

4-1-2010

Heirs Of Martí: The Story Of Cuban Lawyers

Victoria Quintana

Follow this and additional works at: <https://repository.law.miami.edu/umicl>



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

Recommended Citation

Victoria Quintana, *Heirs Of Martí: The Story Of Cuban Lawyers*, 17 U. Miami Int'l & Comp. L. Rev. 229 (2010)

Available at: <https://repository.law.miami.edu/umicl/vol17/iss2/6>

This Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami International and Comparative Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

**HEIRS OF MARTÍ:
THE STORY OF CUBAN LAWYERS**

Victoria Quintana*

I. INTRODUCTION.....	230
II. THE COMMON INHERITANCE.....	234
A. <i>Cuban Nobility</i>	237
B. <i>What Made Cuba Distinct</i>	238
C. <i>Case Study: The Cuba Company</i>	238
III. PLATT AMENDMENT PRESIDENCIES	240
A. <i>Cuban Presidents from Estrada Palma to Zayas Alfonso</i>	241
B. <i>The Machado Years and the Rise of Student Leadership</i>	243
C. <i>Machado Continues . . .</i>	246
D. <i>The Interim Presidency of Carlos Manuel de Céspedes Quesada</i>	248
IV. THE PENTARCHY AND THE END OF THE PLATT AMENDMENT.....	249
A. <i>The Constitution of 1940</i>	251
B. <i>The Failed Revolution</i>	252
V. THE FINAL REVOLUTION AND THE LAWYERS THAT LIVED IT	254
A. <i>The Supreme Court</i>	257
B. <i>How the “Big Three” Were Replaced</i>	257
C. <i>The Constitution of 1976</i>	258
D. <i>Martí Lives On . . .</i>	259

* Juris Doctor Candidate, University of Miami School of Law, 2010; B.A. Latin American Studies, French & Spanish, University of Miami, 2007. I would like to express my gratitude to Yves Dezalay for supervising the writing of this paper.

I. INTRODUCTION

Lawyers that came with the conquistadors to settle in Latin America made the journey to assure that the contracts established between the crown and conquistador were dutifully followed.¹ Years later, the same lawyers were at the forefront when the descendents of those who conquered the New World sought to attain independence from the Spanish crown. The lawyers became the “nation-builders”² and the writers of constitutions.³ Yet, despite all the hopes that came with independence, not every country reached the ultimate goal. Even today, when so many Latin American nations are in the process of democratization after years of military dictatorships and other forms of undemocratic governance, one country stands apart: Cuba.⁴

The island nation of Cuba inherited its early laws from Spain. “The Spanish Code of Commerce and the Spanish Civil Code, introduced in Cuba in 1885 and 1889 respectively, formed the backbone of Cuban private law . . . The Penal Code was somewhat more recent, having been enacted in 1936.”⁵ Thus, Cuba received the same inheritance as other Latin American countries; however, it has used such inheritance in its own unique way.

Part of the reason for Cuba’s singular history is the men that forged it. Cuba, like any other nation in the New World, had its own founding fathers, primarily revolutionary war heroes like Carlos Manuel de Céspedes, Máximo Gomez and Antonio Maceo, as well as those who were part of the leading Republican elite, including: Juan Gualberto Gómez, Enrique José Varona, Manuel Sanguily, Enrique

¹ ROGELIO PÉREZ-PERDOMO, *LATIN AMERICAN LAWYERS: A HISTORICAL INTRODUCTION* 14 (2006).

² Manuel A. Gomez, *Greasing the Squeaky Wheel of Justice: Lawyers, Social Networks and Dispute Processing*, (Paper submitted to the conference on “Lawyers and the Construction of the Rule of Law: National and Transnational Processes” held at the American Bar Foundation on March 21-22, 2008), at 1.

³ See PÉREZ-PERDOMO, *supra* note 1, at 53.

⁴ *Id.* at 100.

⁵ Michael Bogdan, *Thirty Years of Cuban Revolutionary Law*, 15 *REV. OF SOCIALIST L.* 319, 320 (1989).

Collazo, Néstor Carbonell, and Gonzalo de Quesada.⁶ However, one man stands apart from the rest. “The birth and evolution of the Cuban Republic has been intimately linked to the memory and political use”⁷ of the legacy of one man: José Martí. He was a lawyer, a poet, a statesman and a revolutionary.⁸ Unfortunately, he was killed in battle before he was to see his country free from the Spanish colonizers.⁹ Yet, Martí’s legacy lives on in the Cuban psyche. “[A] study of Cuban political history in reference to Martí’s influence shows the presence of his legacy in three important moments of constitutional foundations: 1901, 1940, and 1976.”¹⁰

Indeed, Martí’s legacy has remained relevant and deeply influential throughout Cuba’s history. The leaders of the original independence movement and the nationalist political leaders evoked Martí as “a martyr and founding father.”¹¹ The students and intellectuals who brought about political change for a second time in Cuba from the 1910s through the 1930s claimed to be doing so in response to what they thought was the government’s “betrayal of Martí’s ideals.”¹² At the same time, “[p]opulist caudillos and dictators such as Gerardo Machado and Fulgencio Batista counteracted by honoring and manipulating the nationalist ideology built around Martí.”¹³

Currently, Martí lives on not only as a hero for the Cubans living out a “permanent” Revolution under Fidel Castro on the island, but also as one for the thousands who have fled, or have otherwise been exiled under, the Castro dictatorship. “The leaders, ideologues and intellectuals of the Cuban Revolution have placed Martí at the head of the Cuban pantheon of heroes and zealously

⁶ Rafael Rojas, “*Otro gallo cantaría*”: *Essay on the First Cuban Republicanism, in THE CUBAN REPUBLIC AND JOSÉ MARTÍ: RECEPTION AND USE OF A NATIONAL SYMBOL* 7, 8 (Mauricio A. Font & Alfonso W. Quiroz eds., 2006).

⁷ *Id.* at 3.

⁸ *Id.* at 2. Martí received his law degree in Spain and went on to lead what would be Cuba’s last war for independence against Spain. *Id.* at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 12.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

guard his revolutionary image.”¹⁴ Meanwhile, “[e]xiled Cubans also claim Martí and vie to rescue him from what they consider a hijacked and distorted ideal.”¹⁵ Whatever Martí may mean to those who are in exile and those who are still in Cuba, all who rose up to take his place aimed to live up to the republican ideals he proclaimed as Cuba’s most revered revolutionary. However, a look at Cuba’s history, and that of the heirs of Martí, shows many frustrations with state legitimacy and incomplete independence, especially in the early years of the Republic. Since Martí’s death in 1898, Cuba has twice been occupied by U.S. forces, survived three dictatorships, and throughout, has lacked political and democratic stability, even under democratically elected governments.

Would the story have read differently if Martí had lived? “Lamenting Martí’s absence has always been a central figure in the discourse of the Cuban republican frustration.”¹⁶ However, rather than dwell on what could have been, this paper will analyze what happened in spite of Martí’s absence. How did the “nation-builders” go about creating constitutions for, and governing, the “Queen of the Antilles chain”?

