plan, however, they are far more homogeneous in their structure and in the services they provide than law firms in the United States. Discussions with attorneys who worked in other bufetes colectivos indicated that there was considerable similarity between their experiences and those of the attorneys with whom I worked more closely. Three characteristics of the bufete studied, however, may make it less than perfectly representative. First, it was located in central Havana just a few steps from a major bus stop. This made it convenient for many people traveling to and from central Havana as well as people living in the municipality the Bufete served. Consequently, its caseload and staff were larger than most bufetes. Before it split into two separate law collectives in 1991, it was the largest bufete in the country. Second, because several of the attorneys who worked there were renowned for their skill, particularly for appeals to the Supreme Court (*recursos de casación*), the proportion of the overall caseload composed of these appeals may have been somewhat larger than in other bufetes. Finally, the Havana location meant that the number and mix of criminal cases handled was characteristically urban. In addition, because Havana has a notable concentration of foreign tourists, there were more cases involving currency violations than in law collectives serving populations relatively removed from the opportunities to engage in illegal currency traffic.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

included sitting in on attorney-client interviews and pre- and posttrial discussions between attorneys and their clients; observing trials and discussions between attorneys, judges, and prosecutors; reading the documents relevant to cases I was following; and discussing the progress of cases and case strategy with various attorneys.[6]

In gathering and analyzing information about the everyday practice of law in Cuba I have been guided by one of the basic principles of ethnographic research, which in Malinowski's (1922:25) words is "to grasp the native's point of view, his relation to life, to realize his vision of his world." At the same time I also recognize that ethnographic texts are not stenographic reports of transparent realities. Rather they are always *interpretations* of the "native's point of view" as experienced by the researcher (Geertz 1973; Clifford & Marcus 1986). What I offer, then, is my interpretation of how Cuban attorneys understood their work and dealt with the dilemmas it posed within Cuba's socialist framework for the practice of law.

I first discuss the ideological basis for the socialist practice of law in Cuba and then examine the legal framework governing this practice. This will be followed by a description of the characteristics and activities of Cuban attorneys as they pursue the practical business of serving their clients within Cuba's socialist state.

The Ideology of Socialist Legality

In his pioneering study of the Soviet legal system, Berman (1964:267) defines law as the "process of ordering human affairs" through the consistent enforcement of norms by the state. Since the bourgeois revolutions of the 18th century, this legal ordering of human affairs in Western market societies has been grounded in the concept of individual, human rights. These "rights" are taken as fundamental and preexisting possessions of individuals that must be defended against the possibility of encroachment by either the state or other individuals (Macpherson 1967). Within this framework the role of private legal counsel, at least in theory, is to represent the interests of clients against the state or other claimants.

In civil legal actions under bourgeois law, the attorney's task is to enlist the state on the side of the client in order to either preserve or expand the client's freedom of action in some private pursuit contrary to the wishes of others or to obtain redress for

[6] At no time during my research was any request for data or to participate in some case-related process denied. Quite to the contrary, the Bufete staff made considerable efforts to ensure that I was able to obtain whatever information I requested. My contact with clients most often came about because I would be sitting in an attorney's office when a client arrived. I was never asked to leave by either a client or an attorney, and I was often incorporated into the discussion as clients sought to convince me of the righteousness of their complaints.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

some putative injury suffered by the client (Kidder 1983:212–13). In criminal matters, the attorney's role, ideally, is to protect the client against the possibility of prosecution and conviction by the state and to protect clients against possible violation of their due process rights by agents of the state (Vago 1991:66). In criminal matters, the essential relationship between citizen and state is understood to be antagonistic, with the attorney serving as the representative of the interests of the accused citizen against the power of the state (Maddex 1974:65–66). In theory, this antagonism ideally will produce the truth about "guilt" or "innocence," thus serving the wider interests of the society by ensuring that justice is rendered.

In one-party socialist states based on centrally planned economies, the role of the attorney is, both philosophically and practically, more limited with respect to civil actions and more ambiguous where criminal defense is concerned. The elaboration of laws and legal mechanisms for the resolution of private disputes is directly related to the scope of private property as a social institution (Maine 1888; Tigar & Levy 1977). Consequently, free-market societies tend to develop extensive avenues for the litigation of private disputes. In contrast, state ownership and management of the means of production in socialist states, such as Cuba, translates into an economic system with few opportunities for private ownership of productive property, with a corresponding reduction in the possibilities for private legal disputes over property. Many disputes that would lead to private suits in market societies are transformed into conflicts between citizens and components of state bureaucracy or between bureaucratic organs of the state (Ginsburgs 1985).[7] One consequence is that the practice of law outside of official organs of government or state enterprises is limited primarily to criminal cases and domestic issues.

The ideology underlying the practice of criminal defense in socialist societies is shaped by the Marxist-Leninist doctrine that socialist states represent the interests of all working people (Lenin 1965:461). The Cuban legal theorist Diego (1979:147) argues that the inherent antagonism between the interests of the individual and the interests of the state, characteristic of capitalist societies, is absent under the socialist state. According to this view of the socialist state, attorneys should work to ensure the fulfillment of socialist legality, that is, guaranteeing that the law is obeyed, rather than playing an adversarial role vis-à-vis the state on behalf of their clients. This is held to be particularly true

[7] Many forms of conflict between businesses or other supra-individual entities that are addressed through civil law in market societies are transformed into disputes between organs of the state in a centrally planned economy such as Cuba's. Thus, such conflicts are often resolved outside the formal judicial system, passing to negotiation and dispute resolution mechanisms within the government itself. These will not be considered here insofar as the focus is on attorneys' intermediary role when issues arise between citizens qua citizens and the state.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

when serving in an adversarial role might mean that a guilty client would go unpunished. The role of the Cuban attorney, according to one official of the Fiscalía General, is not to assist defendants *against* the state but to work *with* both the client and the state to guarantee the fulfillment of "socialist legality."[8] The underlying assumption is that the fulfillment of socialist legality will necessarily be in the interest of the client as a citizen of the socialist state.[9] This belief in a unity of interests between citizens and the socialist state was expressed more concretely by an attorney who said:

> If I work to have a client I know is guilty found innocent, then I would not be serving the interests of justice. Neither the society nor the individual would receive what they need. If a man is guilty of a crime, it means he has a social problem. My job is to see that he gets the social services he needs, and to see that he does not suffer punishment he does not deserve.[10]

According to this attorney, representation of criminal defendants is predicated not on a commitment to defending a client's innocence regardless of the facts of the matter, but in serving as an honest broker for the social, as well as legal, needs of the client, thereby serving both the client and the socialist state.

The image of a nonantagonistic state in which lawyers simultaneously help their clients and promote socialist legality by facilitating conviction of the guilty, as well as acquittal of the innocent, is the cornerstone of official rhetoric about lawyering in Cuba. Rhetoric alone, however, does not constitute a substantive framework for the practice of law. In addition to rhetoric about lawyering, Cuba's emerging socialist state also required a legal framework around which to organize the practice of law. Actual laws, however, are never perfect reflections of the ideology on which they are based. The law of legal practice in Cuba is no exception. As I argue in the next section, the evolution of the legal framework for socialist lawyering in Cuba, contrary to the rhetoric of nonadversarial lawyering, tended to expand, rather than narrow, the ability of attorneys to represent the interests of clients. This legal evolution, in turn, was part of a larger process

[8] Interview with Jorge Boda, Director, Office of Evaluation, Fiscalía General, 12 May 1990.

[9] This lack of an antagonistic relationship between citizens and the state is qualified by the fundamental Leninist doctrine that the first and foremost function of the socialist state is the suppression of the "exploiting class" by the creation of a democracy for the (formerly) exploited class, what is sometimes referred to as the "dictatorship of the proletariate" (Lenin 1965:250). Thus, there remains an antagonistic relationship under law between the state and representatives of this former exploiter class (Jambrek 1985; Rodriguez 1987:61–62). When I asked Cuban attorneys about the apparent tension between Leninist doctrine regarding the dictatorship of the proletariate and the view that in Cuba the relationship between citizens and the state is not antagonistic, the most typical response was some version of the statement that "here we do not have an exploiting class, and so we do not have any antagonism between the people and the government."

[10] Interview with Jaime Guzman, 19 June 1985.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

of institutionalizing a stable, socialist legal system following a period of postrevolutionary experimentation with informal justice. This evolutionary process opened a legal space within which attorneys increasingly came to interpret their duty to promote socialist legality as representing the interests of clients rather than those of the state, despite the apparent contradiction with the ideal of nonadversarial lawyering.

The Evolving Definition of Cuban Legal Practice

Law collectives initially emerged as part of the search for popular justice during the decade of "experimentation" immediately after the Revolution (Van der Plas 1987). As early as 1961 some attorneys, sympathetic to the socialist goals of the Revolution, began forming law collectives to facilitate public access to legal services (Evenson 1990:8).[11] Bufetes colectivos did not become the exclusive mechanism for providing legal services to the public, however, until the 1970s when Cuban government began to "institutionalize" the Revolution's socialist principles. In the following sections I examine how this institutionalization of "socialist" legal practice in Cuba eventually expanded the opportunities for attorneys to represent their clients.

