

Adèle G. van der Plas

Revolution and criminal
justice: the Cuban
experiment, 1959-1983

LATIN AMERICA STUDIES



39

REVOLUTION AND CRIMINAL JUSTICE: THE CUBAN EXPERIMENT, 1959-1983

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Translated from Dutch by Peter Mason

TRANSLATOR'S NOTE

How to present for the English-speaking reader an equivalent of an institution which has no equivalent in the English-speaking world?

The *Tribunales Populares de Base* appear in the text as (popular) base tribunals. 'Tribunals', rather than 'courts', because most of the associations which the word 'court' has for an English speaker are hardly applicable to the experimental Cuban forms of basic judicial administration described in this book. Moreover, at the various levels of administration (neighbourhood, municipality, region, province, nation) no distinction is made in the word used: these are all 'tribunals'.

Last but not least, perhaps the choice of an English word which is as close as possible to the Cuban original might be one way for us of restoring to the Cuban people what is *theirs* in their own language rather than resorting to the terms of linguistic and cultural imperialism.

THE MAIN LAWS REFERRED TO IN THE TEXT

- L.O.P.J.** Ley Orgánica del Poder Judicial, 27.1.1909.
1909
- L.E.C.** Ley de Enjuiciamiento Criminal, Royal Decree 14.9.1882 (Spain), in
1888 force in Cuba by Royal Decree of 19.10.1888.
- C.D.S.** Código de Defensa Social, Decreto Ley No. 802, 4.4.1936, **Gaceta**
1936 **Oficial, edición extraordinaria, No. 108, 11.4.1936.**
- L.O.S.J.** Ley de Organización del Sistema Judicial, Ley No. 1250, **Gaceta**
1973 **Oficial, edición ordinaria, No. 13, 23.6.1973.**
- L.O.S.J.** Ley de Organización del Sistema Judicial, Ley No. 4, **Gaceta Oficial**
1977 edición ordinaria, No. 36, 25.8.1977.
- L.P.P.** Ley de Procedimiento Penal, Ley No. 1251, **Gaceta Oficial, edición**
1973 ordinaria, No. 14, 16.6.1973.
- L.P.P.** Ley de Procedimiento Penal, Ley No. 5, **Gaceta Oficial, edición**
1977 ordinaria, No. 32, 15.8.1977.
- C.P.** Ley del Código Penal, Ley No. 21, 15.2.1979, **Gaceta Oficial, 1.3.1979.**
1979



Map of Cuba

Cuba is the largest and most westernly island in the Caribbean. It is 180 km from the coast of the United States. The Cuban population is Spanish-speaking and is mainly composed of people having Spanish or African origins. At present Cuba has some 9 million inhabitants. The island is 105,007 sq. km in area. Isla de Pinos, an island off the south coast of Cuba, has an area of 2,200 sq. km.

CUBA

In the early years of the Cuban Revolution tribunals were set up in the countryside and later in the large towns too. The judges of these tribunals were chosen by and from the members of neighbourhood councils. This book describes these tribunals from their beginnings around 1962 to their integration within a revised legal system that was adapted to the changed social conditions of the 1970s.

The procedure of the first Base Tribunals had an informal structure. The salient characteristic was the strong and direct involvement of the neighbourhood in this form of administration of justice, which was designed to be uncomplicated and comprehensible. The integration of the tribunals within a new system of Judicial Organisation and the shift towards a greater emphasis on professionalism and efficiency in the 1970s have given the tribunals not only a new name, Municipal Popular Tribunals, but also an essentially changed character.

In this book an attempt is made to offer insight into these recent developments within the Cuban system of basic judicial administration and their antecedents. Their rise and later development are situated within the broader political context of the Cuban revolution. And the far-reaching transformations in Cuba's international orientation, system of economic organisation and politico-cultural tradition since 1959 are examined to see how they are reflected in the new tendencies within the administration of justice at base level.

Cuba has come to occupy a unique position in world history since the 1959 Revolution. Like other Latin American countries, Cuban history before then had been one of colonial and neocolonial exploitation.

When Cuba was discovered by Columbus on the 27th of October 1492, it was inhabited by Indian tribes. The island was a colony of Spain from the occupation in 1511 until 1898. The autochthonous population, the Indians, were virtually wiped out in a short time, according to the historical accounts of writers such as Bartolomé de las Casas. There were only a few survivors to come alive out of the compulsory hard labour as slaves in goldmines and elsewhere.¹

The import of negro slaves from Africa to Cuba began officially in 1513. In the course of time they were mainly set to work on the sugar plantations. Cuba began to concentrate on sugar export from the end of the eighteenth century, resulting in the construction of a monoculture, sugar production, which is still the determining factor in the Cuban economy. It implied total dependence on the fluctuating sugar prices on the world market. This meant that Cuba became economically dependent on her northern neighbour, the United States.² As Cuba's national

hero and liberation fighter. José Martí, expressed it:

A country which buys gives orders; a country which sells takes orders. It is necessary to develop a balanced trade to safeguard our freedom. A country bent on suicide sells only to one buyer, a country which wants to survive sells to several parties.³

The year 1898 marked the end of Cuba's domination by Spain as the result of two wars of independence. There was as yet, however, no genuine independence. From 1898 to 1902 Cuba remained, against her will, under North American rule. In this period Cuba was forced to accept the Platt amendment, by which the Cuban Constitution gave the United States the right to intervene in Cuban affairs. This also implied the right of the United States to set up a naval base on the southeast coast of Cuba at Guantánamo.⁴ As is described in the following chapters, it was only from 1959 that Cuba managed to get rid of the dominant economic influence of the United States.

To achieve this it was necessary for the United States puppet dictator, General Fulgencio Batista, who came to power by a coup d'état in 1952, to fall. The political group which was capable of this was the movement of the 26th of July led by Fidel Castro Ruiz. January 1st 1959, the day on which Castro and his forces entered Havana after years of guerrilla fighting in the Sierra Maestra mountains, is still celebrated as the birthday of the Cuban Revolution.⁵ Famous guerrilleros from the movement of the 26th of July who are dead now, like the legendary Che Guevara and the popular Camillo Cienfuegos, are still treated in Cuba as heroes.

The successful revolution of 1959 made of Cuba a model for many liberation movements, both in Latin America and in other parts of the world. This accounts for Cuba's important position within the complex of contemporary North-South oppositions.

This is one of the reasons why the achievements and failures of the 27 year old Cuban revolution are of undoubted significance for all those countries which are striving to free themselves from a similar situation of underdevelopment and poverty. Cuba's geographical position close to the North American coast and her more or less forced orientation towards the Soviet Union have put this small country at the crossroads of present day oppositions between East and West. This was blatantly obvious in the crisis of October 1962, when the establishment of Soviet missiles on Cuba threatened to lead to a direct confrontation between the two superpowers. The never-ending stream of accusations levelled against Cuba by the United States of exporting her revolution to Central America provides a more recent example.

This book is primarily intended as a contribution to the modern historiography of Cuba. Compared with the quantity of publications which have appeared on Cuba, there has so far been little written about the Cuban system of judicial administration since 1959.⁶ The present study of the Cuban Base Tribunals and Municipal Popular Tribunals is intended to help to fill this lacuna. Another aim of the research is to give some insight into the development of law within actual processes of revolutionary change.

The specific institution of base-level judicial administration is described as part of a wider social context. It is not abstracted from the social reality in which it functions at different periods in Cuban history. Similarly, the legal institution of the tribunals cannot be detached from the traditional Cuban legal system whose formation goes back to the period of Spanish colonial history. In the present case

study the post-revolutionary neighbourhood tribunals are described from below, using the observations made by one or more independent observers. The developments perceived are set against a background of more general processes of transformation within the revolution. In the historical description of these more general political developments, the state is viewed as dependent on specific people and groups which exert influence on it or participate in it.⁷ Attention is also paid to the shifting international relations of power as an essential part of any attempt at explaining national processes of transformation. This notion has been further developed by, among others, the proponents of *dependencia* theory.⁸ Underlying the method followed in this book is the assumption that law cannot be analysed without taking into account the social and economic forces which lie behind it -- a Marxist tenet.⁹

I hope that this historico-analytical approach will offer some insight into the relation between law, society and revolutionary development. The particular selection of the Cuban base level judicial administration can be seen in this light. Of all the legal institutions it is the one closest to the Cuban people themselves. It has played a more important role than any other legal institution in Cuban history since 1959 as far as the fundamental political and social transformations of Cuban society are concerned. More than any other legal institution, it was the experimental base tribunals which were embedded in the Cuban policy of mass mobilisation in the 1960s.

Besides, the Cuban Base Tribunals, as they functioned in Cuba in the 1960s, appealed to the imagination of many jurists as well as lay persons. Law in the hands of the people. Informality. Alternative sentences instead of the customary imprisonment. This study faces both the positive and the negative sides of the experiment, by comparing them with more general, fundamental legal concepts which underlie different legal systems.

A limitation of this study is the lack of a comparison with primary judicial administration in the Soviet Union, the People's Republic of China and other socialist developing countries, such as Mozambique.¹⁰ There was no time to take this on.

For studies like this access to sources is never without its problems. If one wants to go beyond secondary sources or the official reports presented in Cuban newspapers such as *Granma*, access to Cuba is a necessity. However, even when one is able to hold discussions with Cuban jurists and to spend some time in Cuban libraries, lecture halls and court hearings, the fact that one is only exposed to the events for a brief time, and that as an outsider, remains problematical. It is not just the language which in the first instance raises problems, but also the gap created by cultural differences. The interviewees may certainly do their best to give an honest answer to the questions posed, but difficult problems with which they are wrestling are not always openly discussed in the presence of an outsider. There is a risk that they will be explained in terms of the official ideology or in harmony with the most recent declarations of high party officials. This is by no means always the case -- I have experienced too many exceptions --, but it is a factor which has to be taken into account in a study like this one.

A different problem concerns the use of secondary sources. Given Cuba's place at the centre of important contemporary political contradictions, a good deal of the literature on Cuba is marked by a strong political preference or by animosity. In this book I have used the available literature on Cuba from left and right. For data on the more general political developments in Cuba, for example, I have utilised both North American and other Western sources, mainly publications by recognised

experts on Cuba, as well as speeches by Cuban leaders and other post-revolutionary Cuban literature. This is a justifiable procedure since I refer on each occasion to the sources used.

For my account of the Cuban Base Tribunals in the 1960s I have included in my sources the work of foreign researchers who carried out research on this theme in Cuba in this period. I have also used Cuban legislation, brochures and speeches made by politicians and juridical officials from the same period. I was able to consult many of these texts in the library of the Cuban Supreme Court in Havana and in the José Martí National Library. Some old laws were available from Cuban antiquarians. A particularly illustrative value can be attached to the interviews which I conducted with a number of Cubans in 1983 concerning their functions in Cuban primary judicial administration in the 1960s. The 1970s legislation on the new Municipal Popular Tribunals is freely available in Cuba. It is equally easy to gain access to textbooks which have appeared on Cuban criminal justice and other contemporary juridical literature in Cuba.¹¹ I tried to penetrate further than the formal regulations of the new system of Judicial Organisation and the new criminal procedure legislation by holding discussions with jurists actively involved in legal practice and by attending hearings. These interviews and observations may also be seen to have an illustrative value.

I visited Cuba in 1977, 1980, 1981 and 1983. In spring 1980 it was possible for me, along with some twenty other Dutch jurists, to hold a considerable number of discussions with members of the judicial apparatus, the Public Prosecutor and the Ministry of Justice, with lawyers and with lecturers of the Law Faculty of the University of Havana.¹² In 1981 I spent three months in Havana assisted by a financial grant from the Cuban Ministry of Education for foreign students and researchers. I attended lectures in criminal justice at the University of Havana, attended hearings and held discussions with jurists and other Cubans. I was also enabled to consult literature which is generally inaccessible to foreigners, stored in the dusty archives of the Supreme Court in Havana. In 1983 I visited Cuba for the last time and stayed in Havana again, this time for six weeks.

A weakness in my research is due to the fact that during my visits in 1981 and 1983 I was only able to investigate judicial practice in Havana city. I have thus not been able to do full justice to the emphasis which the Cubans placed in the 1960s on legal development in the countryside. The differences in this period between the practice in a large city like Havana and in the countryside will not show up in my findings.

Despite the variety of source material used for this study, I have tried to let the Cubans speak for themselves about the developments in their land. With a few exceptions, these are Cubans who are living in Cuba at the present moment. In other words, I have tried to match my account to reality as it is experienced and interpreted by the Cubans themselves. My reasons for this procedure are not only pragmatic: much of the information required came from Cuban writers, politicians and jurists who live in Cuba. I have deliberately adopted it because I believe that it is important for gaining an adequate view of the processes of transformation which took place in Cuba. As Berger and Luckmann pointed out in their *The Social Construction of Reality*, the experience of social reality is a construct which is created through a complex process of interaction, institutionalisation and internalisation. Social reality is a social product. Social processes of transformation like those in Cuba are accompanied by new forms of legitimation. To quote Berger and Luckmann:

The history of legitimating theories is always part of the history of the society as a whole.

Social transformations and 'ideas' are caught up in a dialectical relation:

No 'history of ideas' takes place in isolation from the blood and sweat of general history.[...] The relationship between 'ideas' and their sustaining social processes is always a dialectical one.[...] Consequently social change must always be understood as standing in a dialectical relationship to the 'history of ideas'.¹³

It is thus essential to take into account the 'ideas' which went hand in hand with the various transformations, including juridical transformations and the underlying legal theories on which they are based.

At the same time this approach involves a deliberate reserve on my part. Assuming that a given social reality will not be experienced and accepted by everybody in the same way, I have made the choice of letting the Cubans speak and using their interpretations to gain insight into their reality.

Of course, I have myself introduced a normative element into the study by the selection and ordering of the data which I have followed. I have already briefly indicated which theories have influenced my methodology. In addition, at various points in the book I refer to generally valid principles of justice. For instance, in the first three key years of the Cuban revolution I detect a collision of interests between the so-called fundamental social and economic rights and the more conventional fundamental individual freedoms. Similarly, my discussion of the informality of Cuban judicial administration at base level is couched in terms of the general concept of Due Process of Law. These general principles of justice, I fully recognise, are also a social product and form a part of the social reality constructed by men and women in a specific period and in specific circumstances.