This paper will specifically look at the role of Cuban lawyers, the heirs of Martí, throughout Cuban history. If the lawyers were the builders of democracy, what happened when democracy was interrupted? What were the forces they were fighting against? How did Cuba’s dependence on “King Sugar” and the economic roller coaster it endured, following the price of sugar, affect the profession? Finally, what happened to the lawyers after democracy broke, seemingly decisively, with the military coup of Fulgencio Batista in 1952, whose bloody dictatorship was immediately followed by the Cuban Revolution of 1959 and the inauguration of Fidel Castro Ruz as a new kind of dictator? Was it that all the lawyers left? What happened to those who stayed? Finally, this paper will conclude with projections for the future – what will the role of the lawyer be in Cuba’s future? How will Cubans spend the inheritance of the undying legacy of a man whose words are but one of the few things they have left of him?

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 8.

. . . and the good leader in America is not the one that knows how to govern the German or the French, rather, it is the one that knows what his country is made of and how he can guide his countrymen as one, to arrive, via methods and institutions born of that same country, to that desirable state where each man knows himself and practices all benefit from the abundance that Nature gave for all those in the nation who make it fruitful with their work and defend it with their lives. The leader must be born of the country."¹⁷

Who is the lawyer that Cuba gives birth to? Throughout many Latin American countries, the law profession was often the catalyst for a prestigious political career¹⁸ and Cuba was no exception. Another feature of the law profession was that it underlined "[f]amily relationships [as] an important source of social capital."¹⁹ This is not surprising given that, "[t]he extended family . . . was the most effective institution in Cuba."²⁰

Law and social capital led many into political careers. In fact, in a survey of prominent Cubans taken in 1919, out of sixty-three lawyers, almost all of them were involved in politics at some point in their lives.²¹ An added element to the development of Cuban lawyers was the strong influence of the island's northern neighbor, the United

¹⁷ HUELLAS DE LAS LITERATURAS HISPANOAMERICANAS 292-93 (John F. Garganigo et al. eds., Prentice Hall 2nd ed. 2002) (author's translation).

¹⁸ YVES DEZALAY & BRYANT G. GARTH, THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES 19 (2002).

¹⁹ Larissa Adler Lomnitz and Rodrigo Salazar, *Cultural Elements in the Practice of Law in Mexico: Informal Networks in a Formal System*, in GLOBAL PRESCRIPTIONS: THE PRODUCTION, EXPORTATION, AND IMPORTATION OF A NEW LEGAL ORTHODOXY 208, 232 (Yves Dezalay & Bryant G. Garth eds., 2002).

²⁰ Aldred L. Padula, *The Fall of the Bourgeoisie: Cuba, 1959-1961* (Dec. 1974) (unpublished Ph.D. dissertation, University of New Mexico) (on file with Xerox University Microfilms).

²¹ HISPANIC SOCIETY OF AM., CUBANS OF TO-DAY (William Belmont Parker, ed., G.P. Putnam's Sons 1919), <http://ia341015.us.archive.org/3/items/cubansoftoday00park/cubansoftoday00park.pdf>.

States. Because of the important U.S. influence in Cuba, those whose social capital was vested in U.S. businesses, as well as those who had completed some of their studies in the U.S., were part of an equally important, U.S.-oriented elite.

In the early part of the twentieth century, many Cubans worked as attorneys serving North American interests.²² Indeed, several of them had received their law degrees in U.S. law schools. For example, Attorney Félix Martínez Giralt received his law degree at Columbia University.²³ Those who were not educated in the U.S. were still subject to U.S. educational influence under the “teachers’ project,” which involved Cuban teachers traveling North to be trained “adequately” by their U.S. counterparts.²⁴ It was thus that “the first generation of public school children of the republic received instruction from teachers trained in the United States[,] . . . many of [whom] subsequently went on to occupy prominent positions in . . . public life.”²⁵ These included a judge, a magistrate of Havana’s *audiencia*,²⁶ and a liberal party senator.²⁷

II. THE COMMON INHERITANCE

Part of what made Cuba such a uniquely lucrative colony was its sugar production. Sugar came to rule in Cuba (much like King Cotton in the Southern U.S.) – dictating its moments of prosperity as well as its economic meltdowns. Moreover, in the beginning, Spanish law ruled over Cuba and its sugar market. It was not until 1850 that “planters were freed from their last inconvenient legal encumbrance” regarding sugar.²⁸ Previously, a sixteenth century provision provided that sugar mills could not be attached, which led to high interest rate for loans on that particular kind of property.²⁹

²² LOUIS A. PÉREZ, ON BECOMING CUBAN: IDENTITY, NATIONALITY AND CULTURE 137 (The University of North Carolina Press ed. 1999).

²³ *Id.* at 131.

²⁴ *Id.* at 161.

²⁵ *Id.* at 161.

²⁶ Translated as “court.”

²⁷ PÉREZ, *supra* note 22, at 161 n.142.

²⁸ HUGH THOMAS, CUBA OR THE PURSUIT OF FREEDOM 154 (Da Cap Press Inc. 1998) (1971).

²⁹ *Id.* at 154-55.

Furthermore, Spanish law, although most important, was not the only influence on Cuba and its legal system. The English occupied the capital city of Havana from August 13, 1762 to July 6, 1763.³⁰ This occupation made Cubans aware of trading possibilities with the English as well as the United States (still a British colony at the time). This brief moment of freer trading and economic boost (caused by large British investment in Cuba's raw materials) forced Spain to reconsider its policies towards the colony. This eventually led to the elimination of a number trade barriers maintained under the Spanish crown. Indeed, "[b]y the turn of the century, Cuba enjoyed substantial trade with the United States and when Cuban ports were thrown open to free trade with all nations in 1818, commercial relations between the two grew even closer."³¹

These early trading bonds established with the U.S. continued to grow. In fact, the United States involved itself in Cuban matters by declaring war on Spain, and thus allying itself with the Cubans, after the explosion of the *USS Maine* in Havana Harbor in February of 1898. Then, having defeated Spain, the United States was given the Philippines, Puerto Rico and Cuba. The United States would maintain military presence in Cuba under the leadership of U.S. governors, the most influential being General Leonard Wood, until May 20, 1902.³² Under the supervision of General Wood, "a public school system was established and the university was modernized."³³ Furthermore, the judicial system was recognized and "the judges were placed on salary for the first time."³⁴ Then, in 1899, an electoral law was promulgated, giving the right to vote to "adult males who were literate, owned property, or had served in the revolutionary army."³⁵

Under this law, in June of 1900, thirty-one delegates were elected to the Constitutional Convention, which drafted the Consti-

³⁰ Jerry Wilkinson, *History of Cuba*, (unpublished manuscript, on file with The Historical Preservation Society of the Upper Keys) (*available at* www.keyshistory.org/cuba.html).

³¹ JAIME SUCHLICKI, *CUBA: FROM COLUMBUS TO CASTRO AND BEYOND* 39 (Brassey's, Inc. 5th ed. 2002).

³² *Id.* at 74.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

tution of 1901, modeled in great part after the American Constitution.³⁶ Evidence of Martí's influence can be seen in its translated preamble:

We the delegates of the nation of Cuba, gathered at this constitutional convention with the purpose of writing and adopting the Fundamental Law of its organization as an independent and sovereign State, establishing a government capable of complying with its international obligations, maintaining order, to insure liberty and justice, promoting the general well-being, we agree on and adopt the following constitution.³⁷

However, the Constitution of 1901 came with an attachment - The Platt Amendment, which was drafted by United States Senator Orville Platt, approved by the United States Congress, and signed by President William McKinley.³⁸ The key article in the amendment is article three, which read as follows:

[T]he government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba. This clause remained in force until 1934[.]³⁹

The Platt Amendment would affect the Cuban state's legitimacy for thirty-two years. If lawyers are the brokers of nations

³⁶ *Id.*

³⁷ VICENTE VIÑUELA, *EL PODER JUDICIAL EN CUBA* 52 (Ediciones Universal 1991).