The Legal Framework for Bufetes Colectivos

Passage of the 1973 Law of Judicial Organization abolished the private practice of law and required that all attorneys providing direct services to the public work in and through law collectives known as bufetes colectivos.[12] The purposes of this change were to ensure universal public access to legal services and to reshape the practice of law into a system that would place collectivist, socialist goals ahead of the individual goals of attorneys and their clients.

Although the 1973 Law of Judicial Organization mandated that law be practiced through bufetes colectivos, it was not until 1977, following the establishment of a new Constitution, that an institutional framework for the operation of these law collectives was formalized. The 1977 Law of Judicial Organization (art. 146) defined the bufetes colectivos, taken as a whole, as an "autonomous national organization." In keeping with the new Constitution's emphasis on an independent judicial process, the designation of the system of law collectives as an autonomous national

---

[11] I was told that an attorney in the Bufete, a man in his late 50s and, judging from comments made about him, a well-respected criminal law specialist, was one of the first attorneys in Havana to convert his private law practice into a law collective shortly after the triumph of the Revolution.

[12] There are certain instances when attorneys not working in bufetes colectivos can argue cases before courts of law (see Decree-Law No. 81, art. 4 (1984)), although these are relatively rare.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

organization placed both legal and institutional distance between law collectives and the government.

As part of an autonomous organization, the individual bufetes colectivos are self-financed and locally administered. This means that on a day-to-day basis, attorneys are not subject to direct involvement of state mangers in their work.[13] The law collectives, however, do not constitute private law firms in the free-market sense of the term "private." While the individual bufetes colectivos are independent with respect to their day-to-day activities, they are subject to the rules and regulations established by the Organización Nacional de Bufetes Colectivos (ONBC) and to administrative governance by the ONBC staff.

The ONBC operates as a combination bar association and corporate headquarters for the practice of law in Cuba. Much like a bar association, the ONBC provides a mechanism through which the interests of attorneys as a group can be heard within the government. Also like a bar association, the ONBC develops standards and ethical principles for the practice of law. Like a corporate home office, the ONBC management staff, through consultation with rank-and-file representatives, sets forth detailed administrative guidelines for the practice of law and guides the process of decisionmaking regarding investment in, and development of, legal practice in Cuba. The ONBC (with review by the Ministry of Justice) also sets uniform fees for legal services and serves as the central clearinghouse for both income and expenditures of the individual bufetes colectivos.

The ONBC was established as a representative system through which attorneys could articulate and pursue goals and interests related to the provision of legal services to the public. In keeping with the ideology of a nonadversarial relationship between the state and the bar, however, it was designed to serve more than the sectoral interests of attorneys or their clients. This ideology has been interpreted to mean that both the individual bufetes colectivos and the ONBC must also be concerned with fulfilling their "social mission" of implementing and advancing socialist legality (Escalona 1985:9). In an address to the National Assembly of the ONBC in 1985, then-Minister of Justice Dr. Juan Escalona Reguera (ibid., p. 10) described his vision of the relationship between the practice of law and advancing the socialist goals of the Revolution: "In our society when we speak of a professional ethic [for attorneys], we are referring to an ethic freed from the deformed burden of individualistic motivation and corporate egoism. . . . It is not possible to separate the ethic of a profession from the general ethic of a socialist society." In other words, in the practice of law, attorneys should contribute to the

[13] The presence of a "party nucleus" does mean, however, that those workers who are members of the Communist Party—unlike their non-Party co-workers—will be periodically subject to evaluative criticisms in accordance with political ideology.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

development of a socialist society, as well as represent the interests of their clients. To help ensure this attention to building socialism, the ONBC is subject to oversight (*alta inspeción*) by the Ministry of Justice (MINJUS). MINJUS has final authority over the policies and practices of the ONBC, and it is authorized to take an active role in promoting developments in the way law is practiced in order to advance the cause of building socialism.

At the policy level there is a high degree of integration and coordination between the leadership of the ONBC, MINJUS, and the Fiscalía General. This facilitates the political effort to link the practice of law with the development of socialist legality while creating a mechanism through which attorneys' professional interests and concerns can be heard within the government. The creation of the Regulations and Code of Ethics governing the practice of law in Cuba offers a good example of how this coordination works.

The 1977 Law of Judicial Organization specified, among other things, that the practice of law would be governed by a set of regulations and a code of ethics. It further established that MINJUS would be responsible for "approving" these codes. Several months later, drafts entitled *Regulations Regarding Law Collectives* and *Code of Ethics for the Practice of Law*, both of which had been developed by a commission of attorneys empaneled by the government for that purpose, were presented to, and adopted by, the inaugural meeting of the National Assembly of the ONBC. These regulations and codes, in turn, were adopted as law two weeks later by MINJUS in the form of Resolution No. 938 (Regulations Regarding Law Collectives).

The swiftness with which the draft regulations were adopted by MINJUS foregrounds the way in which the ONBC is able to influence the development of laws governing legal practice in Cuba. By the time the draft rules and regulations had been submitted to the ONBC assembly, the ONBC draft committee and MINJUS had already arrived at a general agreement about the basic principles contained in these rules and regulations. An attorney who had been an officer of the ONBC at the time the regulations and ethics codes were established described this situation to me: "the [draft] committee worked many hours with the Ministry [of Justice] to be sure they had a proposal everyone could accept."

This strategy of negotiating consensus is characteristic of Cuban lawmaking. According to the former head of the legislative oversight subcommittee of the Cuban National Assembly, lawmaking in Cuba is a process where "every effort is made to resolve the most troublesome issues between organizations or sectors of the society *before* the bill [*proyecto*] comes before the

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

legislature for debate and a vote."[14] Within this model of lawmaking, the development of laws governing legal practice necessarily involves discussions and negotiations between representatives of the ONBC and other organs of the justice system and the government. Although Cuban lawmaking is often characterized in the United States as monolithic and top-down, it is more often a relatively complex and dialogic process over which many sectors of the society exert influence.

The current legal framework for lawyering in Cuba is a product of the ongoing search for balance between legal stability versus the freedom to use law in revolutionary ways to build socialism and repress its enemies. On the one hand, the structure of the bufete colectivo system provides a degree of autonomy for attorneys. This autonomy, in turn, contributes to the stability of law by creating a legal space within which attorneys can act to serve their clients interests without direct government intervention. Moreover, the establishment of the ONBC structure itself played an important role in helping to expand this sphere of action as will be discussed below. On the other hand, the formal links between the ONBC and MINJUS continue to provide the state with an ideological and structural platform to promote a discourse about lawyering that includes the collectivist goal of building socialism as part of an attorney's task.

Expanding the Space for Legal Action

The coordination between ONBC officials and organs of government in developing the regulations for the practice of law reflect as much bottom-up influence by the Cuban bar as top-down influence by political officeholders. One indication of this, as the following discussion shows, is that the evolution of laws governing legal practice in Cuba have expanded attorneys' professional role, emphasized their obligations to their clients, and downplayed the "social mission" of legal practice, even though there was no obvious change in the official rhetoric about socialist lawyering.

Article 143 of the 1977 Law of Judicial Organization defined the function of attorneys as "properly defending the interests of those they represent." This function, however, was conditioned by the proviso that legal representation be conducted in a manner that would "avoid abusing the legal guarantees of defense in ways that would impede the *social functions* of justice" (emphasis added). The idea that attorneys are answerable first to a socialist standard of justice and second to the interests of their clients was further emphasized in Resolution No. 938—the Regulations and the Code of Ethics for attorneys.

[14] Interview with Denio Commacho, 22 April 1989; see also Zatz 1994.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

Article 3.2 of the Regulations stipulates that one of the goals of the bufetes colectivos is to "[d]irect the professional practice of law so that it develops as an aid to the performance of courts and other authorities in the realization of justice and socialist legality." The 1977 Code of Ethics likewise repeated the language of the Law of Judicial Organization when it included "acting in a way that impedes justice from fulfilling its social function" in the list of failings that could result in disciplinary action being taken against an attorney.