Chapter Two presents a brief, introductory account of the first three years of the revolution. These were key years for the post-revolutionary development of Cuba. They involved a political and economic break with the United States and a new orientation towards more remote, socialist trading partners. The domestic policy is characterised by an increasing polarisation as a result of the implementation of social reforms. In these years special 'Revolutionary Tribunals' were set up with wide powers to try the increasing numbers of counter-revolutionaries in Cuba. It was a time when many conservative jurists left the country. In fact, there was a clean sweep of the legal institutions. The scope of this study makes it impossible to go into the detention of political prisoners in Cuba in these and later years. It was in the ensuing period, in the middle of the 1960s, that the experimental Base Tribunals were first introduced.

Chapter Three begins with a short account of the predecessors of the Base Tribunals, the Correctional Judges. This is followed by a description of the first experimental Base Tribunals in the countryside. There is an outline of how 'revolutionary' students from the University of Havana began to work together with the local population from 1962 to develop a new type of basic judicial administration. There is a discussion of why the first Base Tribunals were set up in the isolated countryside rather than in the large cities of Cuba. The extension of this base level judicial administration to the large cities dates from 1966, when this experiment was at its height in the countryside.

In Chapter Four the general political developments of this period are presented.

It was a period of political idealism, marked by independence in both internal and external policy and by mass mobilisation. In foreign policy there was a difference of opinion and of practice between Cuba and the Soviet Union on the question of providing support for armed liberation movements in certain Third World countries, with Cuba supporting and the Soviet Union opposing this type of intervention. In domestic policy the main points were the building up of the nation's economy and the implementation of thorough cultural changes. 'New man' values were propagated: the politically conscious, self-sacrificing citizen who acted in solidarity.

Chapter Five details the attempts at this time to mobilise the Cuban people for this process of transformation. It is hard to overestimate the importance of the participation of the people in mass organisations like the Committees for the Defence of the Revolution (*Comités de Defensa de la Revolución*, CDRs). The revolution received important substantial support from the training and voluntary activities of organisations like the CDRs and their part in the fight against the counter-revolutionaries and the growing crime rate.

In Chapter Six there is a detailed account of the day to day functioning of the Base Tribunals in Havana in the same period. Drawing on the ministerial instructions issued in 1966 for the Base Tribunals, the markedly informal nature of the procedure is highlighted. To conclude the account of the Base Tribunals in the 1960s, the concept of 'informality', which has already been introduced, is analysed both in terms of the notion of 'social harmony' which underlies Marxist-Leninist legal theory and in terms of the legal position of the defendant. This analysis assumes that the concept of informal law can only be understood in terms of the specific historical context in which it finds its application.

The base level judicial administration as it was practised in Cuba in the 1960s went through fundamental changes in the following decade. In Chapter Seven the general political and economic developments underlying these changes are outlined. There is an analysis of the shift from the first phase of mass mobilisation in the 1960s to the second phase of institutionalisation. This second phase was introduced by a reversal in foreign policy in 1968. From 1968 on, the links with the socialist allies in Eastern Europe grew steadily tighter. In domestic policy, there was a radical change in 1970, when the economy was reorganised as the result of a failure in the sugar harvest. The emphasis of the 1960s on mass mobilisation and a morality of productivity gave way to an approach centred on efficiency and technique.

Chapters Eight and Nine describe the thorough and comprehensive reorganisation of the political and juridical system in line with the other changes mentioned. The political organisation of the 1960s was now viewed as provisional, and in the new process of institutionalisation it was replaced by a new system of popular power: *Poder Popular*. 1973 saw the introduction of a new Law on Judicial Organisation and a new Criminal Procedure Law, and in 1979 a new Penal Code was introduced.

The effects of these changes on the judicial administration of first instance of the 1960s are discussed in Chapter Nine. Differences between the daily procedure of the Municipal Tribunals in Havana and that of the Base Tribunals of the 1960s are highlighted on the basis of hearings I attended in Havana.

Notes to Chapter One

1. Cf. Fernando Portuondo, *Historia de Cuba, 1492-1898*, Editorial Pueblo y Educación, Havana, 1965, pp. 54-102; *Historia de Cuba*, Dirección Política de las FAR (Clasificación Biblioteca Nacional), 3rd ed., 1967; Ramiro Guerra, *Manual de Historia de Cuba (desde su descubrimiento hasta 1868)*, Instituto Cubano del Libro, Havana, 1973, pp. 1-54.
2. Eduardo Galeano, *Open Veins of Latin America*, Monthly Review Press, New York & London, 1974, pp. 82-83.
3. José Martí, cited *ibid.*, p. 83.
4. Hugh Thomas, *Cuba, The Pursuit of Freedom*, Harper & Row, New York, 1971, pp. 449-455.
5. *Idem*, *The Cuban Revolution*, Harper & Row, New York, 1977, pp. 3-5, 247-248.
6. For the relevant non-Cuban literature see : Max Azicri, 'Crime and Law under Socialism: The 1979 Cuban Penal Code', *Review of Socialist Law*, Vol. 6, 1980, Issue 1 (March), pp. 5-31; *id.*, 'An Introduction to Cuban Socialist Law', 'Change and Institutionalization in the Revolutionary Process: The Cuban Legal System in the 1970s', 'The Cuban Family Code: Some Observations on its Innovations and Continuities', *Review of Socialist Law*, Vol. 6, 1980, Issue 2 (June), pp. 153-183; Jesse Berman, 'The Cuban Popular Tribunals', *Columbia Law Review*, Vol. 69, December 1969, No. 8; David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba'. Ph.D. thesis, University of Surrey, 1973; William Riquez-Iribarren, 'Derecho, Justicia y Ley en Cuba', *Actas Procesales*, 1975, Vol. 14, Nrs. 40-42, pp. 17-197; Luis Salas, *Social Control and Deviance in Cuba*, Praeger, New York, 1979.
In 1980 I wrote an overview article on the Cuban Criminal Procedure Law of 1977: Adèle van der Plas, 'Cuban Criminal Procedure: An Overview', *Review of Socialist Law*, Vol. 6, 1980, Issue 1, March, pp. 31-51.
See further the following note.
7. Cf. John Griffith, 'Recht en Ontwikkeling', *Recht en Kritiek*, Jrg.9, Nr. 2, June 1983, pp. 175-191. Griffith uses the term 'anthropological' approach to law in contrast to the so-called 'instrumentalist' approach. The latter totally neglects the context within which legal rules are observed.
8. Cf. in this connection the interesting overview article by Francis G. Snijder, 'Law and Development in the light of dependency theory', *Law & Society Review*, Vol. 14, No. 3, Spring 1980, pp. 723-804.

9. For a sample of literature on Marxism and law, see : Maureen Cain & Alan Hunt, **Marx and Engels on Law**, Academic Press, London & New York, 1979; Colin Sumner, **Reading Ideologies, an investigation into the Marxist theory of ideology and law**, Academic Press, London & New York, 1979; Norbert Reich, **Marxistische Rechtstheorie, Recht und Staat**, J.C.B.Mohr (Paul Siebeck), Tübingen, 1973; Michel Miaille, **Une Introduction Critique au Droit**, François Maspero, Paris, 1978.
10. Cf., e.g. Barbara Isaacman & Allen Isaacman, 'A Socialist legal system in the making: Mozambique before and after Independence', ed. Richard L. Abel, Vol. 2, **Comparative Studies**, Academic Press, New York, 1982.
11. José A. Grillo Longoria, **Los Delitos en Especie**, Tomo I & II, Editorial Ciencias Sociales, Havana, 1982; Aldo Prieto Morales, **Derecho Procesal Penal**, Tomo I & II, Editorial Orbe, Havana, 1976-77; **Revista Cubana de Derecho**, Organo de la Unión Nacional de Juristas de Cuba, Havana, Cuba; **Revista Jurídica**, La Fiscalía General de la República, Havana, Cuba.
12. For a report of this trip see 'Justitie op Cuba', **KRI**, Maandblad Reklassering, Jrg. 10, Nr. 7, August 1980, pp. 11-14; Han Janse de Jong & Adèle van der Plas, 'Strafrechtspleging en Cuba', **Recht en Kritiek**, 1/1981, pp. 52-98; Willem de Haan, 'Institutionalisering van Volksrechtspraak in Cuba', **Delikt en Delinkwent**, 11, 1981, Afl. 5, pp. 345-363.
13. Peter L. Berger & Thomas Luckmann, **The Social Construction of Social Reality**, Penguin, 1973, pp. 145-146.

**TRANSITION 1959-1962:
FROM GREEN REVOLUTION TO SOCIALIST REVOLUTION**

CRIMINAL JUSTICE AS A WEAPON AGAINST COUNTER-REVOLUTIONARIES

On January 1st the Movement of the 26th of July was victorious over the dictator Batista. The road was clear for carrying out the ideals and programme of the movement. The subsequent profound process of transformation through which Cuban society went was deeply affected by changes in the sphere of international relations. It was accompanied by various internal power conflicts. It left its mark on the existing legal system.

In this chapter the first three years of the revolution are considered, as well as the changes which took place in these years in the politically most sensitive area of criminal justice: the trial of political -- i.e., counter-revolutionary -- crimes.

The existing system of judicial organisation was left temporarily as it was in 1959. The main point in the programme of the opponents of Batista was the restoration of 'bourgeois democracy'¹ with the closely linked demand to give genuine implementation to the Constitution that had been introduced in Cuba in 1940.² As yet there was no question of the Movement of the 26th of July's having its own Marxist-Leninist ideology. It was not until spring 1961 that Fidel Castro first made explicit reference to a socialist revolution.³ Nor had definite ideas been developed on the fundamental restructuring of the legal system. The profound transformation of Cuban society after 1959 was not primarily situated in the area of the administration of justice. There were other priorities in the 1960s. The main one was guaranteeing the safety of the revolution: developing the economy, organising defence against foreign aggression, and creating a politically conscious population. It was this last point in particular, I believe, which led to the experiments with tribunals at a neighbourhood level in the 1960s.

Temporarily leaving a mass of legal institutions intact after 1959 did not mean that the administration of justice remained unaltered. First of all there were the 'revolutionary' tribunals, which saw their area of jurisdiction extended to the whole territory of Cuba with the military success of the rebel forces. In early 1959 these tribunals tried only war criminals and others who had been in the service of the Batista regime.⁴ In the autumn of 1959, however, they were also empowered to try counter-revolutionary crimes. This category was later extended via the traditional offences involving the security of the state to include certain malpractices and economic offences which had previously not had any special status.⁵ Arising from the practices of guerrilla warfare, the revolutionary tribunals formed a sort of 'special' judicial administration beside the 'regular' one. As long as the threat of counter-revolutionary violence and aggression continued to grow, their existence was assured.

There were also changes within the 'regular' administration of justice. The rapidly changing political circumstances immediately after 1959 were reflected in conflicts within the legal profession. Cuban lawyers spoke of two tendencies: the liberal lawyers, and the lawyers who continued to support the revolution when it entered a more radical phase. The first group, the liberal lawyers, was initially favourably disposed towards the revolution in the fight for bourgeois democracy and the restoration of the 1940 Constitution. When the political events began to take a clearly socialist and Marxist-Leninist course, however, they found this development as unacceptable as the increasing hold which the government was gaining on the judicial administration.⁶

The first three years of the revolution were a climax in this respect. They were years of rapid and profound political change. In May 1959 Fidel Castro was still denying that the Cuban revolution was a communist one. 'The revolution was a democratic one,' he said, 'which gave the people not only food but freedom too'.⁷ It was in April 1961 -- two years later --, that he called the Cuban revolution for the first time in public a socialist one.

A month earlier he had characterised the earlier aspirations of the Movement of the 26th of July as *petit bourgeois* in an interview with the Italian paper, *L'Unità*. His comments on the Cuban Communist Party in this interview were as follows:

It is the only party that has always clearly proclaimed the necessity of a radical change in the structure of social relationships. It is also true that at first the Communists distrusted me and us rebels. It was a justified distrust, an absolutely correct position... because we of the Sierra... were still full of *petit bourgeois* prejudices and defects, despite Marxist reading... Then we came together, we understood each other and began to collaborate.⁸

The difference between these statements of Castro stems from the complicated process of radicalisation which the Cuban revolution has undergone through the years. In fact, an acceleration in this process could be dated to the first Agrarian Reform Law of May 17th 1959. As we shall see, this law, which had as one of its consequences the nationalisation of foreign concerns, marked the beginning of the eventual break with the United States of America. On the domestic front, this law and other measures led to a political power struggle which finally resulted in a defeat for the so-called liberals. In the spring of 1959 political power in Cuba was in the hands of three groups: the rebel army under Castro, the communists and the liberals. By the spring of 1961 the liberals had left or had disappeared from their positions of importance. The new government consisted of an alliance between members of the Movement of the 26th of July and the communists.⁹ Resistance to this process on the part of members of the Movement of the 26th of July and others was repressed with an increasingly harder hand.¹⁰ The political power struggle at work behind this process of change was also clearly visible in the relations between the government and the judiciary.¹¹ Furthermore, it led to all kinds of conflicts within the legal profession itself.

What exactly took place in this period in the sphere of the administration of justice? What was the relation between these changes and other significant events of these years? What was the reaction of the legal profession to these transformations?