³⁸ JORGE I. DOMINGUEZ, *CUBA: ORDER AND REVOLUTION* 13 (The Belknap Press 1978) (author's translation).

³⁹ *Id.*

and a weak state enforces informal agreements, the result of the weak Cuban nation struggling to stay afloat under the weight of U.S. hegemony would naturally lead to issues with state stability.

"In 1899 the U.S. Judge Advocate in Cuba (Major Edgar Dudley) had speculated how difficult it was being shown to be to combine the Spanish law and the U.S., deriving from Roman law on the one hand and English common law on the other."⁴⁰ Therefore, although the U.S. occupation led to an attempt to include such things as being judged by a jury of peers and habeas corpus (the former proved impossible although the latter was indeed implemented), when U.S. forces pulled out of Cuba and formally gave the island its independence in 1902, Spanish laws continued to be in place.⁴¹ In fact, in the 1950s, and another constitution later, "[t]he law governing the [Cuban] Stock Exchange was an old Spanish one."⁴²

A. Cuban Nobility

Spain, as it did in its other colonies, left a center of legal education to form the lawyers who would learn and carry out the Spanish legal tradition.⁴³ The law school of the University of Havana was founded in 1728.⁴⁴ In order to attend at the time there were three necessary documents: (1) certification of "*limpieza de sangre*" (2) "*carta de solvencia moral, religiosa y social*;" and (3) "*cuota de 100 reales fuertes*."⁴⁵ In 1788, under King Carlos III of Borbón, new areas of studies were introduced, including civil, mercantile, criminal and canon law.⁴⁶

⁴⁰ THOMAS, *supra* note 28, at 461.

⁴¹ *Id.*

⁴² *Id.* at 1183.

⁴³ The *Universidad de Chile* was founded in Santiago de Chile in 1622; *Universidad Nacional Autónoma de México* (UNAM) was founded in 1551; *Universidad del Rosario* in Colombia was founded in 1653. <http://lex.uh.cu/> (follow "*leer mas*" hyperlink on the main page).

⁴⁴ *Id.*

⁴⁵ Respectively, blood purity; a letter indicating moral, religious and moral solvency; and a fee to be paid in Spanish currency. *Id.* (author's translation).

⁴⁶ *Id.*

By the 1950s, the University of Havana became "the greatest source of upward mobility."⁴⁷ Those who could not obtain or inherit a title of nobility, pursued the middle class' "own species of [nobility], the doctorate."⁴⁸

B. What Made Cuba Distinct?

Cuba is a unique colony: though it brought riches to Spain like all Spanish colonies, it served as a geographically central point of departure from the Old World to the New, diverging from the history of other Spanish colonies in the way it achieved independence. "The fact that the country did not achieve political independence in the same way as the other Latin American republics affected the investment of foreign capital in the island."⁴⁹ Furthermore, independence did not mean "sovereign state."⁵⁰ Apart from being politically tied to the U.S. under the Platt Amendment, the latter also carried economic importance in that it protected "the rights of U.S. capital invested in Cuba."⁵¹

This plethora of foreign investment led to several consequences, including a political arena influenced by foreign firms allying themselves with local leaders to further their own interests over those of the Cuban people, and the encouragement of the single crop system: sugar.⁵² Foreign firms from the U.S. were willing to do whatever it took to make sure that Cuba's lucrative sugar industry remained good business.⁵³ An example of this, coupled with the significance of roles played by Cuban lawyers, can be seen in looking at the story of one company in particular.

C. Case Study: The Cuba Company

Cuba's relationship with the U.S. had to do with more than the Platt Amendment; it was a relationship reinforced by "informal

⁴⁷ Padula, *supra* note 20, at 58.

⁴⁸ *Id.* at 21.

⁴⁹ INT'L COMMISSION OF JURISTS, CUBA AND THE RULE OF LAW 53 (1962).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 54.

⁵³ *Id.* at 54-55.

business contacts and relations between the two countries – relations such as those that the Cuba Company established.”⁵⁴ From the outset, the Cuba Company, with the help of Cuban lawyers, was able to find a loophole in a law that would have prevented it from constructing its own railroad to transport sugar.⁵⁵ Thus, “[t]he hiring of the [Cuban] lawyers quickly proved critical” as the lawyers’ incisive interpretation of Spanish law allowed for a unique perspective.⁵⁶

In fact, Cuba Company’s first move was to ally itself with Horatio Rubens (a Cuban who had great familiarity with the U.S.), the former counsel to the Cuban Revolutionary Party in New York.⁵⁷ Rubens was one of the thirty-one delegates who participated in the Constitutional Convention of 1901.⁵⁸ With him on their side, the Cuba Company felt it would be “properly represented and advocated” there.⁵⁹ Moreover, the company also moved to establish a “financial relationship” with other Cuban lawyers, specifically Rafael Manduley and Gonzalo de Quesada (also attending the Convention).⁶⁰ “As the largest and wealthiest single ‘client’ of the attorneys, the Cuba Company was certain to have strong advocates in de Quesada and Manduley.”⁶¹

The Cuba Company’s reach “extended into the political structure of the Cuban Republic because from its inception it actively pursued relationships and private networks with Cuban businessmen, lawyers, politicians, government bureaucrats, and other professionals and elites.”⁶² Part of the reason they were able to wield their power over Cuban professionals was because of the way that “businessmen and lawyers often moved freely between elected

⁵⁴ Juan Carlos Santamarina, *The Cuba Company and the Creation of Informal Business Networks: Historiography and Archival Sources*, 35 CUBAN STUDIES 62, 63 (2004).

⁵⁵ *Id.* at 67.

⁵⁶ *Id.*

⁵⁷ *Id.* at 72-73.

⁵⁸ *Id.* at 73.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 75.

positions and private life."⁶³ These professionals knew that in order to succeed both politically and in the business realm, they could count on the support of the Cuba Company.⁶⁴ Conversely, the Cuba Company knew that having close business contacts in government were essential for its success on the island and happily encouraged this fluctuation between public office and private office.⁶⁵ The following list of Cubans serves as an example:

. . . José Miguel Gómez, the provincial governor and businessman who had close contacts with the company during its early years, became president of Cuba in 1909. Later he returned to private life as a sugar cane supplier to the Cuba Company's mills. A sugar mill manager and friend of the Cuba Company, Mario G. Menocal, became president of Cuba in 1913. Domingo A. Gáldos, vice-president of the Cuba Railroad Company, later became a senator. José Tarafa, a major shareholder, officer, and director of the Cuba Company and its subsidiaries after 1924, also became a senator.⁶⁶

Thus, a *quid pro quo* relationship was established between Cuban lawyers and United States corporations. Cubans could count on more concrete support from the strong U.S. state than from the weaker Cuban one.⁶⁷ Cuban allegiances to U.S. interests over Cuban interests would lead to precisely what future generations refer to as the break of the legacy of Martí.⁶⁸

III. PLATT AMENDMENT PRESIDENCIES

"A cartoon, on Good Friday . . . , in the Cuban paper *La Discusión* showed Cuba crucified between two thieves, Wood and

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* (citations omitted).

⁶⁷ *Id.*

⁶⁸ SUCHLICKI, *supra* note 31, at 93.