On 8 June 1984 the Cuban Council of State adopted Decree-Law 81, Concerning the Practice of Law and the National Organization of Bufete Colectivos. The impetus for this change came from several sources. First, government officials felt that improving the quality of legal services was necessary to promote respect for the law. In other words, if citizens could not obtain what they felt were effective legal services, the legitimacy of the socialist state would suffer. Second, expansion and diversification of both Cuba's economy and its social structure required an expanded conception of the role of attorneys. Finally, the leadership of the ONBC, reflecting the sentiment of many attorneys, actively used their access to the lawmaking process to promote a more independent, client-oriented model of lawyering.[15]

The 1984 decree-law replaced those sections of the earlier 1977 Law of Judicial Organization concerning the bufetes colectivos. Six months later, in accordance with this decree-law, MINJUS, in consultation with the ONBC, promulgated a modified set of Regulations governing the bufetes colectivos. Decree-Law 81 and the subsequent 1984 Regulations refined the definition of legal practice, emphasized the autonomy of attorneys, and placed greater emphasis on the professional quality of legal services. While its preamble reiterated much of the rhetoric of the earlier document, the specific regulations in it tended to broaden the role of attorneys as representatives of the interests of their clients. Article 143 of the 1977 law, for instance, defined the function of attorneys simply as "defending the interests of their clients before the courts." In contrast, seven years later, article 1 of the 1984 Decree-Law declared: "The practice of law consists in carrying out consultations, and advising, representing, and *defending the rights* of a natural or juridical person before courts of justice, bodies of arbitration and administrative agencies" (emphasis added). By elaborating a broader range of legal representation, Decree-Law 81 expanded the professional role of attorneys in both the Cuban system of noncourt dispute resolution and the growing economic and administrative systems. It also inserted the language of "defending the rights" of clients. This lan-

[15] Conversations with Ana Belkis Pupo, 5 March and 25 June 1989. During this time Dr. Belkis served as the director of the Bufete; interview 12 May 1990 with Jorge Boda, Director, Office of Evaluation, Fiscalía General.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

guage implies someone or something against which rights must be defended. Because so few legal cases in Cuba involve tort claims or private economic disputes, whether intentional or not, the language of "defending the rights" of clients resonates most directly with protecting criminal defendants against violations of their rights by the state.

Article 2 of the same law emphasizes the autonomy of legal practice. It begins by saying that "The practice of law is free" and specifies that in exercising this function "the attorney is free and must obey only the law" (ch. I, art. 2a). The 1984 Regulations (ch. 1, art. 2) echo this sentiment, favoring an independent legal profession, and direct attention to the specific professional competence of attorneys: "In the practice of law attorneys enjoy the guarantees established in law, and in light of these no one can interfere with the decisions of a technical character made under their responsibility."

The newer law and associated regulations retain some of the earlier sentiment that the role of the attorney is intimately linked with the broader attainment of socialist justice. In a number of places, however, this concern with the "social mission" of attorneys was muted in comparison with the earlier laws in favor of an emphasis on professional skills and responsibilities to clients. For instance, article 2c of Decree-Law No. 81 states that attorneys "contribute to the realization of justice by means of their observance and strengthening of socialist legality." This emphasis on the positive contributions of attorneys to the ideal of justice differs from the more negative sentiments expressed in article 143 of the 1977 law, which focused on the need for attorneys to avoid practices that would *interfere* with socialist justice. In the new laws, attorneys are enjoined to "keep up-to-date on legislation in force and their modifications and to continually improve their knowledge of the law" (Decree-Law No. 81 art. 2), to "continually advance the technical quality of their services to the population" (1984 Regulations art. 5e), and to "defend the interests of those they represent with the greatest diligence" (ibid., art. 34b). While the list of disciplinary actions set forth in the 1984 Regulations covers a multitude of professional wrongs that can be committed by attorneys working in bufetes colectivos, such as violating lawyer-client privilege, receiving payments outside the officially promulgated pay scale, and suborning perjury (arts. 59-1a, 59-3c, 59-3d), it omits less specific forms of wrongdoing such as "acting in a way that impedes justice from fulfilling its social function" found in earlier regulations (ONBC Code of Ethics art. 2-10 (1978)).

When evaluating the implication of these changes in Cuba, it is useful to consider how they compare with other experiences with socialist lawyering. The legislation that governed legal practice at the time of my research lacked the paternalistic attitude

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

toward clients found in laws governing legal practice in former Eastern bloc nations. There was nothing in the Cuban law comparable with the requirement that attorneys "*admonish* citizens to fulfill their obligations towards the socialist state and society" (emphasis added) which Markovitz (1982:538) suggests was characteristic of Eastern European law governing legal practice. Rather, the laws spoke more of a professional role for attorneys which, while it did not privilege client interests and lawyer-client relationships above all other values, gave greater weight to the role of attorneys as advocates *for* their clients than appears to have been the case in European Marxist states.

Between the late 1970s and the mid-1980s, the laws governing legal practice in Cuba moved increasingly toward emphasizing the independence of attorneys, improving the quality of legal services, and recognizing the need of those accused of crime for a defense against the state. While the rhetoric of the "social mission" of attorneys remained, the actual laws governing legal practice created an opening through which attorneys could define their obligation to advance socialist legality as one best served by effectively representing their clients, even if this representation required adopting a more adversarial role than the official rhetoric of socialist legal practice would suggest.

Passing laws that say the practice of law is free and attorneys should diligently represent their clients, however, does not automatically make it so. To reveal how the legal evolution of the role of attorneys translated into actual lawyering, I focus the remaining discussion on the ethnographic context of a law collective in downtown Havana. My goal in doing so is twofold. First, I want to offer support for the argument that actual lawyering, as well as the laws governing it, moved in a more client-oriented and less state-centered direction. Second, I want to offer a textured understanding of what has heretofore been almost a terra incognita for U.S. students of lawyering—the ordinary practice of law in Cuba.

In a Law Collective

Before examining the ways in which attorneys in the Bufete went about the business of socialist lawyering, I provide some background as to who these attorneys were, how they worked and were paid, and the way in which the Bufete made legal services economically accessible to those who walked through its door. It is these things, rather than abstract legal and ideological frameworks, that made lawyering in the law collective a concrete human activity involving real people attempting to solve real problems.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

Demography as History

One of the more striking social characteristics of life in the Bufete is that the face of law is young and also often female. In 1989, about two-thirds of the attorneys in the Bufete were under 45 and many were in their early 30s and late 20s.[16] Also, nearly a third of the 46 attorneys working there were women. By 1992 the proportion of women had increased to 45%.

The demographic character of the Bufete reflects the ups and downs of the legal profession in revolutionary Cuba. In the years following the revolutionary victory, both the size and prestige of the legal profession in Cuba declined as the result of historic links between the legal profession and the deposed Batista regime and optimism about the eventual disappearance of crime in a more just society.[17] In the early 1970s the size and prestige of the Cuban bar began to rebound. Two things contributed to this. First, crime and other legal troubles did not disappear as predicted in the years following the Revolution. Second, the Cuban economy and foreign trade began to expand. As a result, more attorneys were needed to handle ongoing problems of crime and the growing civil caseload. The School of Law at the University of Havana, which had been previously downgraded, was reestablished as a separate Faculty, and new law schools were established at Santa Clara and Santiago de Cuba (Evenson 1990). By the late 1970s, an increasing number of newly minted, young attorneys began to enter Cuban society. Moreover, these attorneys were the products of a relatively gender- and race-blind system of selecting law students. According to the former vice-rector of the School of Law in Havana, during the 1980s law was one of the more highly desired fields of study. Because female applicants tended to have better secondary school records, and the placement system is one in which those with the best academic records are more likely to receive entrance into their first-choice field of study, a high percentage of law students tended to be women.[18]

The relative youthfulness of attorneys in the Bufete meant that many were trained at about the time that the codes governing legal practice were being revised. Consequently, many of the attitudes regarding the practice of law typically expressed in the Bufete were shaped as much by an ethic of legal professional-

[16] Legal education in Cuba is not a separate postgraduate program. It consists of a five-year program that commences when a student enters the university, normally at age 17, after completing preparatory education (*preuniversitaria*). Thus, a student who proceeds through legal education without interruptions can graduate with a law degree by age 22 or 23, as compared to 25 or 26 for a U.S. student, who must obtain both a baccalaureate degree and a law degree.

[17] Interview with Juan Escalona Reguera, 24 June 1985.

[18] Interview with Omar Fernańdez, Vice-Rector, School of Law, University of Havana, 29 March 1989.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

ism that emphasized serving clients as by the rhetoric of serving the wider interests of a nonantagonistic, socialist state.

Doing Work and Getting Paid

Cuban attorneys work individually with clients and are paid from client fees on a per-case basis, according to a three-point scale of difficulty. Simple cases (*sencillos*) cost the client 40 pesos, of which 15 pesos are paid to the attorney. This category consists of cases such as defense for minor crimes to be adjudicated in Municipal Court, processing a variety of routine civil actions such as name changes, and filing appeals from decisions by various governmental administrative agencies. Complex cases (*complejos*) cost 80 pesos and earn the attorney 30 pesos. Cases in this category consist primarily of crimes prosecuted in Provincial Court and divorces. Very complex cases (*muy complejos*) cost 100 pesos, of which 40 pesos are paid to the attorney. This category consists primarily of appeals for violations of due process in criminal cases (*recursos de casación*) which in Cuba are heard by the Supreme Court.

The highest paid attorneys in the Bufete tended to be those with strong reputations for successful criminal appeals because clients often chose them to handle these highly remunerative cases. Civil law specialists who handled large numbers of divorces, which, relative to the amount of time required, paid better than many other types of cases, were also among the highest earners in the Bufete. The average monthly salary in the Bufete in 1989 was 325 pesos. This was equal to 180% of Cuba's average monthly salary of 180 pesos in 1989—relatively high by standards of socialist lawyering. For instance, the average salary for a Soviet attorney in the late 1980s was 242 rubles—120% of the average salary of 200 rubles (Rand 1991:12).