THE SPECIAL ADMINISTRATION OF JUSTICE FOR WAR CRIMINALS: THE TRIAL OF THE PILOTS OF BATISTA

Immediately after the victory of the revolution on January 1st 1959 the new government kept its promise and reintroduced the 1940 Constitution. However, in the same month this Constitution was amended in a number of important ways. A major problem in the first months was that of the trial of all those who had carried out crimes against the people while in the service of the dictator, Batista. The offences involved here were tried by a special Revolutionary Tribunal according to regulations issued by the rebel army in 1958.¹²

This trial was conducted in principle by members of the armed forces.¹³ No legal expertise was required of them.¹⁴ The procedure was largely based on a Criminal Procedure Law, revised to match the war-time conditions, which had been promulgated in 1896 by the resistance during the Cuban war of independence against Spain.¹⁵

The other main constitutional amendments which were passed by the new Council of Ministers in January 1959 were also intended to facilitate the trial of the followers of Batista. For example, in the middle of January the constitutional ban on applying penal legislation retrospectively was lifted in the case of offences which had been committed in the service of the defeated dictator. At the same time, the penalty of confiscation of all one's goods was declared applicable for crimes committed during the Batista dictatorship which were against the national economy and the general interest. The ban on the death penalty was lifted for the exceptional cases of members of Batista's army or their allies.¹⁶ In early February a number of important procedural and constitutional safeguards, including the right of *habeas corpus*, were denied to the same category of persons.¹⁷ The Fundamental Law (*Ley Fundamental*), which replaced the Constitution on February 7th 1959, included these exceptions or continued them on a temporary basis via new amendments.¹⁸ These constitutional amendments were later justified by the government, when it called a temporary halt to the revolutionary tribunals on July 9th 1959, in the following terms:

With the success of the Revolution it was necessary to try the most serious offenders of the Tyranny, in accordance with the penal regulations laid down by the High Command of the Rebel Army, to ensure the course of justice and to prevent the mourners of the innumerable victims of the official terror of the overthrown regime from taking the law into their own hands.... It is certain... that the judicial administration was in an obviously disorganised state at that time, which was the reason why the Government organised the Revolutionary tribunals...¹⁹

The temporary powers which the government assumed in order to dismiss judges and other public officers probably had the same motivation: the reorganisation of the judiciary and the elimination of the pro-Batista elements from its ranks.²⁰ In the eyes of the new government, the judiciary was one of the few old state institutions to survive the victory of the revolution, despite the fact that a large number of its members had compromised themselves in the pre-revolutionary period by aligning themselves with the interests of the overthrown tyrant.²¹

Although the trial of supporters of the preceding regime caused *few* political problems in Cuba, the way in which some of these trials was carried out did cause some consternation.²² A striking example is the trial of ex-pilots of Batista held in

February and March 1959.²³ On February 13th forty-five members of Batista's air force stood on trial before a revolutionary tribunal in Santiago de Cuba. They were accused of genocide, murder and a number of other crimes associated with the carrying out of six hundred air raids on inhabited areas of East Cuba in late 1958. These air raids had cost the lives of eight civilians; there were sixteen wounded and considerable material damage had been done. The prosecutor called for the death sentence for forty of them, and a sentence of ten years for five technicians. The president of the tribunal was an army major, while two other judges were officers in the army. The seven members of the defence were led by an army captain.

The trial took up a relatively great amount of time in view of the large number of statements by witnesses. The verdict, reached on March 2nd 1959, was a dismissal of the charges for all concerned. The tribunal had arrived at this decision on a number of grounds. First of all, it was claimed, Castro's forces were in the villages which came under attack. The raids had thus been directed not against civilian but against military targets. Secondly, there was no evidence for any attempt to destroy racial, religious or national groups, i.e. there was no proof of genocide. In addition the prosecutor had been unable to prove murder with premeditation. Last but not least, the tribunal found the individual guilt of the various accused not proven. It proved impossible to ascertain which individuals were responsible for the deaths and damage for which they collectively stood on trial.

The reaction of the new revolutionary government to this verdict was one of censure and indignation.²⁴ The very next day, March 3rd 1959, Fidel Castro made the following statement:

The revolutionary tribunal has made a big mistake by acquitting these criminal pilots. Such an action renders Batista a good service and it is a way of encouraging other pilots to work for Trujillo and other enemies of the Revolution. These pilots would then be in a position to bombard anew the civil population of Cuba.

It would be an act of extreme ingenuousness for a people and for a revolution to set free precisely those who were the most cowardly assassins in the service of the dictatorship. The revolutionary tribunals do not need any proofs other than the cities and towns that were devastated and the dozens of corpses of children and women that were produced by bullets and bombs. Or are we going to give a new opportunity to those miserable creatures to resume flying against Cuba and let them write once more their sinister history of mourning and tragedy from some base in the Dominican Republic or any other country where friends of tyranny have been given asylum? The Revolution was not made for that, and those of us who are leading it cannot permit such an error to be made.

This is a matter pertaining to the security of the citizenry and for this reason we are obliged to intervene in this problem, since we cannot remain silent after such a venture.

The people of Santiago de Cuba should not become restless, because the sentence will be appealed, and a just tribunal shall try the case anew.²⁵

Castro announced a retrial. This was a decision which met with gigantic protests from abroad, especially from the United States of America, and which was also criticised from within Cuba itself, though the latter criticism was mild by comparison.²⁶ Cuban bar associations, for example, expressed their concern that in this way

the government was failing to respect the principle of *ne bis in idem*. Nevertheless, on March 7th the case came up for review. This time the tribunal consisted of five new members, all of whom were majors in the army. The prosecutor and the head of the defence were the same as in the first trial.²⁷ In this hearing forty-three out of the forty-five accused were found guilty of the charges. Twenty of them received prison sentences of thirty years, nine received twenty years and two were sentenced to two years. There was no doubt that these sentences met with the approval of the new government. On March 23rd Castro publicly expressed his approval:

We shall be respectful of the law, but of the revolutionary law: respectful of rights, but of revolutionary rights -- not the old rights, but the new rights we are going to make. For the old law, no respect; for the new law, respect. Who has the right to modify the constitution? The majority. Who has the majority? The revolution.²⁸

While the first tribunal had presented an extensive juridical motivation against an ill-considered condemnation on the basis of the charges, the second tribunal had more or less unconditionally capitulated. Only the plea for capital punishment was watered down in the final verdict.²⁹

The criticism from Cuba itself was thus relatively mild, compared with that from the United States of America, for instance.³⁰ One reason for this lies in the difference between the Latin American legal cultural tradition and that of the Anglo-American world. In the former, 'justice' tends to be situated in terms of a moral norm, the definition of what is right and legitimate in terms of content, rather than in terms of guarantees of legal procedure. Justice is more concerned with the content of doing right than with formal procedure.³¹

There is another factor, of a more political nature, that is relevant in this context. The intervention of Castro seems to have increased his popularity among the Cuban population rather than to have diminished it.³² The trial concerned defendants who were seen as supporters of a corrupt and tyrannical regime that had now been overthrown. The cavalier fashion in which certain constitutional and juridical restrictions were swept aside in these proceedings had little influence upon public opinion. The Cuban people's involvement in the pre-revolutionary institutions and official legislation had been limited, and they had not had much benefit from them anyway.³³

Besides, despite all the guarantees of human rights and legal procedures provided by the Constitution, the period before 1959 was marked by an appalling lack of justice. First of all, except for a brief period, the Constitution had been put out of action since 1952. Corruption ran riot in the state apparatus.³⁴ The overwhelming majority of the population lived in extreme poverty without educational facilities, adequate nutrition and housing. The costs of legal aid were in such circumstances simply unthinkable. Only a small percentage of the population was rich. It is thus hardly surprising that the Cuban people raised no objections to the course of events described above. On the contrary, the new revolutionary government, identified with the person of Fidel Castro, was very popular. This popularity was not due to Castro's charismatic leadership alone.³⁵ The revolutionary government stood in the first instance for the guerilleros who had driven out the corrupt Batista regime. Moreover, the programme of the Movement of the 26th of July promised to put an end to all kinds of social evils, a promise which seemed to have been made seriously. Rents of less than 100 dollars had already been cut by half; purchasing power in the towns had risen by a third; telephone prices had been cut; farmers with small

holdings or no holdings at all in Pinar del Rio had received land grants.³⁶ In the eyes of the Cuban public, Castro's intervention in the trial of Batista's pilots was just one more proof of his intention to treat 'practical justice' more seriously than constitutional and procedural red tape.

A number of Cuban lawyers, however, viewed the events with professional disapproval. An example is provided by the protest of the bar association in Santiago de Cuba against the course of the trial.³⁷ Criticism of this kind was later to lead to open conflicts.

INCREASING INFLUENCE OF THE COMMUNIST PARTY

The exceptional legislation and the 'special criminal justice' were not restricted to the group of Batista supporters. As has already been mentioned, the first Agrarian Reform Law of May 17th 1959 heralded the start of an accelerated process of radicalisation in Cuba. The agrarian reform is held to be the first and most important class issue of the revolution.³⁸ The first Agrarian Reform Law, which had already been promised in the programme of the Movement of the 26th of July, concentrated on the implementation of changes in the structure of land ownership. It affected around 40 per cent of the Cuban land which was in use for agriculture and cattle farming. Large landholdings (more than 1,000 acres) were confiscated and passed into the hands of agricultural cooperatives or were divided among small farmers or those who had previously held no land. The agricultural cooperatives were provisionally run by the National Institute for Agrarian Reform, the INRA.³⁹

The declaration of this law led to a wave of protest from home and abroad, particularly from the United States of America. After all, 70 per cent of Cuban agricultural land was in North American hands at the time of the revolution. The conflict between the various economic interests of the United States of America and the implementation of socio-economic reforms in Cuba eventually led to a definitive rift in relations between the two nations. During 1960 all North American concerns were nationalised, while the United States imposed a total economic boycott on Cuba. Finally diplomatic relations between the two countries were broken and the United States of America proceeded to support acts of aggression against the Cuban revolution. The deterioration of relations with North America ran parallel with a tightening of the economic and political links with the Soviet Union.

These shifts in international relations were connected with domestic political relations and affected them significantly. In what follows I shall try to throw some light on these connections and on their implications for criminal justice and the exodus of a large number of lawyers. An important factor in these developments is the position of the Cuban communist party. Why did the struggle between moderates and radicals in this period of the Cuban revolution rapidly take on the shape of a power struggle between liberals and communists?

To recapitulate: when the Movement of the 26th of July was victorious, there were three powerful political groups in Cuba - Castro's rebel army, the communists and the liberals. The communists, who were united in the Partido Socialista Popular (PSP), were not very popular with the rebel army at first. They had not made a great contribution to the defeat of Batista. The first negotiations between the PSP and Fidel Castro appear to have first taken place in the summer of 1958.⁴⁰ Although the PSP was the only one of the old parties which was allowed to exist after January 2nd 1959, it was not included in the newly created government. The Movement of the 26th of July viewed the communists with suspicion. In spring 1959

Castro was still adopting an anti-communist stance in public. On May 21st, for example, he said:

Our revolution is neither capitalist nor Communist!... What matters to us, who are attached to a humanist doctrine, are the people, and we mobilise all our energies for the good of the majority. We want to free mankind of every dogma; we want to make the economy and society free without terrorising or forcing anyone. Today's world situation confronts us with the choice between capitalism which starves people and communism which solves their economic problems but suppresses their freedoms which are dear to them...Capitalism sacrifices the human being, communism with its totalitarian conceptions sacrifices human rights. We agree neither with the one nor the other...Our revolution is not red but olive green. It bears the colour of the rebel army from the Sierra Maestra.⁴¹

Enzensberger calls the Movement of the 26th of July very radical left wing as far as strategy and tactics are concerned, but its programme was strongly coloured by the 'national bourgeoisie' and lacked a coherent ideology. Its main principles can be found in the speech which Castro once made before the Court of Santiago: 'History will absolve me'. The demands listed there concern the restoration of bourgeois democracy (I have already referred to the restoration of the Constitution); moderate agrarian reform; favourable treatment of the small farmers; the setting up of agricultural cooperatives; compensation for large landowners; reduction of rents; a programme for social housing; an attack on corruption in the state apparatus; educational reform; and nationalisation of the public services.⁴²

After the military defeat of Batista's army, the Movement of the 26th of July was faced with new problems at the start of 1959. The vacuum which arose with the disappearance of the old state apparatus and all political groups, with the exception of the PSP, could not simply be filled by the Movement. The Movement of the 26th of July lacked a structured political organisation. Its active membership consisted of a relatively small, inexperienced rebel army. Moreover, the differences in political background within the movement soon began to become apparent with the first social reform measures to implement the basic programme. The implementation of the basic demands of the Movement, largely influenced by the shift in Cuba's international position which resulted from these measures, required a more sweeping radicalisation than the supporters of the Movement of the 26th of July were prepared to accept. In the first three years, the ensuing confrontation between so-called radical and moderate tendencies within the revolution assumed the form of a struggle between communists and liberals. This can be seen in the forced resignation of the President of the revolutionary government, Urrutia, in July 1959 after he had made anti-communist remarks on television,⁴³ or in the notorious trial of Hubert Matos at the end of 1959. Matos, the military governor of the province of Camagüey, had resigned his high position in protest against alleged communist infiltration.

By the end of 1959 the Movement of the 26th of July had in fact ceased to exist. Looking back in an interview with Simone de Beauvoir in March 1960, Castro said:

Why, we asked, doesn't the Revolution have cadres, no apparatus? Allowing for all differences, the replies coincided in the essential points: the Movement of July 26, which had carried the Revolution, did have an apparatus but it was a petit bourgeois apparatus which

could not keep up with the continuation of the Revolution, with its radicalisation and particularly with the progressing agrarian reform. That is why the Movement was dropped.⁴⁴

In the meantime, more and more key positions in the state apparatus had been taken over by socialists. In July 1959 Osvaldo Dorticós replaced Urrutia as President. Nuñez Jimenez assumed the leadership of the INRA, Raúl Roa became Minister of Foreign Affairs and Raúl Castro, the brother of Fidel Castro, became Minister of Defence. All four were closely associated with the PSP. In the vacuum of political organisation, what the PSP had to offer -- a politically trained cadre and an organised party apparatus -- could no longer be ignored. The orientation of the communists towards Moscow was also important at a time of changing international relations. These were the main reasons for the fact that the so-called conflict between communists and liberals ended in a victory for the communists.

LAND REFORM AND THE FIRST COUNTER-REVOLUTIONARY CRIMES

The process of radicalisation of the Cuban revolution certainly did not run smoothly. It was accompanied by an internal political power struggle, dismissals and opposition as well as growing armed resistance from home and abroad. It is obvious that the reactions to this unrest will have been apparent in the field of political trials, as can be seen in the examples presented below.