McKinley: Senator Platt stood by nearby [sic] with a spear."⁶⁹ This is a poignant image evoked by a political cartoonist, yet it was eerily telling of what was to come. Again, just as it is uncertain what would have happened had Martí not been killed at *Dos Rios*, it is equally uncertain how Cuba would have established itself as a sovereign state had there been no Platt Amendment.

"Cuba's first president, Tomás Estrada Palma, who was elected in 1902, argued in 1901 that while the Platt Amendment was outrageous, an accommodation of U.S. interests was necessary in order to 'give full expression to our gratitude.'"⁷⁰ However, the expression of gratitude became an expression of dependency. A brief look at the Cuban presidencies during the first quarter of the twentieth century, i.e., the "Platt Amendment presidencies," will show that, whenever something went wrong in Cuba, the U.S. would get involved – not to protect the Cubans, but to protect themselves. This nevertheless led to an irrevocable dependency. Cubans developed what became known as "Platt Amendment mentality" – the sense that "big brother," i.e., the United States to the north, would always intervene when the government failed to live up to Martí's "vision" for Cuba.⁷¹ Little did Cubans, or anyone, realize then that this would lead to one of the greatest diplomatic breaks in world history.

A. Cuban Presidents from Estrada Palma to Zayas Alfonso

Tomás Estrada Palma served as President of Cuba from 1902 to 1906. A lawyer with strong ties to the U.S. "He did not campaign, staying the full time in the U.S., where he was a citizen."⁷² He ran for reelection in 1906, which caused a riot from his opposition. The U.S. came in to quell the uprising and instituted a second military occupation from 1906-1909.⁷³

José Miguel Gómez served from 1909 to 1913. A general in the Cuban War of Independence, he briefly acted as head of a sugar mill

⁶⁹ THOMAS, *supra* note 28, at 454.

⁷⁰ Santamarina, *supra* note 54, at 74.

⁷¹ SUCHLICKI, *supra* note 31, at 77-78.

⁷² ThinkQuest.org, Tomás Estrada Palma, http://library.thinkquest.org/18355/tomas_estrada_palma.html (last visited February 20, 2010).

⁷³ *Id.*

after a failed run for the presidency in 1905.⁷⁴ He died in New York when he travelled to the U.S. to inform President Harding about an unfair election.⁷⁵ His presidency was filled with corruption and he constantly looked to the U.S. for aid.⁷⁶

Aurelio Mario Garcia Menocal served from 1913 to 1921. He studied Civil Engineering at Cornell University.⁷⁷ The US supported him because he had been educated there and also because he had run a US-owned mill.⁷⁸ His first term was

characterized by a constructive policy including the following practical proposals: (1) Administrative and financial reforms; (2) Strengthening the relations with the United States; (3) Strict regulation of the Public Treasury, liquidation and adjustment of all outstanding indebtedness, and reorganization of taxation, in order to equalize, as far as possible, its incidence; (4) Support of agriculture and development of immigration; and (5) Reorganization of the Army and Navy, in order to obtain efficiency.⁷⁹

Alfredo Zayas Alfonso was Cuba's president from 1921 to 1925. A lawyer, speaker, poet and politician, he was educated at the University of Havana.⁸⁰ In 1907, he served in the Committee of Consultation to deal with relations between Cuba and the US.⁸¹

Of these four presidents, only Zayas Alfonso spent the majority of his life in Havana. However, despite his seemingly strong

⁷⁴ HISPANIC SOC'Y OF AM., *supra* note 21, at 131-35.

⁷⁵ ThinkQuest.org, Jose Miguel Gomez, http://library.thinkquest.org/18355/jose_miguel_gomez.html (last visited February 20, 2010).

⁷⁶ *Id.*

⁷⁷ ThinkQuest.org, Mario Garcia Menocal http://library.thinkquest.org/18355/mario_garcia_menocal.html (last visited February 21, 2010).

⁷⁸ *Id.*

⁷⁹ HISPANIC SOC'Y OF AM., *supra* note 21, at 5-6.

⁸⁰ *Id.* at 377-79.

⁸¹ ThinkQuest.org, Alfredo Zayas, http://library.thinkquest.org/18355/alfredo_zayas.html (last visited February 21, 2010).

ties to Cuba, he voted in favor of the Platt Amendment.⁸² Thus, the Platt Amendment mentality undoubtedly affected the first four presidencies of the “independent” Cuba. The work of the “nation-builders” to achieve sovereignty was not yet complete.

B. *The Machado Years and the Rise of Student Leadership*

As can be seen from the educational background of the first four presidents, law was not the only way to reach political prestige. Just as in U.S. history, being a war hero also carried enormous political influence. A perfect example of this is Gerardo Machado y Morales. He did not complete his university studies, preferring instead to work on the family’s plantation before participating in the War for Independence of 1898, in which he was promoted to the rank of general. He was elected to the presidency of Cuba in 1924.⁸³ His cabinet was made up of well-known men, including José María Barraqué. Barraqué was a graduate of the University of Havana School of Law who served as Secretary of Justice in Machado’s cabinet,⁸⁴ a position he had held previously in 1911. He also served as Dean of the “*Colegio de Abogados*” in Havana in 1913.⁸⁵

During Machado’s first term in office, a series of progressive legislation was passed which included the following: the Verdaja Act (limiting the sugar crop); the Custom-Tariff Law (for the protection of agricultural products and small industries); “[a] law for the protection of public employees . . . which stated that ‘merit and honesty and not political considerations will be the only roads to promotion in every branch of the state’”; and a program for the “regeneration of prostitutes.”⁸⁶ It comes as no surprise that these measures led Machado to become “the most popular president the island ever had.”⁸⁷ Unfortunately, Machado’s popularity took a turn toward the unconstitutional.

⁸² *Id.*

⁸³ LUIS E. AGUILAR, *CUBA 1933: PROLOGUE TO REVOLUTION* 55 (Cornell University Press 1972).

⁸⁴ *Id.*

⁸⁵ THE HISPANIC SOC’Y OF AM., *supra* note 21, at 535.

⁸⁶ AGUILAR, *supra* note 83, at 56-57.

⁸⁷ *Id.* at 57.

In 1925, the leader of the Conservative Party, Wifredo Fernández, declared that “true opposition [to Machado] was unpatriotic” and proposed a plan of “cooperative opposition” under which all political parties came together and agreed not to oppose Machado.⁸⁸ However, not everyone was in agreement. Carlos Manuel de la Cruz, a member of the Chamber of Representatives, warned against the unconstitutionality of Machado’s actions – that the removal of opposition was undemocratic and unworthy of that for which the Republic stood.⁸⁹ However, de la Cruz’s warnings went unheeded, and ultimately, “cooperative opposition” would not be Machado’s only unconstitutional action.

The 1920s were a significant time in Cuba’s history. A plethora of influences from the outside, not just American, were sweeping through the nation’s intellectual elite. These influences included, *inter alia*, the Mexican Revolution and Constitution of 1917; University reform in Córdoba, Argentina, 1918; the Russian Revolution of 1917; and Augusto César Sandino, fighting Yankees in Nicaragua. The sentiments were those of revolution, of fighting against Yankee Imperialism, and arriving at a people’s state (if not a democratic one). Underlining all of these visions, University of Havana students were also fueling their sentiments with the writings of José Martí and José Enrique de Varona (a “man of letters; scholar; teacher [and] statesman”⁹⁰).⁹¹

What was most significant about the spread of these ideas throughout the intelligentsia was that they all came together at one epicenter: the University of Havana, the only place of higher learning in Cuba. In 1926, there were 4,499 students at the University of Havana. The University “lacked proper financial resources, a competent full-time faculty, or an up-to-date system of education. Law and Medicine were the most popular professions – the first because of its importance as a stepping stone for political prominence”⁹² It

⁸⁸ *Id.* at 58.