The relatively high incomes of Cuban attorneys may have accounted for the apparent lack of any systemic practice of circumventing the state-set legal fees. For instance, according to Rand (ibid., p. 13), a practice known at MIKST ("maximum utilization of the client above the statutory fees"), whereby clients paid illegal honoraria to their attorneys, was common in the Soviet Union. This practice finally disappeared with the passage of a 1988 law that permitted attorneys and clients to reach their own fee agreement—in effect eliminating the MIKST as an under-the-table payment and reinstituting it as free-market price for legal services. By contrast, I never witnessed any similar process in the Bufete. Furthermore, both the attorneys with whom I worked, as well as various government officials, said that under-

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

the-table payments for legal services in order to circumvent the established fee schedule, while they did occur, were rare.[19]

The individual caseloads for attorneys in Cuba's bufetes colectivos appeared to be smaller than those typically reported for lawyers in the former socialist states of Europe. To earn the average monthly salary of 325 pesos, an attorney in the Bufete who handled *only* the least remunerative cases would need to complete 22 cases a month. With an 11-month work year, this amounted to 242 cases annually, less than 60% of the yearly caseload for attorneys in the former Soviet Union reported by Huskey (1990:111). In actuality, most attorneys in the Bufete handle a mixture of simple cases, and the more remunerative complex, and very complex cases. Consequently, the annual caseload for the majority of attorneys, judging both from their monthly salaries and discussions with them, was closer to 200 cases.

While most attorneys in the Bufete, except those new to the profession, earned incomes between 325 and 350 pesos, there were several well-known criminal law specialists (*penalistas*) who earned as much as 600 pesos during good months, placing them at the very upper end of the earnings scale in the country. Although salaries much beyond 400 pesos were rare, there were enough super-high earners in the Bufete to generate concern about escalating salaries. In 1989 the Bufete's director said that some attorneys' desire to increase their overall earnings was tempting them to give more attention to expanding the number of cases they handled than to improving the quality of the legal representation they provided.[20] The following year the ONBC instituted several measures to guard against what it saw as the quality-eroding potential of a monetary incentive to increase the size of one's caseload. One measure required periodic quality-control evaluations of each attorney's work by directors of the bufetes colectivos. Another authorized the directors of the bufetes colectivos to decrease an attorney's income for cases characterized by poor-quality work or to augment an attorney's salary in recognition of exceptionally high-quality work.[21] To minimize problems of overcommitment and undercompletion, another required that attorneys would now only be paid for cases completed rather than for cases contracted.

Although their earning were not high by U.S. standards, the attorneys in the Bufete were among the highest paid workers in their country. While the constant flow of cases was demanding, it was less so than had been typical for their counterparts in other

[19] In Cuba by 1993, due to the rapid decline of the real value of attorneys' income, the possibility of an under-the-table payment system developing had increased; however, I could find little evidence of one in August of that year.

[20] Belkis interview (note 15).

[21] Interview with Ana Belkis, 17 June 1990.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

socialist nations. Income, measured as reward for effort, is far from the only measure of social worth. Nevertheless, the work and pay scale in the Bufete suggests that Cuban attorneys, at least at the time of my research, occupied one of the more highly valued positions in Cuba's socialist system.

Public Access to Legal Services

The structure of legal fees in Cuba was designed to bring the cost of legal services within the reach of citizens. Unlike legal fees in market societies, fees for legal services in Cuba are determined strictly by the type of case, rather than by the hours it requires or the prestige of the law firm. Legal representation in divorce proceedings, for instance, cost 80 pesos in 1989. Defense against a felony-equivalent crime likewise cost 80 pesos. In 1989, 80 pesos was equivalent to 40% of the average monthly salary for Cuban workers. Defense for the equivalent of a misdemeanor criminal charge or an appeal from an administrative ruling by some organ of state or local government cost 40 pesos, or 20% of the average monthly salary. An appeal from a felony criminal conviction (*recurso de casación*) cost 100 pesos, about half the average monthly salary. These fees represented the total cost of an attorney's work on the case. The 80-peso fee for legal representation in a divorce, for instance, required an attorney to produce a final divorce decree regardless of the difficulty involved in bringing the parties to terms. Similarly, whether an appeal from a felony conviction was straightforward or highly complex, the fee was the same, 100 pesos.

Arriving at an understanding of the real economic implications of these fees requires considering both the relative demands on incomes and the relative value of the money involved. As a result of Cuba's socialized cost of living, until recently legal fees in Cuba were not burdensome. During the 1989–92 period, housing in Cuba averaged about 10% of monthly income, utilities (including a telephone) around 20 pesos, a week's worth of bus travel to and from work cost 1 peso, and a subsidized ration-book diet for a family of four came to around 15 pesos. As a result of these subsidies, Cuban workers earning near the median wage of 180 pesos a month in 1989 often retained 60–70% of their take-home pay for discretionary expenditures. Some of this was spent legally in restaurants or in government-run parallel markets. Another portion was usually spent in the informal sector to supplement the limited variety of legally available foods or for black-market purchases of other commodities. Despite these expenditures, the limited availability of durable consumer goods to drain off income meant that Cuban workers tended to accumulate undisposable pesos. Consequently, the impact of spending the equivalent of 40% of one month's income for a divorce,

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

for instance, was substantially less for the average Cuban worker than it would have been in a society without socialist subsidies and with more extensive consumer options.

The structure of legal fees in Cuba was established by the Cuban government and the ONBC in pursuit of the socialist goal of providing universal access to benefits, including legal services. Clients in the Bufete rarely complained about the cost of legal services, nor did they link the low cost of legal services to low quality. When complaints did arise about the quality of legal services in the Bufete, they were largely about long waits to see an attorney, attorneys who missed appointments (often because they were delayed in court), or the simple fact that the attorney failed to win the case. On balance, however, it appeared that the provision of accessible legal services through the bufete colectivo system was viewed by the Bufete's clients as a positive aspect of Cuba's legal system.[22]

Overall the Bufete was a place where relatively young attorneys went about earning a living by tending to the civil and criminal problems of their clients. Some of their work was routine, and some was exciting; almost all of it was client-centered. The attorneys earned far less—and their clients paid less—than their counterparts in market societies. Nonetheless, there was an air of familiarity to the process. Although the substance of many laws clearly differed from those in market societies, the form of lawyering—the way in which client concerns were addressed—remained the same.

Lawyering in a Law Collective

This section examines the kinds of work the lawyers in the Bufete actually did. My goal is to provide a feel for the ways in which the ideology and the structure of socialist lawyering in Cuba translated into actual legal services for clients. The primary focus is on criminal cases, which underscore the role of attorneys vis-à-vis the state more vividly than do civil cases. Because civil cases constituted the bulk of the routine work in the Bufete, however, it is important to briefly describe the nature of this work as well.

[22] By 1993, because of the loss of its socialist trading partners, Cuba was increasingly required to spend its limited hard currency to import necessities such as petroleum, medicine, and foods, for which it had previously bartered its sugar, sugar by-products, coffee, seafood, and citrus fruit (Zimbalist 1990). The resulting decline in the availability of certain foods and imported commodities led to skyrocketing black-market prices. By the summer of 1993 Cubans were spending their entire salaries to buy what they had once acquired with only a fraction of their salaries. Legal fees, which in the past had been negligible, became correspondingly more problematic.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

Doing Civil Legal Work

The kinds of problems for which Cubans sought legal services in the Bufete were predominately civil matters, and the vast majority of these concerned family-related problems, particularly divorce. A one-third sample of all cases contracted in the Bufete in 1989 produced 1,916 cases.[23] Of these, 85% (1,635) were civil in nature, with 65% (1,057) of all civil cases involving divorce (see Table 1). Over 90% of these divorce cases were uncontested, and these represented fairly routine work for the attorneys. Another 15% of the civil cases involved contested inheritances resulting from the complexities of divorce and remarriage. A majority of these cases were initiated by adult children seeking to claim the inheritance of property belonging to now-deceased fathers or mothers who had divorced and remarried, or by women seeking to claim the inheritance or pension of former spouses.