Partly in reaction to the declaration of the Land Reform Law of May 17th 1959 a chain of events was set in motion which illustrates this. Within Cuba, land-owners organised all kinds of protest actions against the law: buying transmission time, organising demonstrations, etc. The United States of America registered an official protest on June 11th 1959.⁴⁵ On the next day, Castro sacked a number of his ministers who were known for their moderate political opinions.⁴⁶ He then opened the attack on the domestic critics of the law. In a television speech he called them traitors to the revolution, who were only interested in their own well-being.⁴⁷ As a sort of direct answer to this speech a number of bombs exploded in Havana at the same moment.⁴⁸ The subsequent arrest of what were mainly supporters of Batista was the signal for the first direct confrontation between the government and the judiciary, as one of those arrested was a leading right wing lawyer, Enrique Llada Ortiz. When the Havana court (La Audiencia de Havana) ordered his release, the government tried to prevent this via the Ministry of Justice. The Supreme Court intervened and stated that the judges were within their rights: 'Was the right of *habeas corpus* not one of those very rights defended by the revolution?', it asked.⁴⁹ The result was that a conflict between the judiciary and the government concerning the handling of counter-revolutionary acts of violence in the country was for the time being settled in favour of the judiciary. These events did immediately lead to a significant amendment of the Constitution, however. A major amendment to the Fundamental Law increased the number of capital offences in July 1959. This category was extended to include 'counter-revolutionaries' and those who had harmed the national economy or the public interest.⁵⁰

The broad term 'counter-revolutionary' was specified in terms of particular offences. As the commentary on a new law promulgated for this purpose indicated, failure to define the term would be an assault on the possession of individual liberty defended by the revolution.⁵¹ In apparent contradiction with the increasing political tension which surrounded these events was the decision taken in the same period regarding the special 'revolutionary tribunals'. The same law which introduced

the new regulations on capital offences dismantled the revolutionary tribunals for the time being. The only reservation was that the council of ministers could call these tribunals to life again if they were required for the defence of the revolution.⁵² It took only six months for this clause to be used.

The introduction of the broad category 'counter-revolutionary' together with its detailed specification, and the simultaneous dismissal and recall of the revolutionary tribunals are contradictions in this law of July 7th 1959. They spring directly from the conflicts and compromises between, on the one hand, radical lawyers and the government, and on the other hand, liberal lawyers. At a deeper level, this inconsistency was due to the process of radicalisation to which the Cuban revolution was subject. Legal rights such as the protection of individual liberty by the principle of legality, and guarantees for the procedure of criminal justice were important aims of the revolution. The fulfilment of certain other promises which the revolution had made, however, such as the carrying out of social changes for the benefit of the poorest sectors of the population, provoked such violent opposition that a choice between the two positions seemed under the given circumstances inevitable. The law of July 7th was the expression of a phase in this process.

THE TRIAL OF HUBERT MATOS BY A REVOLUTIONARY TRIBUNAL

The political antagonisms quickly sharpened. The growth of internal and external opposition expressed itself in a variety of ways. The head of the air force under Castro, Díaz Lanz, left for the United States of America at the end of June 1959, where he stated before the Senate Internal Security Subcommittee that the communists had taken over power in Cuba. The first open acts of aggression from Florida started in the autumn with a bomb attack on a sugar factory in Pinar del Rio. After England had refused to deliver fighter planes in September 1959, Cuba began to hint openly at the possibility of other arms suppliers, such as the U.S.S.R. This was on 17th October 1959. The first bomb attacks on Cuba had been on the 11th of October. On the 15th of October Raúl Castro was appointed Minister of Defence.⁵³

This had consequences for the administration of criminal justice. The government found that the situation had by now become so serious that it was necessary to make use of its authority to resort to the 'revolutionary courts'.⁵⁴ The 'special judicial administration' which had been used against the supporters of the defeated Batista regime was now reintroduced into the political struggle as a legal instrument. The opponents were no longer the Batista supporters, but the 'counter-revolutionaries': the Cubans who had gone into exile and were now acting against Cuba from bases in Florida, and the opponents of the new regime who were operating from within Cuba itself. The latter group included both those Cubans who had opposed the revolutionary changes from the first and those whose opposition dated from the increased radicalisation. Among the latter were a number of 'liberals', mainly members of the Cuban middle class, who were afraid of increasing communist influence, as well as some ex-members of the Movement of the 26th of July.

One of the most well known was Hubert Matos, whose trial in autumn 1959 attracted considerable attention. Matos had been a member of the rebel army in the Sierra Maestra. He was appointed military governor of the province of Camagüey in 1959. This was an influential and important position in an area which had to face considerable counter-revolutionary activities as a result of the agrarian reforms carried out there.⁵⁵ Matos' disapproval of the increasing communist influence came into the open in a speech that he made on June 8th 1959.⁵⁶ It also came out that

he had had contact with important figures in the underground opposition to Castro, such as the ex-Minister of Agriculture, Rogelio González Corso.⁵⁷

The appointment of Raúl Castro as Minister of Defence on October 15th was the last straw for Matos. Four days later he offered his resignation.⁵⁸ The next day he and the officers who had joined him in resigning were arrested by Castro in person, accused of 'treason by opposing the agrarian reform'.⁵⁹ As a direct political consequence of this, the complete leadership of the Movement of the 26th of July in Camagüey resigned,⁶⁰ to be followed by the resignation of a new group of 'moderates' in the government a month later.⁶¹ It may not be fortuitous that a day later a B-25 bomber dropped thousands of pamphlets over Havana stating that Castro was a communist. They were signed by Díaz Lanz, the exiled ex-chief of the air force.⁶²

Matos' trial began on December 11th 1959 before a revolutionary tribunal. These tribunals had been in operation again since November 2nd 1959, some two weeks after the arrest of Matos, when the council of ministers had empowered these tribunals, which had temporarily disappeared from the scene, to try counter-revolutionary crimes.⁶³ The president of the tribunal which tried Matos was Major Sergio del Valle, head of the Cuban air force at the time. The other members of the tribunal and the Public Prosecutor held similar military positions or had a similar record in the rebel army.⁶⁴ Fidel and Raúl Castro appeared in person as witnesses in what was a blatantly political trial.⁶⁵

Fidel spoke of a 'counter-revolutionary conspiracy' now that Matos had made his resignation public in an attempt to involve the military leadership and the population of Camagüey in his resistance to the government.⁶⁶ The verdict was twenty years imprisonment.⁶⁷ In his book *Cuba*, Suárez writes:

We know very little about the real aims of this (Matos) resignation. What we do know is that Fidel and his associates were certain that Matos was engineering a plot that would have taken most of his provincial military staff officers with him. Camagüey was a very sensitive region at the time, and Matos had made his move at a dangerous moment, before Fidel's power had been fully consolidated. Moreover, Castro was then working out his policy of 'unity', which was neither pro- nor anti-Communist, but which included the Communists in the power structure. Fidel, suspicious as always of the United States, feared that Matos was getting encouragement from the Americans. Anyway, as Castro said at the trial, Matos was 'a false revolutionary'.⁶⁸

As far as criminal justice was concerned, this was a new escalation of events which led, among other things, to the reintroduction of the revolutionary tribunals. These were still military tribunals. The members were appointed by the Minister of Defence. If the prosecutor of the revolutionary army requested it, these military members could be joined by civilian members of the legal profession. The procedure was in accordance with a special legal regulation of the Criminal Procedure Law of 1896, i.e. a brief, summary and unwritten procedure.⁶⁹ There was a distinction between Revolutionary Tribunals and Review Councils or Appeal Councils. The defendant had the right of appeal against a sentence in the first instance. A death sentence was officially dealt with by an appeal court.⁷⁰

At the end of December an extension took place of the category of persons liable to be subject to confiscation of all their goods. The new category included 'counter-revolutionaries' and others, such as those found guilty of conspiring

abroad against the government.⁷¹ This marked a new and important stage in the process of radicalisation. Former allies could now be tried and sentenced as enemies of the revolution. Still, the popularity of Fidel Castro and his new government among the Cuban public kept on growing.⁷²

THE CUBAN REVOLUTION IS A 'SOCIALIST' REVOLUTION

The antagonisms described above became more acute in 1960 and 1961. The first official visit of a Soviet politician to Cuba took place when Mikoyan arrived on January 31st 1960. From the negotiations a trade agreement emerged, in which the U.S.S.R. pledged itself to buy sugar, to lend currency and to supply oil and other materials.⁷³ In June 1960 this eventually led to a serious conflict with the North American oil companies on Cuba. There had already been an attempt to control the activities of these companies by means of an Oil Law.⁷⁴ After Cuba had concluded an agreement with the Soviet Union to buy crude oil from the U.S.S.R. at a price below that charged by the oil multinationals' refineries on Cuba, the latter refused to refine Russian oil. This marked the beginning of a new escalation in the conflicts with the United States of America.

The Cubans reacted to the refusal of the refineries by confiscating them. A week later the United States of America cancelled their order for sugar, Cuba's main export product, for that year.⁷⁵ In the following months, the Cuban government proceeded to nationalise all North American and all large, private Cuban concerns. The Cuban telephone and electricity companies which were in North American hands⁷⁶ and the North American oil refineries and sugar factories were taken over in August. In October the large Cuban sugar factories followed suit.⁷⁷ In the meantime, the United States of America, Cuba's biggest supplier and customer, stopped all export to Cuba. Obviously, Cuba had to find new markets and new trading partners for her sugar if she was to survive. It is thus hardly surprising that a new trade agreement was made with the U.S.S.R. in December 1960.⁷⁸ This followed the pattern of trade relations that Cuba had already established with other socialist countries, such as the People's Republic of China.⁷⁹ Soviet tanks and armaments were publicly displayed during a military parade in Havana on January 1st 1961.⁸⁰

At home, the resistance showed a sharp increase in intensity and violence. In the spring of 1960 the North American President, Eisenhower, had already given the CIA a free hand in Cuba. During that year Cuban refugees were trained in guerrilla and other types of fighting in Guatemala and Panama.⁸¹ At the same time the CIA established contacts with the opposition in Cuba. One of the oppositional groups, the Movement of Revolutionary Liberation (MRR), was led by Díaz Lanz, the ex-chief of the Cuban air force, to whom reference has already been made. In April 1960 the MRR appeared to be the best organised opposition movement in Cuba, enjoying excellent relations with the United States of America.

Besides the familiar figure of Díaz Lanz, other members of the organised opposition had originally worked with Castro, such as Sergio Sanjenis, who had been head of intelligence in Havana for a short period.⁸² By October 1960 some 1,000 rebels had assembled in Escambray, an inaccessible mountainous area in central Cuba.⁸³ There were also bomb attacks, arson, sabotage and threats in increasing frequency. Many of these active opponents appear to have been arrested and tried in the winter of 1960-61.⁸⁴ The decisive defeat of the counter-revolution supported by the North American government was the holding back of the invasion at the Bay of Pigs

on April 17th 1961.⁸⁵ On the 16th of April 1961 Castro had called the Cuban revolution 'socialist' for the first time.

LAW AS INSTRUMENT THE BREAK WITHIN THE BAR AND THE JUDICIARY

The political tension and changes of these years made their presence felt in criminal justice and other areas of the law. The same can be said of the government's increasing need to tighten its grip on the economy and the public administration. The operation of the Revolutionary Tribunals led at the end of 1960 to a dispute over their competence between the tribunals and the Supreme Court. In the same year the conflict between so-called moderate and radical lawyers reached its peak. A large number of members of the legal profession left, while those who remained dedicated themselves to the development of a new ideology in terms of which their function could be situated.

The criminal legislation passed in this period reflected the bitter struggle against the counter-revolution and the huge extension of governmental control in the economy. Early in 1960 a law was promulgated which extended the category of economic offences. Malpractices in trade and industry could be defined as counter-revolutionary crimes under certain aggravating circumstances, such as serious national economic recess or hostile relations with another country.⁸⁶ In February of the same year the number of types of official misconduct was increased and the related sentences were made more severe. Misuse of public funds, for example, was now a counter-revolutionary crime and would be tried as such by the Revolutionary Tribunals.⁸⁷ The same applied to the civil offence of arson if it affected sugar plantations or other agricultural areas.⁸⁸ In July new economic offences were declared counter-revolutionary and in a number of cases the relevant penalties were increased.⁸⁹ The enormous increase of counter-revolutionary acts of violence in the autumn of 1960 was the reason for a law passed in January 1961,⁹⁰ which increased the penalties for counter-revolutionary offences such as bomb attacks and arson to include the death penalty. The commentary on the law referred to the necessity of repressing clandestine counter-revolutionary activities, which were in some cases financed and encouraged by foreign imperialist agents.⁹¹ In November the government went even further and changed the death penalty from a maximum to a minimum for these offences, as well as for a number of others, such as the formation of armed groups for the purpose of committing crimes against the security of the nation or for gaining entry into the country.⁹² The lending of assistance to saboteurs and other counter-revolutionaries could be punished with confiscation of all one's goods.⁹³

In the same period the so-called struggle between moderate lawyers, on the one hand, and radical lawyers and the Revolutionary Government, on the other hand, became accentuated.⁹⁴ In July 1960 a conflict which had probably been going on for some time within the Cuban bar emerged into the open with actions in Havana.