⁸⁹ *Id.* at 59.

⁹⁰ THE HISPANIC SOC’Y OF AM., *supra* note 21, at 199.

⁹¹ AGUILAR, *supra* note 83, at 68-71.

⁹² Jaime Suchlicki, *Stirrings of Cuban Nationalism: The Student Generation of 1930*, 10.3 J. INTER-AM STUD. 350, 350-51 (1968).

would come as no surprise that Machado's strongest opposition came from the students at the University, and that among them would be law students.⁹³

Occurring parallel to the spread of ideas among the country's intellectuals was another element that would come to affect the Machado government. This was the Cuban economy, centered on "King Sugar." Much like the rest of the world, Cuba found itself in a deep economic crisis from 1929 to 1933.⁹⁴ One cannot overemphasize the importance of sugar to the Cuban economy. Though many of the Cuban sugar mills were run by Americans, "Cubans were selectively admitted to mill management The mill hired Cubans . . . as consultants and attorneys, without whom the mill could not have functioned."⁹⁵ According to historian Luis A. Pérez, the power of the mills was also evident in their ability to achieve "favorable court rulings."⁹⁶ Indeed, the sugar-dominated economy featured "[a] vast, complex network of overlapping and mutually reinforcing interests [and] involved local politicians and judges"⁹⁷ When the price of sugar was high, Cuban morale was high, and when it was low, morale was low. Toward the latter years of the Machado government, when the rumbles of opposition were being heard, there is no doubt that the situation was further aggravated by the impending economic crisis.

In 1930, the U.S. Chargé d'Affaires recorded an interesting anecdote illustrating this agitation:

In every conversation I have had with Cubans . . . who are opposed to the Machado administration I have asked the following question: If sugar were selling at three cents a pound [at the time it was selling for 1.23 cents a pound], would the present

⁹³ *Id.* at 355-56.

⁹⁴ AGUILAR, *supra* note 83, at 95.

⁹⁵ PEREZ, *supra* note 21, at 232.

⁹⁶ *Id.* at 236.

⁹⁷ *Id.* at 237.

political agitation continue? The answer has invariably been: No.⁹⁸

It seems that there is a definite correlation between economic stability and political stability. Despite encroachments on democracy, the ruling elite was content as long as the price of sugar was high.

C. *Machado Continues . . .*

In 1927, Machado found himself leaning less towards the role of a President of a Republic and more towards one of a benevolent dictator – deciding to stay in power because that was what was best for the country, in his point of view. He officially put this idea into practice by engaging in “*continuismo*,” i.e., the act of staying in power by changing the constitution so he could be re-elected. This action was not well-received. Moreover, “[t]his act of *continuismo* came . . . when Machado’s national image was tarnished because he was contracting heavy debts with U.S. banks . . . [and] it roughly coincided with the decline of world sugar prices that had begun in 1925 and that had later become more drastic”⁹⁹

Machado’s undemocratic move to stay in power served as “the spark that ignited student opposition.”¹⁰⁰ He responded to the first opposition attempt by closing the University temporarily.¹⁰¹ After another significant demonstration in September of 1930, the University’s doors were closed until Machado fled the country in 1933.¹⁰² However, this only intensified the demonstrations; now that the students could not attend classes, more of them moved quickly to join the ongoing struggle against the president.¹⁰³

Furthermore, students were not the only ones in opposition. “Segments of old parties, led by Mario G. Menocal [an engineer], Miguel Mariano Gómez [a lawyer], and Carlos Mendieta [a doctor],

⁹⁸ AGUILAR, *supra* note 83, at 99 (internal quotations omitted).

⁹⁹ Jules R. Benjamin, *The Machado and Cuban Nationalism, 1928-1932*, 55 HISP. AM. HIST. REV. 66, 67 (1975).

¹⁰⁰ Suchlicki, *supra* note 92, at 355.

¹⁰¹ *Id.*

¹⁰² *Id.* at 356-57.

¹⁰³ *Id.* at 357.

moved into formal opposition after 1928.”¹⁰⁴ Because these men, having already established themselves in their respective professions, had more social capital than the students, they were able to make attempts at negotiating with Machado in order to reopen the door to legitimate opposition. Furthermore, they brought legal action challenging the Machado regime before the Supreme Court, but were unsuccessful.¹⁰⁵

Despite the lack of success of these opposition groups, it is important to point out that not all of those in the opposition groups were lawyers. Perhaps this was sparked by the strong American presence in Cuba and the influence of big business, as was seen in the example of the Cuba Company. Influenced by the industrial north and the importance of the sugar industry, many Cubans studied engineering. The other professions of the intellectual elite included medicine and journalism.

Although they were not the only leaders, lawyers did, undoubtedly, play an important role, especially within what became known as the “Generation of 1930.”¹⁰⁶ This title, used to describe those who rose in opposition to Machado, evoked a sense of romanticism. This was a generation whose parents had fought for Cuba’s independence and they saw themselves continuing that fight. They were the heirs of Martí. “Opposing American supervision of Cuban affairs and the humiliating Platt Amendment, they found inspiration and guidance in Martí’s teachings. Martí’s vision for a just society in a politically and economically independent nation became their creed.”¹⁰⁷ Apart from being the sons and daughters of those who fought in the War for Independence, the leaders of this generation were, to a great extent, from the middle class.¹⁰⁸

One example of the lawyers’ involvement in the acts of the Generation of 1930 is seen with the publication of the “Minimum Program” – a document published by the Student Directory in 1930. It stated: “It is urgent that the University become the voice of the new

¹⁰⁴ Benjamin, *supra* note 99, at 78.

¹⁰⁵ *Id.*

¹⁰⁶ Suchlicki, *supra* note 92, at 360.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 360-61.

politics, and stop being the playing field for old politicians.”¹⁰⁹ The document was signed by the numerous members of the faculty of law.¹¹⁰

There were many anti-Machado groups that sprung up during the late 1920s and early 1930s, but the three main groups were the *Ala-Izquierda Estudiantil*, the *Directorio*, and the ABC. Of the three, it was the *Directorio*, made up primarily of the middle class, that would play a significant role in the government of post-Machado Cuba.¹¹¹ It is unclear how many of the members of the *Directorio* were law students or lawyers.

The Machado story ends with the intervention of Benjamin Sumner Welles, who was sent by the United States “to act as mediator between government and opposition.”¹¹² His efforts brought about a general strike, created dissent within the armed forces (formerly Machado’s strongest ally), and Machado was forced out of Cuba on August 12, 1933.¹¹³

D. The Interim Presidency of Carlos Manuel de Céspedes Quesada

Carlos Manuel de Céspedes was appointed by Welles to succeed Machado.¹¹⁴ His background involves early studies in New York where he was born and raised.¹¹⁵ He later went on to obtain a bachelor’s degree in International Law and Diplomacy in France, and eventually returned to Cuba, where he fought alongside his father, Carlos Manuel de Céspedes y Castillo, in the War of Independence.¹¹⁶

¹⁰⁹ AGUILAR, *supra* note 83, at 104-05.