Table 1. Civil Cases Contracted in the Bufete Colectivo, 1 May 1988–30 April 1989 (One-third Sample)

	No.	%
Marriage and family:		
Divorce	1,057	
Inheritance	250	
Children	64	
Name changes	16	
Total	1,387	85
Housing:		
Appeals	98	
Others	12	
Total	110	7
Labor appeals	44	3
Private disputes	37	2
Other appeals	57	3
All civil cases	1,635	100

Cases involving inheritance and pension claims generally required more investigative work, in order for attorneys to document the claims being made, than did routine divorces. In one case, for instance, Magdalena, a woman in her 60s, came to the Bufete seeking legal assistance against a claim by her deceased husband's former wife. She explained that the former wife

[23] All cases contracted in the Bufete were recorded on consecutively prenumbered forms (*asuntos consecutivos*). One copy of each contract is filed in the Bufete's archive. The data reported here were compiled from these contracts. Over 4,000 civil cases are contracted in the Bufete annually. Given this volume of cases, I elected to draw a one-third sample of civil cases by selecting every third case in each monthly period between 1 May 1988 and 30 April 1989. These dates were chosen because they represent the first 12 months after the implementation (1 May 1978) of Cuba's revised penal code. I compiled data on all criminal cases for this period as well. The one-third sample of criminal cases presented here was drawn from this universe to provide proportional comparability with the one-third sample of civil cases.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

claimed that she, rather than Magdalena (his wife at the time of his death), was the legal heir to his pension as a factory worker. Magdalena's husband, it seems, had never formally divorced his first wife. This, his former wife argued, gave her a preemptory claim to his pension. The attorney, however, through various inquiries, found that the woman who sought to claim the pension had herself remarried and then divorced in a small town outside of Santiago de Cuba, some 180 kilometers from Havana. The attorney was eventually able to locate documentation of this remarriage. Through inquiries in several bufetes colectivos in the region, he also ascertained that she had filed a similar claim against the pension of her divorced second husband. These two pieces of information were sufficient for the attorney to successfully convince the court to deny the claim against his client.

The routine nature of divorce and inheritance cases generated no particular tension between the ideology of socialist legality and its practice. The attorney's primary legal function in these cases was often only to ensure that the proper papers were filed with the proper authorities. While a few civil cases, such as the inheritance claim described above, provided the opportunity for creative, adversarial work, the majority were pro forma from a legal standpoint. From the personal standpoint of the attorney's experience, however, these cases often involved more than the perfunctory filling out of paperwork. Divorce and other family troubles are emotional matters as well as legal problems. Consequently, lawyers who primarily handled civil cases spent much of their time with clients listening to, and often sympathizing with, personal troubles. As one civil law specialist said, "a large part of my work is just being someone my clients can talk with about their problems."

Civil legal cases in the Bufete, for the most part, involved routine work that seldom required attorneys to balance the rhetoric of nonadversarial lawyering with their clients' needs. If there were adversaries at all, they were usually other citizens, not the state. When handling civil cases, attorneys generally felt they were advancing socialist legality in a nonadversarial way simply by ensuring that divorces, housing transfers, inheritance payments, and the like took place according to established socialist laws for doing so. Because civil work constituted by far the largest proportion of cases in the Bufete, it was relatively easy for those working there to conclude that lawyering was indeed primarily a nonadversarial activity in keeping with socialist legality, even if some proportion of the criminal cases, as is discussed below, involved a less cooperative relationship with the state.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

Varieties of Criminal Cases

At the level of everyday practice Cuban attorneys must balance the interests of their clients with an ideology that emphasizes their obligation to strengthen socialist legality by working with, rather than against, the state. To the extent that there are tensions between this ideology and the everyday problems of representing clients, it is most apparent in the defense of clients charged with criminal offenses.

Of the cases sampled in the Bufete, 15% (281) were criminal cases, and of these, 80% (226) involved either ordinary crimes against persons, property, and public order, such as murder, robbery, burglary, theft, and drunkenness, or appeals resulting from convictions for such crimes. Another 13% (35) were prosecutions for violations contrary to Cuba's socialist economy. These include offenses such as illegal use of one's employment for personal economic gain (*malversación*), obtaining property illegally diverted from the authorized distribution system (*receptación*), killing stolen beef cattle and selling the meat on the black market (*sacrificio ilegal*), and violations of currency regulations such as possessing or trafficking in foreign money (Table 2).

Table 2. Criminal Cases Contracted in the Bufete Colectivo, 1 May 1988–30 April 30, 1989 (One-third Sample)

	No.		No.
Violence against persons (21%):		Conventional property crime (23%):	
Homicide	10	Misdemeanor theft	17
Assaults	30	Felony theft	9
Sexual assaults	6	Burglary	26
Robbery	12	Frauds/gambling	8
Total	58	Other	3
		Total	63
Traffic-related offenses (9%):			
Homicide	13	Public order violations (2%):	
Injury	7	Dangerousness	1
Other	6	Drug possession/sale	7
Total	26	Total	8
State security related (7%):		"Socialist" crimes (13%):	
Resisting arrest	10	*Malversación*	6
Illegal departure	7	*Receptación*	9
Disobedience/*desacato*	3	Illegal slaughter	2
Total	20	Currency offenses	11
		Health/safety	4
Appeals (25%):		Other economic	3
From municipal court	44	Total	35
From provincial court	27		
Total	71	All criminal cases	281

About 7% (20) of the sampled criminal cases fell under the "state security" section of the criminal code. Eight of these 20 cases were charges for the crime of *atentado*—which involves im-

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

peding the performance of a public functionary through violence or intimidation. Some of these cases resulted from altercations between police and intoxicated party-goers. Brawls (*riñas tumultarias*) are a not uncommon Saturday-night phenomenon in Havana, and these sometimes produced charges of resisting arrest when police attempted to quell the fray. It was difficult to determine from case records whether any of the charges of "resisting" arrest stemmed from police-initiated aggression, as sometimes happens in the United States. I did, however, witness an improbable conflict between a 6-foot 3-inch Cuban man and a 5-foot 4-inch police officer in Havana's Central Park. After an initial exchange of words, the officer began pushing the other man backwards until he fell into a large, empty fountain. The officer then wrestled him into handcuffs. Although the larger man quarreled with the police officer, he never put up any physical struggle. Nevertheless, I later found that the man in question had been charged with *atentado* and was being represented in another bufete colectivo in Havana.

Two other cases involved impeding government functionaries but without the use or threat of physical violence (*resistencia*) (Penal Code arts. 142.1-3, 143.1-2 (1987)). One involved repeated refusals to allow a city housing inspector to enter a house to determine if the water system met standards, and the other involved refusal to permit mandatory fumigation for roaches.

Seven of the 20 state security cases involved attempts to leave the country without completing the official procedures for emigration (*salida ilegal*). In each of these latter cases the accused had attempted to reach Florida via a small craft, raft, or lash-up of inner tubes or truck tires. In 5 of these cases the attempted illegal departure was associated with the theft of the boat or tires used to leave the island. Cases of *salida ilegal* are political insofar as they are the result of a complex interplay of political decisions on the part of both Cuba and the United States. Since the late 1980s, some Cubans have *legally* immigrated to the United States, even though Cuba's emigration policy places various bureaucratic hurdles in the path of those who desire to emigrate. These bureaucratic difficulties in obtaining permission to emigrate may have made illegal departure an attractive alternative for some of those wishing to leave the country. The difficulty of obtaining a visa from U.S. immigration authorities, however, was often the larger hurdle. At the same time that the U.S. government was limiting the number of entry visas, it also pursued a policy of granting asylum to any Cuban who could make it to Florida without a visa. The contradictory nature of these policies was starkly revealed in August and September 1994 when Cuba stopped policing illegal departures from the island, precipitating an immigration crisis for the U.S. government. During the period of my

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

research, however, the Cuban government actively prosecuted those caught attempting an illegal departure.

While geopolitics shaped Cuban and U.S. immigration policies, they were relatively unimportant to the actual participants in the cases of illegal departure I observed. All the individuals charged with *salida ilegal* in my sample were individuals whom the U.S. government would have classified as "economic refugees" had they attempted to enter the United States from any other country. None had been involved in political activity prior to their attempted illegal departure, nor had any been previously arrested for political reasons. The fiscales for their part, tended to view prosecuting illegal departures as a necessary deterrent to the dangerous, and sometimes life-threatening, crossing. In one case a prosecutor argued that people who leave the country illegally "contribute to the U.S. propaganda about Cuba as a prison island." This, however, was the only instance I observed where illegal departures were given any political import. It was also the one instance when the prosecutor knew of my presence in the courtroom prior to the trial, and this may have provoked the political lecture.

The Bufete's attorneys, for the most part, tended to view clients charged with illegal departure with a mixture of sympathy and disdain. On one hand, the attorneys usually characterized these clients as people driven by personal desperation to undertake a dangerous venture, rather than as either political victims or threats to the socialist state. On the other, they would point out that the majority of those attempting illegal departures were people with little education who had failed to make much of a life for themselves in Cuba.

One of the remaining state security violations resulted from the failure of a government official to enforce a legal order (*desobedencia*). There were two other offenses that were more political in nature. These were charges for defaming a government official (*desacato*). I could find little detailed information on these cases. The attorneys who had handled them had since left the Bufete, and because *desacato* is the equivalent of a misdemeanor offense in Cuba, the case jackets contained only the notice of the charge, the contract with the attorney, and the outcome—fines of 100 and 300 pesos, respectively. However, insofar as speech against a public official can be punished under law, these cases have an inherently more political quality than the other state security violations in my sample.