The last elections for the Governing Board of the Bar Association of Havana, which had been in existence for a century, had taken place in August 1958. New elections were planned for spring 1961. However, a year earlier -- on July 5th 1960, to be precise --, an action on the part of 'revolutionary' lawyers had blocked this plan. In the night hours a group of lawyers occupied the organisation's office. They claimed to have taken over the running of the organisation and labelled the mem-

bers of the old board traitors of the revolution, calling one member at any rate by his full name.⁹⁵ In December of the same year a new General Meeting of the Association was held, at which new statutes were adopted and a new executive committee was chosen. A year later, in honour of a 'Lawyers' Day' held on June 8th 1961, the new Bar Association of Havana declared itself to be in solidarity with 'socialism', the People and the government party of that time, the *Organizaciones Revolucionarias Integradas* (Integrated Revolutionary Organisations, or O.R.I.):

What we can say about this of June 8 is that it has served to show that lawyers too are becoming impregnated with the new morality, that they are ready to combat tirelessly all tendencies towards favouritism and nepotism and all outrages to truth, that their device is one and one only: Towards socialism, with the People, under the guidance of the O.R.I.⁹⁶

The old, displaced executive committee of the Havana Bar continued to hold meetings, at first outside the official offices of the association and later in exile. Like a large number of other lawyers, its members left the country. From Miami they issued declarations abroad sharply condemning the situation in Cuba.⁹⁷

There were also conflicts between the government and radical judges, on the one hand, and the more liberal members of the legal profession, on the other hand. Looking back over the previous years on September 1st 1961, the Public Prosecutor of the Supreme Court, Dr. Santiago Cuba, accused the Cuban judiciary of having a counterrevolutionary attitude. By means of legal verdicts, so he claimed, the laws had been interpreted in an unfavourable way for the people. For example, the Court of Constitutional Guarantees had granted far too much compensation in cases of nationalisation: more than 15 million pesos in less than a year. This figure represented the compensation which the Cuba people had had to pay the big landowners, which were often foreign companies. Many more appeals were accepted by the Court from big landowners in this period than appeals which were lodged by the state body, the INRA. Dr. Santiago Cuba claimed that from the INRA's appeals fifty-one were turned down and only nine were accepted, while from the appeals lodged by big landowners and other proprietors sixty-four were accepted and only three were turned down.⁹⁸

The conflicts with and within the judiciary escalated to become a dispute about the respective powers of the Revolutionary Tribunals and the Supreme Court. In October 1960 the Court for Constitutional and Social Guarantees gave a negative reply to the question as to whether it was constitutional for a verdict of a Revolutionary Tribunal to be reconsidered by the Supreme Court. The argument behind this decision was that the organisation of the Revolutionary Tribunals was independent of the Supreme Court according to the Fundamental Law. A minority within the Court disagreed, claiming that it was within the powers of the Supreme Court to decide whether an offence was counter-revolutionary or not and thus whether it should be tried by a Revolutionary Tribunal or not.⁹⁹

Events followed one another in quick succession. On November 15th two members of the Supreme Court, Dr. José Morell Romero and Dr. Emilio Menéndez, the second of whom had been appointed President of the Supreme Court by Castro in January 1959, resigned from their function as judges and sought political asylum, the former in the Mexican embassy and the latter in the Argentinian embassy. Only a few of their colleagues in the Supreme Court were prepared to label them as 'traitors'. In December Castro opened a violent public attack on the judiciary. On December 20th the ban on the dismissal of judges was temporarily lifted (for the

second time since January 1959). This gave the President of the Republic and the council of ministers forty-five days in which to dismiss judges.¹⁰⁰ Via this procedure seventeen judges of the Supreme Court were dismissed on December 26th, nine of whom were already abroad. According to the International Commission of Lawyers, a good hundred other judges met the same fate in January 1961.¹⁰¹ By 1961 the composition and ideological line of the Supreme Court were such that it could openly call the new revolutionary Cuban justice socialist:

Under a socialist regime the courts of law have the duty of protecting socialist legality and order with the specific methods which belong only to them.¹⁰²

Ideologically at least, a big step had been taken in the direction of what was to be institutionalised in the 1970s as a new 'socialist' legality. In the same declaration of 21st August 1961 the Supreme Court continued:

The function of the Courts is that of deciding cases of Justice. This means that before making any judgement the legal norm to be applied to the concrete case under decision must be studied...But the socialist justice goes further. Socialist justice serves besides to build and improve socialism, because the courts, in deciding each case, are teaching the citizen to be loyal to the socialist motherland and its institutions...

The members of the judiciary cannot make an interpretation of the revolutionary legislation without a close regard to the social reality which supports this legislation. It must be understood that the revolution has drastically eliminated the former legal regime which has been replaced by a new regime, both in its formal basis and in its profound content. Only when judges and magistrates get fully acquainted with their true mission as active guardians of socialist legality, would it be possible to create a new pattern of adjudication of the fundamental laws of the revolution.¹⁰³

In order to familiarise the Cuban judges who worked in different courts with the new socialist vision of legality, training sessions were organised at the instigation of the Supreme Court. The Court issued a special resolution for this:

Study and training courses will be organised at all tribunals and courts of law in socialism and the fundamental duty of socialist justice.

The judges were expected to be 'revolutionaries', or at any rate to be capable of showing some understanding for the 'social justice and brotherhood' which the revolution was attempting to realise. It was felt that this required ideological education.

It is thus necessary to raise the ideological level of our colleagues who are involved in the administration of justice. We must increase our efforts to familiarise those working in the legal profession and other workers too with the ideas of Marxism-Leninism and to convince them of the need for such study.¹⁰⁴

We have seen how at particular times the government could go ahead with the dismissal of certain judges. In addition, in December 1960 the appointment of the President and other members of the Supreme Court and the presidents of the courts of law, the *Audiencias*, passed directly into the hands of the President of the Republic and the Council of Ministers. By an amendment to the Fundamental Law, it was no longer required for an electoral committee consisting of judges and others

to present the President with a list of proposals from which he could select the final candidates.¹⁰⁵ In this new situation, the criticisms which had been levelled against the judicial administration as it was practised in 1960 no longer applied. When Dr. Santiago de Cuba, the Public Prosecutor, made the following remarks in September 1961:

The other form of counter-revolutionary struggle was the revival of outdated theories on the separation of powers, the independence and apoliticism of the judiciary.¹⁰⁶

he was criticising a system which no longer existed. In the middle of 1961 the first principles of a Marxist legal theory were introduced, such as recognition of the impossibility of an independent judiciary. In the words of Santiago Cuba:

Even the proponents of the separation of powers knew perfectly well that the so-called separation of powers does not exist in any country and never has done. Whatever the social and economic system of a state may be, there is only one power. This political power is in the hands of the people or of its exploiters.¹⁰⁷

A new legal consciousness was required:

Under the previous regimes legal consciousness was expressed in the intransigent defence of the political power of the North American monopolies and the big national proprietors who exploited the labour of the people. The new legal consciousness must find expression in the defence of the new political state which provides and guarantees the social property of the whole people, the property for the workers and the economic, social and political rights for the workers, peasants and middle class.¹⁰⁸

THE CONFLICT OF VALUES

The most important counter-revolutionary crimes were introduced in 1961 and 1962. Later, in 1963, there was another legal amendment, by which the category of counter-revolutionary crimes was extended to include robbery and burglary. These offences were now to be tried by Revolutionary Tribunals and could be capital offences.¹⁰⁹ There were no further changes of importance in this field until 1973, the year in which the Revolutionary Tribunals as such were dismantled.¹¹⁰ By 1961 the legal profession seemed to have entered a phase of relative calm for the time being. The discussion on the tasks and ideology of lawyers and legislators died down in the late 1960s. It was not until the 1970s that this discussion was reopened on a new ideological basis.

In this chapter an outline of the first stages of the Cuban revolution has been presented: the ideals at the beginning and the socio-economic reality which rapidly curtailed them. For instance, the programme of the Movement of the 26th of July had promised the restoration of the Constitution of 1940 *and* the implementation of all kinds of social reforms. In this phase of the Cuban revolution it was clear that these promises involved conflicting values. The implementation of the first social reforms, such as the redistribution of agricultural and grazing land in early 1959, met with such strong political and increasingly violent resistance that the measures taken to deal with this resistance themselves became more drastic. This escalation in the severity of the measures taken threatened a number of constitutional rights which protected the individual against arbitrary action by the state. The category of counter-revolutionary offences was extended, and the summary criminal procedure of

the military tribunals which tried them gave the defendants less protection than was normally the case. Those accused of such crimes were denied the right of habeas corpus and could face exceedingly severe penalties. Ideals taken from the bourgeois Constitution of 1940 had to make way for the 'different' political goals: a human minimum level of existence for the largest part of the Cuban population, the poor and the poorest. The Movement of the 26th of July's ambitions to fulfil both ideals after the victory failed in the difficult early years of the revolution, at any rate as far as the struggle against the growing group of enemies of the revolution was concerned, some of whom had been members of the Movement's own ranks.

The most rapid developments in the field of criminal justice were those affecting the struggle against counter-revolutionaries. Within a few years, the use of the law as an instrument of power against political opponents was a political fact. The difficult conditions under which the Cuban revolution struggled to achieve political and social transformations rendered it extremely difficult or simply impossible to retain the liberal constitutional principles intact within the revolutionary administration of justice.

This chapter deals only with political, or counter-revolutionary, offences.¹¹¹ In a number of socialist countries, such as the People's Republic of China in the 1950s and 1960s, this is expressed in a theoretical distinction, the so-called 'conflicts between the enemy and ourselves'.¹¹² So far, 'contradictions within the people', as they are called within this perspective, have been left out of account. These concern small misdemeanours and relatively light offences which do not directly threaten the revolutionary process and which are carried out by ordinary men and women. In what follows I shall describe how the treatment of these misdemeanours and offences in Cuba in the 1960s was incorporated in a wider policy of mass mobilisation and education of the people; how trial of these offences was put in the hands of the people itself by the establishment of neighbourhood tribunals throughout the whole land.

Notes to Chapter Two

1. Hans Magnus Enzensberger, 'Portrait of a Party, Prehistory, Structure and Ideology of the P.C.C.', *The New Cuba, Paradoxes and Potentials*, Ronald Radosh, ed., New York, 1976, Morrow Paperback.
2. Fidel Castro, *La Historia me absolverá*, Editorial Ciencias Sociales, Havana, 1975, p. 165. *Cuba and the Rule of Law*, International Commission of Jurists, Geneva, 1962, pp. 55-57. After the seizure of power by Batista in 1952, the 1940 Constitution was suspended, except for a period of two years. It was only in force from 24th February to 2nd December 1955: *Cuba and the Rule of Law*, pp. 84-85.
3. In a speech held in Havana on April 16th 1961.
4. Articles 1 and 2 of the 'Regulation no. 1 of the Rebel Army concerning Criminal Justice' and 'Regulation no. 1 of the Penal Code of the Rebel Army', as amended in the laws: Law no. 33, *Gaceta Oficial*, ed. extraordinaria, no. 10, 30.1.1959 and Law no. 39, *Gaceta Oficial*, no. 16, 2.2.1959. Sources: Juan Vega Vega, *Legislación Penal de la Revolución*, Editora Universitaria, Havana, 1966, pp. 6-8 and 10; *Folletos de Divulgación Legislativa, Proclamas y Leyes del Gobierno Provisional de la Revolución*, I, 1^oA, 31.1.1959, 3rd ed., Editorial Lex, Havana, 1959, pp. 81-83 and 99-105.
5. See the discussion later in this chapter.
6. As a Cuban lawyer put it in 1983, they had been opposed to the Batista dictatorship and in certain cases were anti-imperialist. However, the rapid changes in the direction of a Marxist-Leninist state proved unacceptable to a number of them. Source: interview on 17.2.1983 with Jesús Valdés García, judge of the criminal chamber of the Popular Supreme Court in Havana. Before 1959 he had been secretary to a court; in 1962 he became judge of the *Audiencia* of Havana and editor-in-chief of the Cuban legal journal, *Revista Cubana de Jurisprudencia*.
7. Cited by Hugh Thomas, *The Cuban Revolution*, Harper & Row, New York, 1977, p. 434, from *Revolución*, 10.5.1959.
8. Cited by Thomas, *ibid.*, pp. 534-535, from *L'Unità*, 1.2.1961.
9. For the disappearance of the liberal minister, see *ibid.*, pp. 446, 473, 512.
10. The trial of Hubert Matos, that began in December 1959, is a notorious example. See below.
11. Thomas, *op. cit.*, p. 569.

12. All the legislation of the Rebel Army was declared officially in force in Cuba on 30th January 1959: Law no. 39, *op. cit.* Article 1 of this law was as follows:
 First Article: All the laws and penal, civil and administrative regulations promulgated by the High Command of the Rebel Army during the armed struggle against the dictatorship put down on December 31st 1958 will continue in force throughout the whole territory of the nation until the popularly elected Government has been installed, pending previous amendment or repeal.
 The Regulation (no. 1 of the Rebel Army concerning Criminal Justice) was amended on 29th January 1959 by Law no. 33: *Cuba and the Rule of Law, op. cit.*, pp. 114-115; Vega Vega, *op. cit.*, pp. 10, 11, 6. Source: *Folletos, op. cit.*, p. 99.
13. Regulation no. 1 of the penal code of the Rebel Army, articles 2-6. Art. 2 was as follows:
 The revolutionary military authorities will try all crimes and offences committed by members of the army in active service and the crimes of murder, homicide, maltreatment of those in prison or detention, violation, arson or damage, robbery or theft committed by members of the armed forces or by civilians in the service of the tyranny, applying the rules laid down in this Regulation and in the Penal Code of Cuba at War during the War of Independence. In addition their competence will extend to those crimes specified in articles 128-161, 170-213, 420-426 and 427-430 of the Social Defence Code. Crimes not included in this Regulation will fall under the jurisdiction of the ordinary courts.
 Source: *Folletos, op. cit.*, pp. 101, 102. See Vega Vega, *op. cit.*, pp. 4 & 10; *Cuba and the Rule of Law, op. cit.*, pp. 131-133; and Francisco José Moreno, 'The Cuban Revolution v. Batista's Pilots', *Political Trials*, T.L.Becker (eds.), Indianapolis, Indiana, 1971, p. 95.
14. José García Alvarez, *Los Tribunales Revolucionarios, Primera Etapa, Legalidad y Poder Popular en Cuba*, presented and selected by Juan Rosales, Editorial Convergencia, Buenos Aires, 1976, p. 130 [first in *Revista Cubana de Jurisprudencia*, no. 1, January 1962].
15. This was the Procedural Law of Cuba in Arms during the War of Independence, promulgated by the resistance on July 28th 1896 during the war of independence against Spain (1868-1898). See art. 16 of Regulation no. 1 of the Penal Code of the Rebel Army as amended on 29th January 1959, *Folletos, op. cit.*, pp. 103-105; *Cuba and the Rule of Law, op. cit.*, pp. 134-135; García Alvarez, *op. cit.*, pp. 56-57.
 Art. 9 of Regulation no. 1 was as follows:
 All trials will follow the summary verbal procedure.
16. Constitutional Reform, *Gaceta Oficial Extraordinaria*, no. 5, 14.1.1959. Retroactivity of the Penal Code. Confiscation of Goods and Restoration of the Death Penalty: Vega Vega, *op. cit.*, pp. 1-2.
 Article 21 of the 1940 Constitution, which includes a general prohibition on retroactive legislation, was supplemented as follows:

In the cases of crimes committed in the service of the dictatorship put down on December 31st 1958, those responsible will be tried in accordance with the penal laws which will be promulgated to this effect.