¹¹⁰ *Id.* at 106 n.19. Those who signed the document included: Carlos Prío Socarrás, Manuel Varona Loredó, Augusto V. Miranda, Jústo Carillo Hernández, José Sergio Velásquez, Raúl Ruíz Hernández, José Morell Romero, Alberto Espinosa Bravo and Francisco Suarez.

¹¹¹ SUCHLICKI, *supra* note 32, at 90-91.

¹¹² *Id.* at 92.

¹¹³ *Id.* at 93.

¹¹⁴ *Id.* at 94.

¹¹⁵ University of Miami’s Digital Archive, The Cuban Heritage Collection, available at http://merrick.library.miami.edu/cdm4/item_viewer.php?CISOROOT=/cubanphotos&CISOPTR=175&CISOBX=1&REC=3 (last visited February 3, 2010).

¹¹⁶ *Id.*

Céspedes' father was the first president under the revolutionary government during the War. After the war, he went into politics and served in the House of Representatives, as well as in a diplomatic function, and eventually served as Machado's Secretary of State before being appointed President.¹¹⁷ Céspedes was "a prestigious although uninspiring figure, [and he] soon received United States support and the backing of most anti-Machado groups. . . . [Céspedes] restored the 1901 Constitution, and prepared to bring the country back to normalcy."¹¹⁸ The Americans appointed an "American" to replace Machado. The move was poorly received, and it is no surprise that he was quickly replaced by Cubans.¹¹⁹

Almost immediately, the *Directorio* and other groups made no secret of their discontent with the new presidential situation. They were upset by Céspedes's refusal to change the 1901 Constitution and make it more Cuban (they considered it too American), and they were further enraged by his "softness" toward those who were engaged in unconstitutional and undemocratic functions under the Machado dictatorship – including Machado's secret police and those who had made themselves rich off of the situation.¹²⁰

IV. THE PENTARCHY AND THE END OF THE PLATT AMENDMENT

One of the *Directorio*'s most faithful allies was an army stenographer by the name of Fulgencio Batista, whom the students had met while on trial for their opposition activities. Their leader was a Medical Professor by the name of Dr. Roman Grau San Martin. Frustrated with the situation, the *Directorio* met with Batista and they agreed to overthrow Céspedes and "to form a pentarchy (a five-member civilian executive commission) to head a provisional government."¹²¹ Dr. Grau San Martin was eventually appointed provisional president, and his tenure is touted as one of significant change.¹²²

¹¹⁷ *Id.*

¹¹⁸ SUCHLICKI, *supra* note 31, at 94.

¹¹⁹ *Id.* at 94-95.

¹²⁰ *Id.*

¹²¹ *Id.* at 95. The members of the pentarchy were: Dr. Ramon Grau San Martin, Guillermo Portela (a professor of criminal law), THOMAS, *supra* note 28, at 639,

Grau's regime was the high-water mark of the revolutionary process and of the intense nationalism of the generation of 1930. . . . [He] abrogated the 1901 Constitution and promulgated provisional statutes to govern Cuba and called for a constitutional convention with elections subsequently set for April 1, 1934. He also demanded the abrogation of the Platt Amendment . . . [and] grant[ed] the University of Havana its autonomy from government control.¹²³

Although Cuba had finally rid itself of the Platt Amendment, Grau's presidency was not all democracy and republicanism – reminiscent of Martí's legacy. For example, he "sidestepp[ed]" the Supreme Court's ruling against a general wage increase and "sabotaged Congress's authority":

[H]e effectively paralyzed [Congress] by asking his supporters to absent themselves to prevent a quorum. The Congress had the right to force the President to remove ministers, according to the semi parliamentary system in effect. President Grau simply re-assigned ministers to different cabinet posts and, when Congress removed several ministers simultaneously, [he] ruled through undersecretaries.¹²⁴

In addition, just as every Cuban president before him (save Tomás Estrada Palma), Grau "entered the presidency in modest circumstances and left [a] millionaire[]." ¹²⁵

To further aggravate the situation, the students and the Generation of 1930 were viewed in a negative light by the United

Sergio Carbó (a journalist), Jose M. Irisarri (a lawyer), and Porfirio Franca (a banker and financier), *Id.* at 549.

¹²² SUCHLICKI, *supra* note 31, at 95.

¹²³ *Id.* at 97.

¹²⁴ DOMINGUEZ, *supra* note 38, at 110-11.

¹²⁵ Padula, *supra* note 20, at 14.

States. The United States government never recognized Grau's Cuba, which was practically a death sentence for the regime. Without support from the United States, Grau was unable to hold the country together. On January 14, 1934, Batista forced President Grau's resignation.¹²⁶ Writing from exile, Grau criticized his ouster: "The deciding factor which led to my final resignation . . . aside from the perturbing influence of illegitimate interests and the handiwork of Mr. Caffrey, was my refusal to grant an extension of military jurisdiction repeatedly requested by the head of the army [Batista], which would have prevented ordinary courts of justice from judging common crimes committed by members of the armed forces."¹²⁷ Following that, Batista appointed Carlos Mendieta as Cuba's provisional president, and the United States moved quickly to recognize Mendieta's government.¹²⁸

Carlos Mendieta was a member of the elite. He was educated by private tutors and eventually attended the *Colegios* "Belén" and "El Mesías" - two of Cuba's most prestigious Catholic private schools.¹²⁹ He began his medical studies at the University of Havana but left early to travel to his family's sugar plantation and from there to participate in the Revolutionary movement.¹³⁰ After the war, he returned to school to finish his studies and graduated with a medical degree in 1901.¹³¹ Shortly after, he was elected as Representative.¹³²

A. *The Constitution of 1940*

The abrogation of the 1901 Constitution under Grau led to the creation of the 1940 Constitution, which "proclaimed political democracy, the rights of urban and rural labour, limitations on the size of sugar plantations and the need for systematic state intervention in the economy, while preserving the supreme role of private

¹²⁶ SUCHLICKI, *supra* note 31, at 100.

¹²⁷ *Id.*

¹²⁸ *Id.* at 99.

¹²⁹ THE HISPANIC SOC'Y OF AM., *supra* note 21, at 529-31.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

property.”¹³³ Rogelio Pérez-Perdomo describes Latin America as “a great producer of constitutions”¹³⁴ in the early 1800s. Cuba followed suit a century later and once more evoked the legacy of Martí.

Most of the members of the Constitutional Convention that created the Constitution of 1940 were familiar with the many constitutions written throughout Latin America. It was to those constitutions, rather than to the American Constitution (like their forefathers had one in 1901), that they turned when constructing this new document. They were especially inspired by “the new constitutional tendencies of including in their norms a multitude of social, political, and economic aspects”¹³⁵

B. *The Failed Revolution*

The revolution of 1930 did not fulfill the ideals of Martí. As a behind-the-scenes figure during the 1930s and 1940s, Batista decided upon a dictatorship. He accomplished this with a bloodless coup that changed the course of Cuban history forever. Suddenly, memories of Machado’s democratic election in 1924 faded. According to Pérez:

The larger implications of the coup, and certainly its deeper significance, were to be found at the point where it shattered collective self-esteem and undermined some of the most cherished assumptions of self-representation. The celebrated Constitution of 1940 had been unceremoniously shunted aside by a common barracks revolt, forcing Cubans to confront a reality that most would have thought unimaginable only months earlier. Cuba was different from other

¹³³ Robert Whitney, *The Architect of the Cuban State: Fulgencio Batista and Populism in Cuba*, 13 J. OF LATIN AM. STUD. 435, 438 (2000).