An examination of the total universe of criminal cases contracted in the Bufete during the 1988–89 period revealed two more political cases that did not surface in the one-third sample. One involved the printing and distribution of antigovernment literature, and the other involved giving what the government charged was false and damaging information to a foreign jour-

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

nalist. In both these cases, the accused was convicted, although the attorneys involved did successfully argue for lesser sentences than those requested by the prosecutors.

Criminal Defense: Prologue Revisited

The absence of a structured adversarial role for private legal counsel in socialist legal systems, it has been suggested, lessens the ability of lawyers to represent the interests of their clients in comparison to bourgeois legal systems. Huskey (1986:26) argues that the nonadversarial role of Soviet attorneys reduced their part in the drama of criminal prosecution to a relatively unimportant one, with little opportunity to protect the accused from conviction. Solomon (1987) claims that the near disappearance of acquittals from the Soviet trial system reveals the greater power of the procurate in comparison to defense counsel. Markovitz (1982:538–39) argues that socialist lawyers are primarily technical specialists who "share a general subservience to a centrally defined order," rather than "generalists" who can manipulate the law in pursuit of the interests of their clients.

These characterizations of the "typical" socialist attorneys in the Soviet Union and Eastern Europe seem little suited to describing the Cuban criminal defense specialists with whom I worked. Despite the official ideology of a nonadversarial state in which the attorney worked *with* the state to ensure socialist legality, attorneys often told me that if the accused is guilty but the case presented by the prosecutor's office is too weak to generate a guilty verdict, it was not their responsibility to help ensure a conviction. One attorney expressed this common sentiment by saying, "I'm here to defend my clients, not to help the state convict them."

The defense that Sanchez assembled in the case of the stolen cooking oil described in the Prologue is a good example of the way attorneys in the Bufete would negotiate the terrain between official ideology and the needs of a client when the law and the facts of the case provided an opening to do so.

Shortly before Gutierrez stole the oil, Cuba instituted a major revision of its criminal code. This new penal code, which went into effect on 30 April 1988, incorporated a new definition of crime. Specifically, the new penal code excluded from the category of crime "any action or omission that, despite bringing together the elements that constitute crime, is lacking in social danger because of its limited consequences or the character of the offender" (Penal Code art. 8, "El Concepto de Delito"). Philosophically, this change was supposed allow a distinction between serious social injuries warranting the label of "crime" and other acts, similar in nature, but limited in consequence. These latter were defined as "infractions" to be resolved through ad-

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

ministrative fines. Miguel Angel Garcia (1992) of the Fiscalía General described Cuba's new definition of crime this way:

> A man who steals 5 pesos and the man who steals 500 pesos perhaps have engaged in similar acts, but these do not have the same meaning. Taking 5 pesos does not cause serious social injury, and should not be included in the definition of crime. Taking 500 pesos is a different matter. That causes serious harm and should be a crime. The idea is to have a definition of crime that reflects the social reality of crime, not an abstract legal standard.[24]

Appealing to this logic, Sanchez argued that taking five tins of oil from a factory had not caused any serious injury, and therefore his client should never have been charged with a crime—an infraction, perhaps—but a crime, no. The judicial panel that heard the case agreed with this reasoning, and because the court did not have jurisdiction over infractions, Gutierrez received a verdict of not guilty (*absuelto*).

Gutierrez was guilty of taking the cooking oil. That was never in doubt. Nevertheless, in this case, Sanchez worked to help his guilty client evade the full weight of the charge against him. I questioned Sanchez about this, asking him if there was any contradiction between his defense of the guilty Gutierrez and his obligation to build socialist legality. Sanchez replied: "I *am* building socialist legality. It is the police who are not supporting socialist legality. He [Gutierrez] didn't commit a crime and they were wrong to charge him with one." Whatever interpretation one might be tempted to put on Sanchez's post hoc view of his role as the defender of socialist legality, *he* believed that what he had done was not only in the best interest of his client but also of socialist legality. In his own mind, Sanchez had successfully closed any gap between defending his client and meeting his obligations to the socialist state. In a similar vein, several other attorneys told me that, in their view, a vigorous defense resulting in an acquittal would promote the long-range goal of improving socialist legality by serving notice on prosecutors and police that they will have to improve the quality of their work if they hope to win convictions. By taking this position, attorneys could view themselves as contributing to the legitimacy of the state by helping to promote justice, even as they behaved adversarially toward specific organs of government.

Exploiting Legal Openings

Overall, attorneys in the Bufete achieved a relatively high rate of *absuelto* verdicts. A review of case outcomes for a 25% sample of all criminal cases contracted in the Bufete during the 1988–89

[24] Interview with Miguel Angel Garcia, Director, International Relations, Fiscalía General, 4 June 1990.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

period and a similar sample of cases contracted in 1991 revealed an overall acquittal rate of 28% for the earlier period and 31.5% for the later one. There was some variance by offense type. For instance, in 1991, 31.8% of those charged with crimes of violence were acquitted at trial, as compared with 28% of property offenders and 22% of those charged with state security violations. All offense categories, however, had acquittal rates of better than 20%.

The acquittal rates I noted contrast sharply with data reported under socialist legal practices in the former Soviet Union. Solomon (1987:547), for instance, reports an acquittal rate in Soviet courts of first instance of 1%. Rand (1991:44) quotes a similar figure for 1988. Markovitz (1989:401) suggests that socialist attorneys fail to achieve many acquittals because under socialist law there is "no forum and no formal structure that a lawyer could exploit to the client's advantage." If this is correct, an important question is: What about structure of Cuban legal procedure creates possibilities for acquittals uncharacteristic of other socialist legal system? I suggest that one possibility is the structural difference in the relationship between prosecutors, courts, and attorneys.

In the former Soviet Union, according to Huskey (1991), "if evidence is to be appended to the materials that go to trial, the advocate must submit a petition to the investigator and hope that the investigator agrees." By contrast, according to Cuban procedural law the defense counsel must respond to the specific claims set forth by the prosecutor in a written memorandum submitted *to the court* prior to trial (*conclusiones provisionales*). A copy is also submitted to the prosecutor, but the direct submission of this document to the court means that it automatically becomes part of the evidentiary basis. Its inclusion is not subject to prosecutorial veto. In this memorandum defense attorneys indicate whether they agree (*conforme*) or disagree (*inconforme*) with the specifics of the indictment. These specifics include details regarding the nature of the crime and the accused's role in it, statements pertaining to the social and political character of the defendant, and the sentence being sought by the prosecutor. Defense attorneys also set forth the basis for whatever objections they have with the specification of charges, the characterization of the suspect, and the sentence, and enumerate potential evidence, including a list of witnesses, that will be used at trial to support these disagreements.

The preparation of the response to the conclusiones provisionales provides a good example of the way in which legal structures, once established, create the potential for outcomes contradictory to the immediate intentions of state actors. Attorneys in the Bufete utilized their responses to the conclusiones provisionales, in a number of instances, as an initial salvo against the pros-

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

ecutors' case. Because the prosecutors could not legally prohibit the delivery of these responses to the judicial panel, enterprising attorneys were in a somewhat more advantageous position, and the state in a somewhat less advantageous position, than appears to have been the case under Soviet law.

Effective preparation of responses to conclusiones provisionales requires defense attorneys to participate in some pretrial investigative work. Most of this work involves interviewing the suspect, interviewing other potential substantive and character witnesses, and, where relevant (as is often true for charges of *malversación*), assembling documents and data in support of the defendant's claims. How thoroughly and aggressively attorneys constructed their responses to the initial indictment was determined by the individual attorney's work style and orientation. The criminal defense specialists in the Bufete prided themselves on including in their response to the conclusiones provisionales information or novel interpretations of the law that would challenge the prosecutor's case. While all attorneys were not equally aggressive in exploiting this opportunity, many of the younger ones who had been educated under more liberal rules governing the practice of law used their response to the conclusiones provisionales to build an active defense.

Another possible explanation for the high rates of acquittal in Cuba is poor-quality case preparation by the prosecutors. Even if this were the case, however (and I have no reason to believe that the Cuban prosecutors are less competent than those in other formerly socialist states), moving from a weak case to an acquittal would still require (1) attorneys willing to capitalize on the errors of the prosecution, (2) a procedural system that permitted them to do so, and (3) a judiciary willing to rule against poor prosecution and in favor of a competent defense. Thus, the acquittal rates generated by the lawyers in the Bufete reflects at least some degree of successful defense work on their part.[25]

Cuba does not have a formal equivalent to the process of plea bargaining in the United States. Criminal defendants cannot be convicted on their confession alone, even if they wish to plead guilty. Cuban law requires the provision of substantive evidence beyond the confession of the accused for a conviction (Law of Criminal Procedure arts. 161, 170 (1985)). Nevertheless, preparing a response to the conclusiones provisionales at times provided a parallel process. In these cases, however, the negotiation took place between lawyer and client rather than between lawyer and prosecutor. An important part of responding to the conclusiones provisionales was the indication of agreement or disagree-

[25] One caution in interpreting these data is that the acquittal rates discussed above are from a single law collective and may differ from national averages. Nevertheless, the Bufete's acquittal rates indicate that, given a willingness to defend one's clients, these attorneys could achieve some degree of success at trial.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

ment with the charge. In the majority of cases I observed, the attorney was guided by the defendant in determining whether to agree or disagree with the charge. In a few instances, however, I observed attorneys attempt to convince clients that it would be better to accept the charge and argue for a lesser sentence based on mitigating circumstances or the character of the accused, rather than to object to the initial charge.