Article 24 of the same Constitution, which dealt with confiscation, was supplemented as follows:

The confiscation of goods is prohibited. However, it is authorised to confiscate the goods of natural or juridical persons responsible for crimes against the national economy or the public interest during the tyranny which stopped on December 31st 1958, of the tyrant and of his accomplices.

The prohibition of the death penalty in art. 25 of the same Constitution, with the exception of military crimes and certain forms of high treason, was supplemented as follows:

An exception is made in the case of members of the Armed Forces, the Repressive Organisations of the Dictatorship, the auxiliary groups organised by it and of spies for crimes of a military nature or crimes committed with the purpose or intention of restoring or defending the regime put down on 31st December 1958, and those persons guilty of treason or subversion of the institutional order or of espionage on behalf of the enemy in the course of war with a foreign power.

17. Constitutional Reform, *Gaceta Oficial*, no. 18, 4.2.1959. Source: Vega Vega, *op. cit.*, p. 3; *Cuba and the Rule of Law, op. cit.*, pp. 89-91. This constitutional reform concerned articles 27, 29, 196 and 197 of the Constitution as well as articles 174(d) and 182(a) of the Constitution, for a period of 90 days. The text was as follows:

First Article: The application of articles 27, 29, 196 and 197 of the present Constitution is suspended for the period of 90 days from the publication of this law in the *Gaceta Oficial* of the Republic with respect to those persons falling under the jurisdiction of the Revolutionary Tribunals, acting in accordance with the penal code of the High Command of the Rebel Army...

Second Article: The application of section (D) of article 174 and of section (A) of article 182 of the Constitution is suspended for a period of the same duration with respect to those cases in which questions of constitutionality are raised by the persons to whom the previous article applies.

18. See 'Fundamental Law of the Republic of Cuba' of 7th February 1959, art. 21 (retroactivity), art. 24 (confiscation), art. 25 (death penalty) and the transitional articles 3 (the suspension of the right of *habeas corpus* for certain groups for a further 90 days) and 4 (the suspension of the right of constitutional appeal for certain persons for a further 90 days). Regarding *habeas corpus*, art. 41 of the Fundamental Law added the exception clause that this right could be suspended temporarily for a period of not more than 45 days in a part or the whole of the country in the event of a threat to national security (war, invasion, etc.). This suspension had to be carried out by law: *Cuba and the Rule of Law, op. cit.*, p. 92.

Three months after the promulgation of the Fundamental Law a new suspension of the right of **habeas corpus** and the right of constitutional appeal for 90 days was effected by a Constitutional Reform Law, **Gaceta Oficial**, no. 80, 6.5.1959: **Cuba and the Rule of Law**, *op. cit.*, p. 98; Vega Vega, *op. cit.*, p. 28.

19. Introductory Clause, Law no. 425, **Gaceta Oficial**, ed. extraordinaria, no. 32, 9.7.1959: Vega Vega, *op. cit.*, pp. 31 & 32; **Cuba and the Rule of Law**, *op. cit.*, p. 137.

20. The constitutional irremovability of certain persons, including members of the judiciary and the Public Prosecution, as laid down in art. 200 of the Constitution, was suspended for a period of 30 days on 13th January 1959 by a constitutional amendment, in **Gaceta Oficial**, ed. extraordinaria, no. 4, 13.1.1959. See **Cuba and the Rule of Law**, *op. cit.*, p. 86. This was the first time since the revolution of January 1st 1959 that the irremovability of judges was lifted. This was brought about by the following constitutional amendment passed by the Council of Ministers:

Article I: For the purposes of reorganising the Supreme Court, the Public Prosecution and the Supreme Electoral Court, the judicial permanence established by article 200 of the Constitution will be suspended for 30 days; articles 180 and 208 are also suspended for the same period, as well as the irremovability of the Public Prosecutor and the provisions of article 187 and article 189, both of the Constitution. All constitutional or legislative regulations which stand in the way of the reorganisation with which the present law is concerned are likewise suspended for the same period.

Article II: The vacancies which occur for whatever reason during the stated period of suspension in the positions of President, President of the Chamber of Magistrates, Public Attorney and Attorney-General of the Supreme Court, as well as any positions in the Office of the Prosecution, the Audiences and the Judicial Divisions, will be filled by the President of the Republic assisted by the Council of Ministers.

Presidential Palace of the Republic, Havana, 10th January 1959.

21. García Alvarez, *op. cit.*, p. 128. The introductory clause to the constitutional amendment which temporarily suspended irremovability expressed this as follows:

Wherefore: It is a notorious fact that the large majority of the members of the Supreme Court, the Office of the Prosecution and the Supreme Electoral Court, in betrayal of their high office, supported the establishment and continuance of the oppressive regime which was set up on March 10th 1952; and disregarding their obligation to protect human rights, they stood by and watched the crimes committed to maintain the repressive system; they relinquished their own competence and permitted the transfer to military courts of the trial of those crimes whose victims were the underprivileged.

Wherefore: The rottenness of the high offices brought as its inevitable consequence the corruption of many magistrates, judges and

district attorneys.

Source: *Gaceta Oficial*, ed. extraordinaria, anual 4, p. 1, 13.1.1959.

22. An overwhelming majority of the Cuban people approved of the trials and executions. Even President Urrutia, a former judge and a stern critic of Fidel Castro, approved.
Herbert L. Matthews, *Fidel Castro*, New York, Simon & Schuster, 1970, p. 145. [Matthews refers to Manuel Urrutia Lleo, *Fidel Castro & Company*, New York, Praeger, 1964, p. 215].
23. Another notorious trial was that of the Trujillo conspirators in June 1959. See Thomas, *op. cit.*, p. 683.
24. Moreno, *op. cit.*, p. 97; Thomas, *op. cit.*, p. 422.
25. Moreno, *ibid.*, p. 98.
26. *Ibid.*, p. 99.
27. *Ibid.*
28. Moreno, 'Justice and Law in Latin America: a Cuban Example', *Journal of Inter-American Studies and World Affairs* 12, 1970, no. 3, pp. 367-378. The citation on Moreno p. 373 is from *Revolución*, 23.3.1959.
29. An appeal could be filed against sentences passed by an Ordinary Council of War with the Council of Revision. In cases of capital punishment, public loss of honour, loss of rank or work and a declaration of unfitness for an unlimited period, appeal (*apelación*) was possible under article 100 of the Procedural Law of 1896. The Council of Revision instigated a new investigation of the facts in such cases (art. 101). In all other cases a review was possible (art. 100), without necessarily implying a new investigation of the facts, but only a review in terms of 'conflict with law' (art. 107). Unlike appeal, review could also be instigated at the request of the Public Prosecutor (art. 100). See García Alvarez, *op. cit.*, p. 56.
30. Matthews, *op. cit.*, p. 145; Moreno, *op. cit.*, 1970, p. 373.
31. Moreno, *op. cit.*, 1970, pp. 373-377; *id.*, *op. cit.*, 1971, pp. 101-104.
32. *Id.*, *op. cit.*, 1971, p. 104.
33. On more than one occasion it has been shown that in Latin America there is a gap between the official administration of justice and large groups of urban poor and of the rural population, who either have no legal forms or develop their own. See Kenneth L. Karst and Keith S. Rosenn, *Law and Development in Latin America*, University of California Press, Berkeley, 1975, p. 65.
34. Thomas, *Cuba, The Pursuit of Freedom*, Harper & Row, New York, 1971, p. 423 (based on the Brooke Report, p. 163).

35. See Lee Lockwood, **Castro's Cuba, Cuba's Fidel**, Bruna, Utrecht & Antwerp, 1968; Thomas, *op. cit.*, 1977, pp. 413, 479, 573, 574.
36. This took place on 1st March 1959: Thomas, *op. cit.*, 1977, pp. 420, 421.
37. **Cuba and the Rule of Law**, *op. cit.*, p. 191.
38. James O'Connor, **The Origins of Socialism in Cuba**, Cornell University Press, New York, 1970, p. 91.
39. Thomas, *op. cit.*, 1977, p. 436.
40. Enzensberger, *op. cit.*, p. 113.
41. *Ibid.*, p. 115 [from 'Guia del pensamiento político-económico de Fidel', **Diario Libre**, Havana, 1959, p. 48].
42. *Ibid.*, p. 116-117.
43. Thomas, *op. cit.*, 1977, pp. 454-455.
44. Enzensberger, *op. cit.*, p. 119 [from Wyatt MacGaffey & Clifford R. Barnett, **Twentieth Century Cuba: The background of the Castro Revolution**, New York, Doubleday, 1965, p. 209].
45. Thomas, *op. cit.*, 1977, p. 445.
46. *Ibid.*, pp. 446-447.
47. 13th June 1959. See Thomas, *ibid.*, p. 448.
48. *Ibid.*, p. 449.
49. *Ibid.* The (ex-)supporters of Batista had already been deprived of this right: see note 17 above.
50. Constitutional Reform, Modification of art. 25 of the Fundamental Law concerning Application of the Death Penalty, **Gaceta Oficial**, no. 122, 6.7.1959. This constitutional amendment was as follows:
 The death penalty will not be applied...
 An exception will also be made...in the case of those found guilty of counter-revolutionary crimes defined as such by law and of those harming the national economy or the public treasury.
 Text in Vega Vega, *op. cit.*, pp. 28-29; see **Cuba and the Rule of Law**, *op. cit.*, p. 99.
51. Law no. 425, 7.7.1959, **Gaceta Oficial**, ed. extraordinaria, no. 32, 9.7.1959. Source: **Folletos, Leyes del Gobierno Provisional**, *op. cit.*, X, 1^oA, 31.7.1959, pp. 7-25; Vega Vega, *op. cit.*, pp. 30-42. Counter-revolutionary crimes were defined in Chapters I, III and IV of Title I,

Book II, Social Defence Code (the Cuban Criminal Law of 1936), amended in articles 2, 3 and 4 of Law no. 425, as well as those defined in articles 5-12 of Law no. 425. As the Memorandum commenting on the law expressed it:

Wherefore: The general definition of that counter-revolutionary activity which it is necessary to suppress involves the possibility of damaging the invaluable good of individual liberty; it was to guarantee this liberty that the revolution has been fought.

For extensive discussion, see José A. Grillo Longoria, *Los Delitos en Especie*, Vol. I, Editorial Ciencias Sociales, Havana, 1982, pp. 31-34.

52. Article 14, Law no. 425, 7.7.1959.
53. Thomas, *op. cit.*, 1977, pp. 464-465.
54. Constitutional Reform, 29.10.1959, *Gaceta Oficial*, no. 207, 2.11.1959. See Vega Vega, *op. cit.*, p. 56; *Cuba and the Rule of Law*, *op. cit.*, p. 99.
55. See above, note 39.
56. Matthews, *op. cit.*, p. 153.
57. Thomas, *op. cit.*, 1977, p. 497.
58. In a letter to Fidel Castro dated 19.10.1959: Thomas, *ibid.*, p. 466.
59. *Ibid.*, pp. 466-467.
60. *Ibid.*, p. 467.
61. *Ibid.*, pp. 468, 474.
62. *Ibid.*, p. 467.
63. See note 55.
64. Thomas, *op. cit.*, 1977, p. 477.
65. *Ibid.*
66. Antonio Nuñez Jiménez, *En Marcha con Fidel, 1959*, Editorial Letras Cubanas, Havana, 1982, pp. 430-448.
67. Matos completed the entire twenty years of his sentence. See the interview with Hubert Matos by Daniel James in *New York Times*, December 1979, cited in *De Volkskrant* (Amsterdam), 1.12.1979.
68. Andrés Suárez, *Cuba, Castroism and Communism, 1959-1966*, MIT Press, Cambridge Mass., p. 76.

69. Procedural Law of the Republic of Cuba at War, 28.7.1896; articles 1 and 6 of Law no. 634, 20.11.1959, 'Regulations for the transfer of cases and trials of counter-revolutionary crimes from the ordinary jurisdiction to the Revolutionary Tribunals', *Gaceta Oficial*, 23.11.1959. Source: *Folletos, Leyes del Gobierno Provisional*, no. XIV, 30.11.1959, pp. 20-25; Vega Vega, *op. cit.*, p. 57. Art. 1 ran (in part) as follows:
 All cases and trials which have been started or which are to be started for counter-revolutionary crimes... will be tried summarily by the Revolutionary Tribunals and by the procedure laid down by the Procedural Law of the Republic of Cuba at War of 28th July 1896, with the amendments introduced by the present law.
 This meant the introduction of a special, brief and unwritten procedure from articles 108-112 of the 1896 Procedural Law, as amended by Law no. 634 of 20th November 1959.
70. Articles 5, 7, 8 and 9, Law no. 634, 20.11.1959.
71. Constitutional Reform Law, 22.12.1959, *Gaceta Oficial*, ed. extraordinaria, no. 58, 22.12.1959 and Law no. 664, 23.12.1959, 'Establishing the Confiscation of Goods as an Accessory Sanction to be imposed for Crimes Classified as Counter-revolutionary', *Gaceta Oficial*, 23.12.1959.
 Article I: In all cases of counter-revolutionary crimes the Tribunal will impose as an accessory sanction the confiscation of goods. Likewise it will impose the total confiscation of their belongings on those persons who leave the national territory in whatever way to avoid trial by the Revolutionary Tribunals. The same penalty will be imposed by the Revolutionary Tribunals with respect to those persons who, having abandoned the national territory, carry out conspiratorial actions abroad against the Revolutionary Government. See Vega Vega, *op. cit.*, p. 63.
72. Thomas, *op. cit.*, 1977, p. 573. An inquiry carried out in April 1960 demonstrated that the majority of Cuban urban residents (60% of the Cuban population) considered that they were better off under the new regime than they had been before.
73. Thomas, *ibid.*, pp. 487, 488.
74. O'Connor, *op. cit.*, p. 161. This was the Oil Law of 1959.
75. *Ibid.*, p. 165; René Dumont, *Cuba: Socialism and Development*, Grove Press, New York, 1970, p. 34; Thomas, *op. cit.*, 1977, p. 511; Cole Blasier, 'The elimination of United States Influences', *Revolutionary Change in Cuba*, Carmelo Mesa-Lago (ed.), University of Pittsburgh Press, 1971, pp. 65-67.
76. Blasier, *op. cit.*, p. 62; Gérard Pierre-Charles, *Génesis de la Revolución Cubana*, Mexico, 1976, p. 36. Cf. also Sweezy & Huberman, *Cuba, anatomía de una revolución*, 1960, p. 58 (Spanish edition).