¹³⁴ According to Pérez-Perdomo, these constitutions sought to fulfill four functions: “First, they defined the rules of the political game, determining who the actors were and how leaders were to be elected. Second, they expressed a political project, be it conservative, liberal, socialist, federalist, or centralist. Third, they organized public power, limited its exercise, and established relationships among the branches of government. And fourth, they declared the rights of citizens.” PÉREZ-PERDOMO, *supra* note 1, at 53.

¹³⁵ VIÑUELA, *supra* note 37, at 94 (author’s translation).

Latin American countries, Cubans were wont to insist. It had registered notable progress and could rightfully claim its place alongside the select group of modern liberal constitutional democracies of the world. Constitutional legality, free elections, freedom of speech, and a free press were attributes of advanced civilized nations by virtue of which Cubans claimed membership. This was the proposition of constitutionality and the rule of law as a condition of civilization, encoded into the larger narrative of nationality and modernity.¹³⁶

Coupled with Batista's demoralizing actions, the economy faced another downturn after 1953. Thousands of students were graduating from the now autonomous University of Havana, but they could not find work.¹³⁷ It was an era of the "crisis of the professions" – there were no jobs for the lawyers.¹³⁸ "In the 1950s, lawyers, ever the most numerous class, were often obliged to work as typists and secretaries."¹³⁹ This was because, as in the case of Anselmo Alliegro and some of his classmates who attempted to set up law offices, it was an unsuccessful venture.¹⁴⁰ If a lawyer did not have the opportunity to join a big firm through the use of "family influence," he or she was out of luck.¹⁴¹ Alliegro became involved in politics after unsuccessfully practicing law, befriending then-senator Batista.

A solution to the problem of unemployed lawyers came from the dean of the Havana Bar Association, José Miró Cardona, who suggested that the government create legal careers in civil service and "pay them decent salaries."¹⁴² However, this did not come to fruition at the time. With no job prospects, the students took up arms again in

¹³⁶ PEREZ, *supra* note 21, at 446-47.

¹³⁷ *Id.* at 451.

¹³⁸ *Id.* at 452.

¹³⁹ Padula, *supra* note 20, at 59.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

the late 1950s, this time protesting against their one-time ally Batista. "Of the groups that opposed Batista, the students were the first to hoist the flag of rebellion."¹⁴³ Batista fought back with outright violence against the students, and many died during this time. He closed the University, alleging that he had the presidential power to do so under the circumstances.¹⁴⁴ It was this last major rebellion of the students that paved the way for the rise to power of Fidel Castro in January of 1959, himself a former student of the University of Havana School of Law and of Belén.

According to Jules R. Benjamin: "The lack of legitimacy which characterized the regimes of the 1940s and 1950s created an ideological vacuum that served as an important precondition for the decisive victory of a new generation of radical nationalists in the 1960s"¹⁴⁵

V. THE FINAL REVOLUTION AND THE LAWYERS THAT LIVED IT

Often, there is no better way to learn about what really happened during these turbulent times than to hear the stories from the lawyers that lived them.

Ignacio Siberio graduated with a Licentiate in Law from the University of Havana in 1947.¹⁴⁶ He was one of eleven brothers, seven of which were also lawyers and two of which worked as *secretarios del juzgado*.¹⁴⁷ Siberio speaks with sadness of the days immediately following Castro's revolution. The legal world he knew had been turned upside down. At the time of the revolution, Siberio focused his practice on civil litigation. When Castro's new government came to power, he found himself being called to defend his clients who were being accused in military tribunals for having had ties to the Batista dictatorship. His work in these tribunals allowed him to see firsthand the breakdown of the Cuban rule of law.¹⁴⁸

¹⁴³ Jaime Suchlicki, *El Estudiantado de la Universidad de la Habana en la Política Cubana, 1956-1957*, 9 J. INTER-AM. STUD. 145, 150 (1967) (author's translation) [hereinafter "Suchlicki II"].

¹⁴⁴ *Id.* at 150-152.

¹⁴⁵ Benjamin, *supra* note 99, at 91.

¹⁴⁶ Interview with Ignacio Siberio, Attorney, in Miami, Florida (Feb. 3, 2009).

¹⁴⁷ Court clerks.

¹⁴⁸ *Id.*

According to Siberio, the military tribunals were far from any normal judicial proceeding. There was the overwhelming feeling during the proceedings that any imputation to Batista was an automatic death sentence. In his last trial, Siberio defended thirty men; all thirty were condemned to death. He immediately moved for an appeal and was told to go to his office and come back twelve hours later. Soon after, some of the defendants' families informed Siberio that the case was over, the thirty men had already been executed. Siberio knew he had to leave.¹⁴⁹

Another Cuban Lawyer, Agustín Cruz, tells a similar story. In an article discussing the destruction of his law firm in Cuba, Cruz tells that "more than one thousand Cubans [were] executed"¹⁵⁰ in the manner described by Siberio. Moreover, the trials became even less formal and were held in the "cane fields and sugar mills that reduced the time expended on the administration of justice to about forty-five minutes. No lawyer[s] [were] allowed at these trials."¹⁵¹

The lawyers who were trained in the civil law tradition found themselves besieged by the passage of a myriad of new legislation including laws on agrarian and urban reform.¹⁵² Many of them, including Siberio, felt their lives were in danger, merely because they had defended those whom the new government deemed the enemy.¹⁵³

It is with this Socialist revolution that Cuba stands out among its Latin American neighbors. "The replacement of Cuba's prerevolutionary legal system with the one built expressly to suit the ideology, exigencies, and practices of an emergent socialist system was a central component of institutionalizing the nation's new political order after the revolutionary victory of 1959."¹⁵⁴

¹⁴⁹ *Id.*

¹⁵⁰ Agustín Cruz, *It Took Only Three Years: The Destruction of a Law Firm*, 50 A.B.A. J. 63, 64 (1964).

¹⁵¹ *Id.*

¹⁵² *See id.*

¹⁵³ Interview with Ignacio Siberio, *supra* note 146.

¹⁵⁴ Raymond J. Michalowski, *Between Citizens and the Socialist State: The Negotiation of Legal Practice in Socialist Cuba*, 29.1 LAW & SOC'Y REV. 65, 66-67 (1995).

In the early 1960s, the Cuban Bar Association was disintegrating. In the spring of 1959, Cuban lawyers who were identified with Batista were being attacked by those who supported Castro. Gastón Godoy, who had previously been nominated as "*Presidente Ejemplar*" of the Association, was disbarred for his Batista ties.¹⁵⁵ Ironically, almost all the members of Fidel Castro's first cabinet were lawyers.¹⁵⁶ However, the true irony was that "the devotion of the revolutionary government to the rule of law was minimal."¹⁵⁷

Previously, three firms had dominated the legal profession: "Gorrin, Mañas, Macia y Alamilla, the largest and best known, which did much of the sugar industry's legal work; Lazo y Cubas, which handled the largest share of American investment in Cuba; and Núñez, Mesa y Machado."¹⁵⁸ Though, as seen through Cruz's story, these were not to last. "In December, 1960, Castro observed that, thanks to the nationalization of the economy, there were no longer any big interests to defend. Of what use was a legal system which had 'merely served the privileged and the interests of the rich and the powerful?'"¹⁵⁹ The judiciary was also affected: "[a]ll seventeen Supreme Court justices were fired" and "[b]y 1962, some nine hundred of Cuba's six thousand lawyers and judges had sought asylum in the United States."¹⁶⁰

¹⁵⁵ Padula, *supra* note 20, at 517.