One such instance was the case of Marta Piedra, who was charged with first-degree murder (*asesinato*) for allegedly dousing her husband with kerosene and setting him afire. There appeared to be little evidence to contradict the prosecutor's construction of her husband's death by fire. Marta, however, insisted, that she was not guilty and that she had not even been home that evening, despite the testimony of a number of residents of her apartment building that not only had she been home but they had heard Marta and her husband arguing not long before the fire that killed him. Faced with a case that clearly appeared to be a losing proposition, the attorney spent considerable time attempting to convince Marta that it would be better for him to agree with the charge, and to argue that her guilt was mitigated by the unpremeditated nature of her act and the pressures of her marriage. Eventually Marta agreed—albeit reluctantly. She was found guilty at trial but received the minimum sentence of 7 years for second-degree murder (*homicidio*), rather than the 20 years' imprisonment for *asesinato* requested by the prosecutor.

Not all activities outside the scope of nonadversarial lawyering were undertaken solely to advance a successful defense. In some instances attorneys manipulated or circumvented various procedural rules to facilitate their own work. For instance, criminal suspects did not have a right to legal counsel during what is known as the *fase preparatoria*, the period between the identification of a suspect and the official determination that criminal prosecution is warranted. This aspect of Cuban procedural law results from Cuba's inheritance of Spain's civil law system.[26] Despite formal limitations, defense counsel often became involved in criminal cases before the end of the fase preparatoria. While there was no formal role for the attorney during the pre-indictment period, there was also nothing to prohibit family members from seeking services or attorneys from beginning their work. I never observed a client turned away because the fase preparatoria had not been completed. Suspects charged with felony equivalent offenses, but who were not in custody, would usually

[26] Between 1988 and 1992 there was considerable effort aimed at changing this provision to permit earlier entrance of attorneys into criminal proceedings. In spring 1992 several officials of the Ministry of Justice and the Fiscalía General reported to me that a draft bill (*proyecto*) which would allow attorneys to enter into criminal cases at or near the time of arrest was about ready to be presented to the National Assembly.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

seek legal help soon after they were aware that they were suspects. If they were juveniles, or even young adults, suspects were often accompanied by family members. Indeed, seeking legal services was often a family matter, with parents, spouses, siblings, or sometimes other relatives taking considerable pains to convince the attorney of the suspect's innocence. If the suspect was in custody, it was commonly parents, siblings, or some other relative who came to the Bufete seeking help the day of, or the day after, the arrest.

Ana and Manuel Escobedo were typical of the family members of criminal suspects I met in the Bufete. Their 17-year-old son Arturo had been arrested on a Monday night along with two other youths in connection with the snatching of a gold chain from the neck of a 23-year-old woman on a downtown Havana street. All three were being held in custody and would likely be charged with robbery (*robo con violencia*). Ana wept as she kept repeating to the attorney that her son was a good boy, that he would never do such a thing, and that it had to have been done by one of the other two who had been arrested. Manuel, agreeing with his wife's assessment, delivered a tirade on the stupidity of arresting three boys when it was obvious that only one person could actually have been guilty. "Do they think that all three put their hands on the chain and pulled?" he asked rhetorically. Although no indictment had been yet issued, the attorney completed a contract for services (*asunto*) with the couple and began compiling a list of potential witnesses who could testify on their son's behalf.

Later that same day the attorney completed the paperwork necessary to request an interview with the accused in the jail and the form requesting a judicial review of the decision to hold the suspect in custody. This latter document was prepared even though no formal decision had yet been made to hold the suspect in custody until trial. When I asked why she bothered to complete these forms even though it was not yet clear whether the suspect would be released pending trial, the attorney responded that in cases of personal violence the prosecutors "always want to keep the accused in jail. I've got a lot of work to do this week, trials and other things. Today is not so busy. If I get the papers ready I can submit them as soon as the time comes." While she operated within the letter of the law by waiting until the fase preparatoria had been completed to file her motions, she also treated these limitations on her participation as impediments to be dismissed as efficiently as possible.

Criminal legal defense provides the clearest contest between lawyering and the state. Despite Cuba's official policy of nonadversarial lawyering, the criminal cases I observed in the Bufete suggested that Cuban attorneys engage in adversarial lawyering when the intersection of the applicable law and the facts of the

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

case permit. When faced with unwinnable cases, the Bufete attorneys would typically conduct the work preparatory to trial in a routine manner, putting most of the energy into arguing for sentencing lenience. When they perceive a reasonable chance of winning, however, they often mounted a more aggressive defense. Moreover, while the official ideology of socialist legality in Cuba promotes the ideal of nonadversarial lawyering, Cuba's substantive and procedural laws made it possible for attorneys to engage in client defense as a routine part of their profession, rather than as an exceptional breach of conformity.

I do not know whether officials of the Ministry of Justice or the Fiscalía General viewed the Bufete's 20% acquittal rate as unacceptably high or as indications of a justice system with reasonable checks on state power and/or prosecutorial incompetence. My observations suggest, however, that attempts by the government to reduce these rates would require three things: (1) changing the procedural rules that enable attorneys to contest state charges, (2) rewriting the laws governing the practice of law, and (3) altering the professional ethic of lawyering that has developed under the bufete colectivo system toward one more compliant to state wishes. None of these things could be done, however, without some cost to state legitimacy.

Cuban Legal Practice in a Time of Change

Many of the observations presented here occurred during a period of relative economic, social, and political stability in Cuba. By 1992, the disappearance of the socialist trading bloc around which much of Cuba's import-export economy had been constructed over the previous quarter-century had generated both economic difficulties and political uncertainties on the island. These difficulties and uncertainties manifested themselves both in the pattern of legal cases in the Bufete and in the lives of the attorneys who worked there. In both 1992 and 1993 attorneys reported to me that they were experiencing an increase in the number of divorce cases as a result of the difficulty of daily life during what has been termed the "special period." They also reported a noticeable increase in prosecutions for economic crimes such as *malversación*, an upsurge in the number of people charged with illegal departures in boats and rafts, and the appearance of violent crimes against tourists, something that was rare prior to 1992.

The "special period" has affected the personal lives of Cuba's attorneys as well. The declining value of the peso and the increasing use of U.S. dollars within the Cuban economy have led to a dramatic decline in the purchasing power of a typical attorney's salary. By the summer of 1993 the black-market exchange rate had risen to 80 pesos to the U.S. dollar, the use of U.S. dollars

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

had been legalized, and second-economy vendors were accepting pesos only at very discounted rates. By 1993 it took the income from 13 divorce cases to buy one chicken on the second market in Havana, as compared to 1 divorce case in 1989. Attorneys without family or friends in the United States to augment their peso income with U.S. dollars found it difficult to supplement the limited lifestyle afforded by the state-subsidized rations with parallel-market and black-market purchases. The result for many of the attorneys has been a deep demoralization. As one attorney said: "People are making more in the streets shining shoes for tourists. Is this what I went to law school for?" Several attorneys with whom I worked closely between 1989 and 1992 have since left law practice to pursue alternative occupations. Three others have left the country.

What these changes mean for lawyering in Cuba is difficult to discern. Without a substantial increase in attorneys' salaries, many will turn either to other more lucrative, dollar-based occupations or to demanding under-the-table payment in U.S. dollars. Whether the increase in income is via official increases in the rates charged for legal services or through sub rosa payments, the accessibility of legal services will be reduced. Thus, universal access to legal services, like many of the other provisions of Cuba's extensive socialist safety net, will continue to erode as the Cuban economy and political system stagger toward some accommodation with the new world economic order. Insofar as the Cuban government has historically linked its claims to legitimacy to its ability to provide a broad net of social benefits, including access to legal services, the present situation portends either an erosion of that legitimacy or a redefinition of what legitimizes the Cuban state.

Conclusion

The position of attorney is a legal *form* in modern bureaucratic societies. Although what attorneys do will be fundamentally shaped by the substance of law, *how* they go about doing this work will reflect the construction of the legal space they occupy between citizens and the state.

Procedural rules, including the right to an attorney, constitute a framework of expectations regarding how the law *should* behave. They also establish an internal logic that constrains (although it does not eliminate) the arbitrary or extralegal use of power by the state, including socialist states such as Cuba. Part of this constraint in Cuba derives from permitting attorneys sufficient procedural room to pursue at least some defense of their clients. This latitude is less than what would be found in explicitly adversarial justice systems, but it is also more than window dressing. As Thompson (1975:265–66) noted:

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

> The rhetoric and rules of a society are something a great deal more than sham. In the same moment they may modify, in profound ways, the behavior of the powerful, and mystify the powerless. They may disguise the true realities of power, but, at the same time, they may curb that power and check its intrusions. . . . Mediation, through the forms of law, is something quite distinct from the exercise of unmediated force.