77. Dumont, *op. cit.*, pp. 34-35; O'Connor, *op. cit.*, p. 165; Thomas, *op. cit.*, 1977, p. 513; Blasier, *op. cit.*, p. 62.
78. Thomas, *op. cit.*, 1977, p. 538.
79. A trade agreement was signed between Cuba and the People's Republic of China at the end of November 1960: *ibid.*
80. *Ibid.*, p. 536.
81. *Ibid.*, pp. 523-524 offers a detailed account based on Guatemalan and North American sources.
82. *Ibid.*, p. 497.
83. *Ibid.*, pp. 518-519.
84. *Ibid.*, pp. 570-571.
85. As is generally known, in this invasion some 1,300 CIA trained and armed Cubans who had left for the United States of America landed on the South coast of Cuba. Cuba was continually faced with the problem of various counter-revolutionary groups on Cuban territory until 1965.
86. Law no. 719, 22.1.1960, *Gaceta Oficial*, 28.1.1960. See *Folletos, Leyes del Gobierno Provisional*, no. XVI, 31.1.1960, pp. 142-149; *Cuba and the Rule of Law*, *op. cit.*, pp. 125-126.
 A commentary on the law explained the reason for its necessity as follows:
 The economic ambitions of the present revolutionary process, aiming to bring wide and positive benefits to the popular classes of the country, create circumstances which encourage those who find it hard to accept that limits are imposed on the gaining of excessive profits in trading, industrial and agricultural activities to commit such crimes. This situation has to be borne in mind with reference to the amendments.
 Art. 4 of this law declared the crimes specified in article 557 A, B, C, D and E of the Social Defence Code (the Cuban Criminal Law of 1936) to be counter-revolutionary in cases where the circumstances mentioned in article 557 G (i.e. in the event that Cuba should be at war) were in effect.
87. Articles 1, 2, 3 and 5 of Law no. 732, 17.2.1960, *Gaceta Oficial*, 22.2.1960. Source: *Folletos, Leyes del Gobierno Provisional*, no. XVII, 29.2.1960, pp. 102-112. Law no. 732 was entitled 'Amendments to the Social Defence Code, Increasing the Penalties for the Crimes of Malversation of Public Funds, Fraud, Illegal Exactions and Others'. See Vega Vega, *op. cit.*, pp. 66-72; *Cuba and the Rule of Law*, *op. cit.*, pp. 126-127.
88. Art. 4 of Law no. 732 laid down that these crimes were also to be tried by Revolutionary Tribunals.

89. Law no. 858, 11.7.1960, 'Amendment of Regulations of the Social Defence Code for the Protection of the Popular Economy', **Gaceta Oficial**, 20.7.1960. Source: **Folletos**, XXII, August 1960, pp. 170-171. See Vega Vega, **op. cit.**, pp. 75-79; **Cuba and the Rule of Law**, **op. cit.**, p. 127.
90. Law no. 923, 4.1.1961, 'Amendment of the Social Defence Code for the Suppression of Terrorist Attacks and Counter-revolutionary Activities', **Gaceta Oficial**, 4.1.1961. Source: **Folletos**, **Leyes del Gobierno Provisional**, XXVII, January 1961, pp. 128-131.
91. Remarks 1 and 2 in the introductory clause to Law no. 923, 4.1.1961. Source: **Folletos**, p. 129; Vega Vega, **op. cit.**, p. 91.
92. Art. 1, Law no. 988, 29.11.1961, 'Sanctions with the Death Penalty for those who carry out counter-revolutionary acts', **Gaceta Oficial**, ed. extraordinaria, 29.11.1961. Source: **Folletos**, **Leyes del Gobierno Provisional**, XXXVIII, December 1961, pp. 44-45. See Vega Vega, **op. cit.**, pp. 98-100; **Cuba and the Rule of Law**, **op. cit.**, pp. 128-129.
93. Art. 2, Law no. 988.
94. As the Cuban legal journal, **Revista Cubana de Jurisprudencia**, put it:
It is one of the problems of a genuine revolution to ensure that the judicial administration also applies the laws which come into being through the revolution itself. This is a problem that has been encountered in Cuba and it is not an easy one to solve.
Source: Juan Marinello, 'Un Acuerdo Ejemplar', **Revista Cubana de Jurisprudencia**, year 1, January 1962, no. 1, p. 16.
95. This was Dr. José Miro Cardona: **Cuba and the Rule of Law**, **op. cit.**, p. 67.
96. **Cuba and the Rule of Law**, **op. cit.**, p. 68 [from: Bar Association of Havana, **Official Bulletin**, 16th Year, Second Period, June-November 1961, nos. 2, 3, 4, 5, 6 and 7].
97. **Ibid.**, pp. 67, 68, 76, 77.
98. It is undeniable that one of the organs of the state which has been particularly slow in adjusting to the revolutionary process is the judicial administration.
Santiago Cuba, **Memoria, leída por el Fiscal General del Tribunal Supremo**, 1st September 1961, pp. 8-10.
99. **Cuba and the Rule of Law**, **op. cit.**, pp. 63-64 provides a brief account of this decision. It is the only relevant source known to me. For information on the court for Constitutional and Social Guarantees, see Eduardo Rafael Núñez y Núñez, **Ley de Enjuiciamiento Criminal**, Vol. II, Jesus Montero, Havana, 1954, pp. 363-397. The Court of Constitutional and Social Guarantees (**Tribunal de Garantías Constitucionales y Sociales**) was empowered to investigate the means of appeal against unconstitutional decrees, laws, judicial pronouncements and

decisions affecting the neglect of constitutional rights, such as the right of **habeas corpus**.

Article 160 of the Fundamental Law of 1959 is in this respect the same as Article 182 of the 1940 Constitution of the Republic of Cuba:

The Court of Constitutional and Social Guarantees is competent to deal with the following matters:

- a appeals of unconstitutionality against laws, judicial decrees, resolutions or acts which reduce, diminish, restrict or encroach upon the rights and guarantees provided in this Fundamental Law or which hinder the free functioning of the state institutions;
- b the deliberations of judges and courts concerning the unconstitutionality of laws, judicial decrees and other regulations which are applied in courts of law;
- c the right of **habeas corpus** when claimed by means of appeal, or when appeals to other authorities or tribunals has had no effect. etc.

100. Santiago Cuba, *op. cit.*, 1961, p. 10; **Cuba and the Rule of Law**, *op. cit.*, pp. 106-110; Constitutional Reform Law of 20th December 1960, Article 11, which was as follows:

The irremovability of the functionaries of the judiciary is suspended for a period of 45 days from the date at which the present law comes into force. Within this period, the President of the Republic, assisted by the Council of Ministers, will be free to dispense with the services of the aforementioned functionaries and to take back into service in the Supreme Court of Justice those who are not removed from this Court.

Source: **Folletos, Leyes del Gobierno Provisional**, XXVII, January 1961, pp. 19-25.

101. **Cuba and the Rule of Law**, *op. cit.*, p. 64 cites **The New York Times**, 4.2.1961. A brief, positive commentary on the measures taken can be found in **Bohemia**, 12.2.1961, pp. 73-74.

102. Pronouncement no. 783, 21.8.1961, of the Government Division of the Cuban Supreme Court, **Revista Cubana de Jurisprudencia**, year 1, January 1962, no. 1, p. 91.

103. **Ibid.**

104. Santiago Cuba, **Los Tribunales en el Período de Construcción del Socialismo**, Trabajo leído por el Fiscal del Tribunal Supremo, Apertura de los Tribunales, 1st September 1962, p. 18.

105. Articles 6 and 11 of the Constitutional Reform Law of December 20th 1960, by which Article 158 of the Fundamental Law of February 1959 was amended. Article 158 of the Fundamental Law, which was virtually the same as Article 180 of the 1940 Constitution, was as follows:

- 1 The Magistrates of the Supreme Court will be appointed by the President of the Republic from three candidates proposed by an electoral body consisting of nine members. Of these, four will be appointed by the plenum of the Supreme Court from its own ranks, three by the President of the Republic and two by the Faculty of Law of the University of Havana...
- 3 The President of the Supreme Court and the Presidents of the Chambers will be appointed by the President of the Republic on the basis of proposals put forward by the plenum of the Court. These appointments and those of the Magistrates of the Supreme Court must receive the approval of the Council of Ministers [in the 1940 Constitution this was the Senate].

The Judicial Administration Law of 1909 (**Ley Orgánico del Poder Judicial**, 27.1.1909) provided an elaboration of this via an amendment in its articles 59 and 60.

106. Santiago Cuba, *op. cit.*, p. 8.

107. *Ibid.*, pp. 9, 11.

108. *Ibid.*

109. Law no. 1098, 26.3.1963, **Gaceta Oficial**, 29.3.1963. See Vega Vega, *op. cit.*, pp. 108-110.

110. See Grillo Longoria, *op. cit.*, pp. 39-40.

111. For the difference between political and counter-revolutionary crimes, see the statement of the Cuban viewpoint in Grillo Longoria, *ibid.*, pp. 13-18. The principle is that set out by Fidel Castro in 1977:

Good. I am going to say the following. First, I disagree with what you said. Nobody is arrested in Cuba for political ideas. That is the first point.

Point number one. Point number two: we have a conception of political prisoners and of counter-revolutionary prisoners. In accordance with our conception of penal justice, a political prisoner is someone who is arrested and sentenced for wanting to improve society, for fighting for the good of humanity and for social progress. We do not think the same way about those who are fighting for social regression. And though we call them counter-revolutionary prisoners, they are arrested for committing specific serious crimes.

Source: **Granma**, 2.11.1977.

112. See for example Jerome Alan Cohen, **The Criminal Process in the People's Republic of China, 1949-1963. An Introduction**, Harvard University Press, 1968, pp. 22-23 and pp. 83-88; Stanley Lubman, 'Mao and Mediation: Politics and Disputes Resolution in Communist China', **California Law Review**, 55, 1967, pp. 1302-1306.

EXPERIMENTAL BASE TRIBUNALS IN THE CUBAN COUNTRYSIDE

INTRODUCTION

The first three years of the Cuban revolution were of great importance for its future development. Major social reforms were enacted and undesirable international contacts were broken. The choices were not free and the options were limited. Cuba now had to deal with the hostility of countries such as the United States of America, while internally the struggle between communists and liberals grew more and more bitter. The effects of all this on the administration of justice were clear by the middle of 1961: many lawyers had left and the idea of an independent judiciary had become a thing of the past. The judiciary was no longer seen as a politically autonomous and neutral power. According to the new ideology, it never had been autonomous and it never could be so. The new 'socialist legality' served the interests of the construction and progress of socialism. The real duty of judges was the active preservation of socialist legality and the education of Cuban citizens to be loyal to their country and its institutions.¹ The special administration of criminal justice, instituted to try the supporters of Batista, had in the meantime acquired a new purpose: the trial of counter-revolutionaries, which might in practice mean the trial of former revolutionary comrades.

Despite these fundamental changes in the role, place and ideology of the administration of justice, the old system of legal organisation remained in use with the exception of certain *ad hoc* amendments.² It is only toward the end of 1962 that we can detect the first attempts to change this system. A discussion between Castro and students and lecturers of the University of Havana on 12th October 1962 is seen by Cubans as the first initiative towards the establishment of a new type of popular court of law: the so-called base tribunals. Experiments were made with these base tribunals from 1963 to 1966 in rural areas. From 1966 they were also introduced into the large cities like Havana.³

In this chapter the first experiments with the base tribunals are described. It will be argued that the plans for the base tribunals were closely related to the first attempt to launch a general policy of mass mobilisation in 1962. The peak period for this particular political development was the late 1960s.

The concentration on rural areas in the first experiments with the base tribunals will be seen in terms of a more general problem which faced the new government in 1959: the lack of proportion in the underdevelopment of the Cuban countryside.

First of all, the predecessors of the Cuban base tribunals, the 'Correctional Judges', are brought under review. The base tribunals did not emerge from thin air

as a new initiative of the awakening socialist society. Nor were they mere facsimiles of institutions borrowed from other socialist countries. The base tribunals were firmly rooted in existing Cuban and Spanish legal institutions.