¹⁵⁶ These cabinet members included: President Manuel Urrutia, Agriculture Minister Sori Marín, Education Minister Armando Hart, Labor Minister Martínez Sanchez, Treasury Minister López-Fresquet, National Bank President Felipe Pazos, and the Minister of Justice, Alfredo Yábur. *Id.* at 516.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 517.

¹⁵⁹ *Id.* at 521 (citation omitted).

¹⁶⁰ *Id.* at 521-22.

A. *The Supreme Court*¹⁶¹

The new regime was a death sentence for the Cuban Supreme Court – the supposed guardian of the Constitution and legal order. “The judges observed with dismay the increasing number of arbitrary arrests, the long sentences, and the political trials to which all opponents of the regime were subject . . .”¹⁶² Yet, their hands were tied, as the Supreme Court had no jurisdiction over revolutionary tribunals.¹⁶³ On November 17, 1960, the President of the Supreme Court, Emilio Menéndez, and his colleague, Judge Morell Romero, fled to the Argentine embassy.¹⁶⁴ Menéndez was succeeded by Judge Enrique Hart, father of the Education Minister, demonstrating that, even in Castro’s Cuba, family relations would continue to play a significant factor in occupation.¹⁶⁵ “The old legal system before whose tangles Generals Wood and Crowder had confessed themselves baffled, at long last snapped, like an old and rotten tree, the ancient rooks’ nests still visible when it reached the ground.”¹⁶⁶

B. *How the “Big Three” Were Replaced*

By 1973, all practicing lawyers were placed in “*bufetes colectivos* (collective law offices) under the supervision of the Ministry of Justice.”¹⁶⁷ Thus, “law collectives” became the only forum in which lawyers could practice their trade.¹⁶⁸ Just as the place in which they could practice changed, the role of Cuban lawyers changed as well. They were no longer defending “*against the state*” but rather they

¹⁶¹ “The thirty-two judges of the Supreme Court . . . had, normally, life tenure and presided over five separate chambers. These dealt with civil and criminal appeals, administration and disputes over judicial and municipal appointments. The Court also dealt with such questions as the constitutionality or removal of local government officials, and in those and certain other circumstances sat all together.” THOMAS, *supra* note 28, at 1347 n.16.

¹⁶² *Id.* at 1347.

¹⁶³ *Id.* This situation is eerily reminiscent of the Urgency Courts first set up by Machado and used latterly by Batista to try political offenders quickly.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 1348.

¹⁶⁷ Benigno E. Aguirre, *Social Control in Cuba*, 44 *LATIN AM. POL. & SOC’Y* 67, 84 (2002).

¹⁶⁸ *See id.*

"work[ed] *with* both the client and the state to guarantee the fulfillment of 'socialist legality.'"¹⁶⁹ The attorney's first priority was no longer his or her client, but to the state.¹⁷⁰

In 1965, "legal studies almost disappeared: the country's 343 law students represented less than 2 percent of university students" ¹⁷¹ The number of attorneys began to grow in the 1970s, as the profession regained importance. "The School of Law at the University of Havana, which had been previously downgraded, was reestablished as a separate Faculty, and new law schools have since been established at Santa Clara and Santiago de Cuba."¹⁷² By 1995, the number of law students was up to 1,848.¹⁷³

Despite this new method of socialist lawyering, not everything changed. Law studies continued to be a five-year program, and the only additions to the socialist lawyer's coursework were a few courses on the history of the Revolution and mandatory physical education courses.¹⁷⁴ A similarity in education led to similarities in practice; "[a]lthough 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."¹⁷⁵ Moreover, the lawyers, although they may have been paid a great degree less than their counterparts in other countries, were still among the wealthiest groups on the island.¹⁷⁶

C. The Constitution of 1976

In 1976, Cuba promulgated a new Socialist Constitution.¹⁷⁷ This time, the drafters modeled it after other Communist constitutions.

¹⁶⁹ Michalowski, *supra* note 154, at 73.

¹⁷⁰ *Id.* at 77.

¹⁷¹ PÉREZ-PERDOMO, *supra* note 1, at 107.

¹⁷² Michalowski, *supra* note 154, at 81.

¹⁷³ See PÉREZ-PERDOMO, *supra* note 1, at 107.

¹⁷⁴ Plan de Proceso Docente, <http://lex.uh.cu/Secretaria/secretaria/plan%20de%20estudio.htm> (last visited Feb. 1 2009).

¹⁷⁵ Michalowski, *supra* note 149, at 85.

¹⁷⁶ *Id.* at 83.

¹⁷⁷ SUCHLICKI, *supra* note 31, at 185.

[It] recognized the [Communist Party] as “the highest leading force in state and society” and defined the function of mass organizations such as the Committees for the Defense of the Revolution and the Federation of Cuban Women . . . It also recognized freedom of speech, religion, the press and association so long as these did not conflict with the objectives of socialism; enumerated the rights and duties of Cuban citizens¹⁷⁸

The constitution derived legitimacy from the fact that it was approved by a popular referendum with a 97.7% majority.¹⁷⁹ The legitimization process of the Castro regime allowed “the cult of Martí [to] flourish[.]”¹⁸⁰

D. Martí Lives On . . .

It is said that, “Fidel Castro has been projected as the embodiment of Martí, his privileged interpreter and seer. Cuba’s dissident activists, on the other hand, point to Martí’s magnanimous humanism and his emphasis on human rights and freedoms.”¹⁸¹ For example, Martí wrote against Socialist ideology:

Socialist ideology, like so many others, has two main dangers. One [stemming] from confused and incomplete readings of foreign texts, and the other from the arrogance and hidden rage of those who, in order to climb up in the world, pretend to be frantic defenders of the helpless so as to have shoulders on which to stand.¹⁸²

¹⁷⁸ *Id.* at 185-86.

¹⁷⁹ *See id.* at 185.

¹⁸⁰ *Id.* at 200.

¹⁸¹ Aguirre, *supra* note 163, at 73. (citations omitted).

¹⁸² Carlos Ripoll, *Martí Thoughts/Pensamientos*, UNIÓN DE CUBANOS EN EL EXILIO, Dec. 11 2005, available at <http://www.fiu.edu/~fcf/marti.pensamientos.10797.html>.

The latter sentiments are certainly not openly discussed in Cuba today.

The future remains unclear as to which path the lawyers – the heirs of Martí – will take in Cuba's future. What will happen after Castro's death? Democracy is possible for Latin America, and in the recent past, democracy has grown in other socialist states, (e.g., Poland and Soviet satellites). What new government will be born out of Cuba? Will we see Cuban lawyers in exile return to their country and bring back with them the lessons learned abroad – as we have seen with Chilean and Argentine lawyers who fled their respective countries' military dictatorships and later returned to witness the democratization process?

With further research into the lawyers of today, those in exile and those on the island, these questions may become easier to answer. No one can predict the future with any certainty, but knowing more about the social connections between lawyers, as well as their backgrounds and how they view Martí, could provide some indication of what could happen. Will it be the students or the lawyers, or a combination of both who bring about change in Cuba?