A state that incorporates into its procedural law the proposition that individuals should have the right to legal counsel renders that legal counsel wholly ineffective at the risk of its own legitimacy. Undercutting all possibilities of effective defense contributes to the delegitimization of the ideological foundations of the state. States may narrow the path to effective legal representation, or place obstructions along the way, but they cannot afford to close the road altogether.

In the Cuban case the search for forms of state legitimacy and legal stability consistent with socialism ultimately shaped lawyering in several important ways. First, as part of institutionalizing socialist distribution systems, in 1973 the government designated bufete colectivos as the universal mechanism for delivering low-cost legal services. In 1977, as part of a broader process of organizational restructuring in accordance with Cuba's new constitution, the law collectives were restructured as an "autonomous organization"—through the creation of the ONBC. This, in turn, provided a mechanism through which the ONBC leadership could enter into the dialogic process that underlies lawmaking in Cuba. The ONBC used this opening to help shape procedural laws and rules governing lawyering in ways that increased the ability of attorneys to confound the prosecutorial interests of the state.

Despite the influence of the ONBC, unlike their free-market counterparts, attorneys in the Bufete still had to negotiate a contradictory space between a legal framework that spoke of defending client rights and an official rhetoric that emphasized nonadversarial lawyering. In everyday practice, however, the attorneys accomplished this by reframing their understanding of the "interests" of the state to include effective defense of clients as an important part of those interests. Although it contradicted the ideology of nonadversarial lawyering, this reframing nevertheless appears to have been acceptable to Cuba's political leadership because it contributed to state legitimacy by increasing the probability of legal outcomes that citizens would view as just. This process reveals the complexity of the lawyer-state relationship under Cuba's socialist government which, on the one hand, seeks to restrain the adversarial impulses of attorneys and, on the other, to provide them with sufficient leeway to effectively serve their clients, thereby increasing state legitimacy in the eyes of citizens.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

References

Agar, Michael (1986) *Speaking of Ethnography*. Beverly Hills, CA: Sage Publications.

Azicri, Max (1980) "A Cuban Perspective on Socialist Legality," 5 *Rev. of Socialist Law* No. 1, p. 203.

——— (1987) "Crime, Penal Law, and the Cuban Revolutionary Process," *Crime & Social Justice* No. 23, p. 51.

Berman, Harold (1964) *Justice in the U.S.S.R.: An Introduction to Soviet Law*. New York: Vintage.

Bogdan, Michael (1989) "Thirty Years of Cuban Revolutionary Law," 15 *Rev. of Socialist Law* 319.

Brady, James (1981a) "The Transformation of Law under Socialism: The Contrasting Experiences of Cuba and China," 10 *Insurgent Sociologist*, No. 4, pp. 5–24 (Summer-Fall).

——— (1981b) "Fresh Winds on Rotted Sails: Spanish Legal Reforms, American Parallels, and the Cuban Socialist Alternative: A Reply to Antonio Beristain," 9 *International J. of the Sociology of Law* 177.

Cantor, Robert (1974) "New Laws for a New Society," *Crime & Social Justice*, No. 2, pp. 12–23 (Fall-Winter).

Clifford, James & George Marcus, eds. (1986) *Writing Culture: The Poetics and Politics of Ethnography*. Berkeley: Univ. of California Press.

Diego Cañizares, Fernando (1979) *Teoría del Derecho*. Havana: Editorial Pueblo y Educación.

Escalona Reguera, Juan (1985a) "Palabras de Apertura de la Asamblea," *Memorias de la Sesion Constitutiva de la Asamblea General*. Havana: Organización Nacional de Bufetes Colectivos.

Evenson, Debra (1989) "The Changing Role of Law in Revolutionary Cuba." Legal Studies Institute, Univ. of Wisconsin–Madison.

——— (1990) "The Changing Role of Law in Revolutionary Cuba," in S. Halebsky & J. Kirk, eds., *Transformation and Struggle: Cuba Faces the 1990s*. New York: Praeger.

Geertz, Clifford (1973) *The Interpretations of Cultures: Selected Essays*. New York: Basic Books.

Ginsburgs, George (1985) "The Soviet Judicial Elite: Is It?" 11 *Rev. of Socialist Law* 293.

Gomez Treto, Raúl (1989) "30 Years of Cuban Revolutionary Cuban Penal Law." Presented at the 30 Years of Cuban Revolution Conference, Halifax, Nova Scotia.

Hayden, Robert M. (1989) "Cultural Context and the Impact of Traffic Safety Legislation: The Reception of Mandatory Seatbelt Laws in Yugoslavia and Illinois," 23 *Law & Society Rev.* 283.

Hazard, John N. (1969) *Communists and Their Law*. Chicago: Univ. of Chicago Press.

Huskey, Eugene (1986) "The Politics of the Soviet Criminal Process: Expanding the Right to Counsel in Pre-Trial Proceedings," 34 *American J. of Comparative Law* 93.

——— (1990) "Between Citizen and State: The Soviet Bar (Advokatura) under Gorbachev," 28 *Columbia J. of Transnational Law* 95.

——— (1991) "A Framework for the Analysis of Soviet Law," 50 *Russian Rev.* 53.

Jambrek, Peter (1985) "The Economic Base of Legality: The Case of Yugoslavia," 13 *International J. of the Sociology of Law* 191.

Kidder, Robert L. (1983) *Connecting Law and Society*. Englewood Cliffs, NJ: Prentice-Hall.

Lenin, Vladimir (1965) *What Is to Be Done? Burning Questions of Our Movement*. Moscow: Progress Publishers.

https://doi.org/10.2307/3054054 Published online by Cambridge University Press

Macpherson, C. B. (1967) *The Political Theory of Possessive Individualism.* New York: Oxford Univ. Press.
Maddex, James L., Jr. (1974) *Constitutional Law: Cases and Comments.* St. Paul, MN: West Publishing Co.
Maine, Henry (1888) *Ancient Law.* New York: Henry Holt & Co.
Malinowski, Bronislaw (1922) *Argonauts of the Western Pacific.* London: Routledge.
Markovitz, Inga (1982) "Law or Order—Constitutionalism and Legality in Eastern Europe," 34 *Stanford Law Rev.* 513.
——— (1989) "Law and *Glasnost:* Some Thoughts about the Future of Judicial Review under Socialism," 23 *Law & Society Rev.* 399.
Michalowski, Raymond (1992) "Another Way to Skin the Cat: Depenalization and Criminal Code Reform in Cuba." Presented to American Society of Criminology, Baltimore.
Rand, Robert (1991) *Comrade Lawyer: Inside Soviet Justice in an Era of Reform.* Boulder, CO: Westview Press.
Rodriguez, Antonio (1987) "El Sistema Juridico Penal y el Sistema Judicial Cubano," *Rev. Juridica,* pp. 45–111 (July-Sept.).
Salas, Luis (1979) *Social Control and Deviance in Cuba.* New York: Praeger.
——— (1983) "The Emergence and Decline of the Cuban Popular Tribunals," 17 *Law & Society Rev.* 587.
Solomon, Peter (1987) "The Case of the Vanishing Acquittal: Informal Norms and the Practice of Soviet Criminal Justice," 39 *Soviet Studies* 531.
Thompson, Edward P. (1975) *Whigs and Hunters: The Origin of the Black Act.* London: Allen Lane.
Tigar, Michael, & Madeleine R. Levy (1977) *Law and the Rise of Capitalism.* New York: Monthly Review Press.
Vago, Steven (1991) *Law and Society.* 3d. ed. Englewood Cliffs, NJ: Prentice-Hall.
Vega Vega, Juan (1981) "Comentarios a la Parte General Del Codigo Penal Cubano," 17 *Rev. Cubana de Derecho* 109.
Van der Plas, Adèle (1987) *Revolution and Criminal Justice: The Cuban Experiment, 1959–1983.* Providence, RI: FORIS.
Zatz, Marjorie (1994) *Producing Legality: Law and Socialism in Cuba.* New York: Routledge.
Zimbalist, Andrew (1990) "Does the Economy Work?" 24 *NACLA: Report on the Americas* No. 2, pp. 16–19.

Statutes, Codes, and Regulations

Code of Ethics (established by National Assembly of Bufetes Colectivos), 13 Dec. 1978.
Law of Judicial Organization, No. 1250 (1973).
Law of Judicial Organization, No. 4 (1973), approved 12 Aug. 1977).
Law of Criminal Procedure Law, No. 5 (1977).
Resolution No. 938, Ministry of Justice: Regulations Regarding Law Collectives (1978), approved 27 Dec.
Decree-Law No. 81: Concerning the Practice of Law and the National Organization of Bufete Colectivos (1984), approved 8 June.
Resolution No. 142, Ministry of Justice: Regulations Concerning the Practice of Law and the National Organization of Bufete Colectivos (1984), approved June.
Penal Code, No. 62 (1987).

https://doi.org/10.2307/3054054 Published online by Cambridge University Press