PREDECESSORS OF THE BASE TRIBUNALS: SPANISH LEGISLATION FOR MINOR OFFENCES AND THE NORTH AMERICAN POLICE COURT

The base tribunals with which experiments were made in Cuba in the 1960s have their juridical roots in a pre-revolutionary legal institution. The Cuban criminal procedure law of 1888, the *Ley de Enjuiciamiento Criminal* of Spanish origin, provided for a special municipal criminal procedure, Correctional Justice, for misdemeanours (*faltas*).⁴ Contemporary Cuban writers consider that this procedure, which was introduced during the Spanish colonial presence, offered formal guarantees of reasonable protection within the judicial proceedings.⁵

There were two instances. When a municipal judge was informed of a misdemeanour, he could immediately determine the date and time of day of the hearing and summon the defendant and the District Attorney to appear at the sitting.⁶ In the first instance the presence of the Public Prosecutor was not obligatory.⁷ In the case of minor offences which could be prosecuted by individuals, the Public Prosecutor was also not required to attend. Customarily the hearing was held within three days.⁸ The defendant had the right to the final word and the proceedings of the hearing were recorded.⁹ The sentence was pronounced no later than the day after the sitting, in contrast with the normal practice in which a maximum of three days was allowed.¹⁰ There was a right of appeal to the examining magistrate, (*Juez de Instrucción*),¹¹ who in turn was associated with the immediately superior court, the *Audiencia*.¹²

In the second instance, a public hearing took place at which the presence of the Public Prosecutor was obligatory.¹³ The judgement of this court could be reversed by the Supreme Court in a case of a breach of the law.¹⁴

The so-called police court was introduced at this level of jurisdiction in 1899. The victory in the war of independence against Spain meant a change of foreign masters for Cuba. In 1899 the United States of America 'temporarily' took over the administration of Cuba from the Spaniards.¹⁵ One implication of this was that Cuba was under North American military rule from 1st January 1899 to May 1902.¹⁶ Immediately after its entry into Cuba in January 1899, the North American government introduced a new legal institution to deal with minor offences, the *Corte de Policia*. Without any law or disposition behind it, this court of law was established in Havana to function as a police court for the trial of minor offences.

The President of the court was a North American army major, John Gary Evans, who also held the office of inspector general of the police force. In March 1899 Evans was replaced as President by W.L.Pitcher, a captain in the army, known in contemporary Cuban sources as the notorious and hated 'Mister Pitcher'.¹⁷ Pitcher could not speak Spanish. His usual sentence, 'Ten days or ten dollars', was proverbial in Havana at the time.¹⁸ The procedure was summary and brief. The single judge was briefed from a police statement, while the accused spent the time waiting for their case to come up for trial under police arrest. Two days after the perpetration of the offence the accused were brought before the judge and the public hearing took place. No record of the trial was kept. Only the verdict was written down in a book which, regrettably for present day Cuban historians, no one

has been able to find since the departure of the North Americans.¹⁹ Sentences were immediately put into effect. No appeal was possible against the 'arbitrary' decisions of the police court, which 'left a trail of bitter memories among the urban population', as Santiago Cuba put it in 1966. One of the many examples of Mr. Pitcher's arbitrariness, tradition goes, was the case of a witness who was supposed to testify. Whether it was an accident or whether it was simply for convenience is unknown, but he was put on trial and ended up with forced labour.²⁰ 'Mister Pitcher' also made arbitrary use of his powers as President to free prisoners who had been condemned by the police court. For this purpose he would visit the cell or the other place of detention of these prisoners, the *Castillo*. After speaking with the director of the prison, a row of prisoners was presented to him. He would then point to those who, in his opinion, could be set free.²¹

LEGALISATION OF THE POLICE COURTS

At first the police court had no legal basis. Almost a year after its inception, the Supreme Court made the first official criticisms of this lack of a legal basis in October 1899. In an official document addressed to the Secretary for Justice and Public Investigation, the Supreme Court stressed the need to legalise the police court. In view of the intention of the military government to set similar courts up all over the island, the Supreme Court found it worth setting up an investigation into their functioning first, as the text carefully put it.²² This demand was met on April 15th 1900, when by a Military Decree the government provided the police court with a legal foundation. From the words of the decree it is easy to see that it was simply a retrospective legalisation of the *status quo*:

The Governor General of Cuba has approved the publication of the following Decree:

- I The Police Court, or Correctional Tribunal, which is held in the city of Havana under the command of the Military Governor there, will continue to exercise its functions with the territorial jurisdiction corresponding to the Police of Havana.
- II This Tribunal remains authorised to investigate, judge and sentence offences against persons and against the public order....
- IV This Tribunal remains authorised to impose penalties of not more than 30 days of arrest or fines of not more than 30 pesos, or a combination of the two if the Tribunal so decides.²³

The functioning of this court was at first regulated by the already existing legislation on Correctional Justice, i.e. Book 6 of the Criminal Procedure Law, the Spanish *Ley de Enjuiciamiento Criminal*.²⁴ A month or so later new procedural regulations for Correctional Justice were introduced by Military Decree on May 25th 1900.²⁵

The Cuban lawyer, Fernando Cañizares Abeledo, believed that the legalisation of the police courts in existence meant an improvement compared with the immediately preceding situation. The changes meant that the judges were no longer North

Americans, but Cubans; no longer members of the armed forces, but civilians. Moreover, the power of this judge was now fixed by legal limits.²⁶ In Abeledo's opinion this new arrangement must have been enthusiastically received at first. However, it was not long before the new Correctional Justice came in for criticism. The rapid, summary procedure of the administration of Correctional Justice turned out to differ very little from the earlier practices of the police court judge.²⁷ The procedure lacked any judicial investigation. A charge made by the police or by an individual was sufficient to bring somebody before the judge. Proof was furnished in a superficial way.²⁸ For instance, a confession was enough to secure condemnation.²⁹ This rule, incidentally, was incompatible with the Constitution which was established later in 1940, which ruled out proof of an offence solely based on the confession of the accused.³⁰ The defendant did not have to be represented by a defence counsel. If the defendant requested it, the judge allowed him to be accompanied by someone of good repute or defended by an attorney.³¹ There was no right of appeal against the sentence passed during the hearing, nor did the sentence have to be justified.³² Once again, this lack of a right of appeal was later incompatible with the Constitution of 1940.³³ Fines had to be paid within three hours. Those who were unable to comply were faced with the alternative of one day's imprisonment for each peso (the Cuban unit of currency) due.³⁴ The maximum penalty for misdemeanours was one month's imprisonment or a fine of 30 pesos. The felonies which fell under the jurisdiction of the magistrate as defined by Military Decree No. 213 could be punished with a maximum of six months' imprisonment or a fine of 500 pesos.³⁵ In the case of non-payment of the fine, the penalty was commuted to imprisonment according to the same formula: one day's imprisonment per peso.³⁶ By the new penal code of 1936, the *Código de Defensa Social*, the maxima for minor offences were raised to two months' imprisonment or a fine of 60 pesos (called 60 units of currency), while the maximum penalty which could be imposed for felonies was reduced to 180 pesos (or 180 units of currency).³⁷

Newspaper reports from the period were critical of the arbitrary and unfair judgements against which no appeal could be made. Jokes began to go around like the one about a nervous man who had just been sentenced: in the presence of the judge he took 20 pesos out of his pocket to pay his fine, while the police court judge asked him if he happened to have 20 days' imprisonment in the other pocket.³⁸ What made things worse was that these judges were directly under the control of the North American military government until 1903. It was only after the departure of the North Americans that the Supreme Court decided in 1903 that these courts of law belonged to the system of the administration of justice.³⁹ Despite this official incorporation of the courts within the system, it never became possible to appeal against a sentence passed by a Correctional judge. The Military Decree No. 213 of May 25th 1900 did away with the possibility of appealing against the sentences passed by the Correctional Judges which the *Ley de Enjuiciamiento Criminal* had offered.⁴⁰ The 1940 Constitution, which made different demands, was never able to change this situation. The Constitution laid down that:

The sentences passed by the Correctional Judges in dealing with offences must be open to appeal. The appeal judge and the appeal procedure are to be determined by law.⁴¹

The law required to put this rule into effect, however, was never promulgated, so that the constitutional stipulations had no effect in practice. The sentences passed by the Correctional Judges remained unassailable, a fact which no doubt contributed to the extensive corruption and the unjust and arbitrary decisions of these judges.⁴²

Cuban lawyers criticised the minimal procedural guarantees which the Correctional Justice offered, both before and after 1959.⁴³ One of their points of criticism was the fact that the jurisdiction of these judges had been considerably extended by the introduction of the *Código de Defensa Social*, the Penal Code of 1936. Before that date these judges had dealt in most cases only with misdemeanours, but afterwards they were also charged with the trial of a large number of delicts as well as cases in which pre-criminal or post-criminal security measures could be taken on the basis of the state of dangerous behaviour.⁴⁴ The critics were particularly alarmed by this extension of powers because it enabled the Correctional Judges to pass sentences six times as severe as those which they had passed before in the case of misdemeanours: instead of one month's imprisonment or a 30 pesos fine they could now impose maximum penalties of six months' imprisonment or a fine of 180 pesos (units of currency in the law).⁴⁵ The Correctional Judges were also empowered by this Penal Code to take security measures in cases of a pre-criminal state of dangerous behaviour. These measures, influenced by the tendency in criminal justice known as '*La Défense Sociale*', sometimes had far-reaching consequences for those subjected to them.⁴⁶

TRIAL BY JURY AND THE ELECTION OF JUDGES CA. 1900

With the legalisation of trial by the police courts in 1900 an attempt was also made to introduce for the first time in Cuba the institution of trial by jury.⁴⁷ This kind of trial, which was perfectly normal in the United States of America,⁴⁸ soon revealed that it was no success in Cuba. The institution seems to have been so badly received that it was never put into practice, and it was dropped before the departure of the North Americans in 1902. Attempts to reintroduce it in 1903 under Cuban rule were successfully put down. The argument used at the time, that trial by jury did not harmonise with the Cuban life style and legal traditions, is still supported today in Cuba.⁴⁹ A contemporary lawyer like Abeledo, for example, finds that the written character of Franco-Roman law is not consonant with a jury chosen from the people to assess the guilt of a suspect. In 1972 he expressed the view that the Cuban style of law, -- and herein it differs from Anglo-Saxon law --, requires a trial by professional lawyers. He claimed:

Trial by jury ... was in contradiction with the cultural level, social psychology and legal tradition of our people. It was imposed simply and exclusively as an imported juridical institution with the sole purpose of functioning as a repressive apparatus in the service of the Military Government of the Island.⁵⁰

Abeledo's remarks bear witness above all to a strong antipathy towards the North American occupation of the time. This is understandable enough given Cuba's history, in which anti-Americanism has a long tradition. It had been put into words and found expression from the time of José Martí and the Spanish-American War, and it entered a new hey-day after 1959.⁵¹ Taken generally, Abeledo's remarks are too one-sided. The experience of a number of European countries had already demonstrated that it is hard for the institution of trial by jury to become established in a civil law legal system. As a result of the enthusiasm at the time of the French Revolution for trial by jury, experiments were made with it in the administration of criminal justice in a number of countries on the European continent. The explanation for its failure within this type of legal system is often sought in the strongly inquisitorial nature of the civil law trial. The relatively small importance which this

form of trial attaches to procedural rules, as well as the importance of the inquisitorial investigation and the dominant position of the judge, all render this form of trial unsuitable for a separate assessment of guilt by a lay jury.⁵²

As for Abeledo's opinion that Cuban legal culture, following Roman traditions, is in principle opposed to tendencies towards deprofessionalisation in the administration of criminal justice, this goes too far when viewed in the light of more recent Cuban legal history. The ideals whose realisation was being fought for in Cuba in 1972, when Abeledo's article was published, are in conflict with his attitude. The fight for more participation by the people and the strong tendency toward deprofessionalisation in Cuba in the 1960s were also felt in the sphere of criminal justice. Experimental forms of popular courts in the 1960s and the judicial reorganisation of the 1970s introduced Cuba to the institution of trial by lay persons, as we shall see below. The main argument that was used in its favour was the incorporation of the influence and insight of the people in the administration of justice. As a deprofessionalising tendency, it was apparently not so much in contradiction with Cuban legal tradition this time and in this form that it was bound to fail from the start.

The same is true of the popular election of judges. Elections of Municipal and Correctional Judges were introduced in 1900.⁵³ The only time they were held was on July 16th 1900.⁵⁴ In the same year a Military Decree laid down that these judges would be appointed by the State Secretary of Justice in the future.⁵⁵ It was only in the 1960s that experiments were begun in which the local population elected the lay judges for its own neighbourhood tribunals.

In countries with a Romano-German legal tradition, judges are usually appointed rather than being elected by the people.⁵⁶ To a certain extent, after 1959 Cuba's socialist development helped to provide a fertile ground for various forms of institutionalised popular influence on the administration of justice, such as trial by lay persons and the election of judges by the people. In what follows an attempt will be made to measure the extent of this phenomenon and to give an account of its causes.⁵⁷ As we shall see, the experimental base tribunals which were set up in Cuba in the 1960s displayed formal resemblances to the Correctional Justice which has just been described.⁵⁸ There was a great difference between the setting in which the tribunals operated, however, and that of the Correctional Judges. The local population was actively involved in a number of ways in this new form of neighbourhood justice. In addition, a number of procedural changes were made, such as the right to have recourse to a legal remedy against a sentence that had been passed.

1962: SPACE FOR DESIGNING THE CUBAN VERSION OF THE REVOLUTION

What was the situation of Cuba when the plans for a new basic administration of justice were being launched? What were the internal power relations, what was the influence from powers abroad and how much support could the revolutionary government count on from the Cuban people?

The bonds with the new ally, the Soviet Union, were by no means unambiguous in 1962, a year in which both the practical and the ideological influence of the communists in the government was sharply reduced. For the economy it was a sober period. It had become necessary to cut back the level of consumption and to make great demands on the readiness of the people to work for the reconstruction of the economy. These were some of the factors which contributed to the development of a

specifically 'Cuban' version of revolution in the 1960s. What had happened?

It is true that in 1961 the revolution had stood up to its first test in self-defence. The counter-revolutionary rebels which had remained in Cuba, particularly in the Escambray mountains, were defeated in early 1961.⁵⁹ A decisive defeat was inflicted on the counter-revolutionary aggression which came from outside Cuba in April 1961. After the events of April 17th, many Cubans who had been wary of the revolutionary process at first now opted for Castro rather than the Miami-based invaders.⁶⁰ Of the open opponents of the government, many had left the country, had been killed in the armed resistance or had been imprisoned. As we have seen, a considerable number of lawyers were among those who left the country.

In 1961 the communists appeared to hold a strong position in the government at first. Castro had described himself as a Marxist-Leninist on December 2nd 1961.⁶¹ Soon afterwards, on March 9th 1962, the composition of the official leadership of the O.R.I. was made public. This new party, the Integrated Revolutionary Associations (*Organizaciones Revolucionarias Integradas*), consisted of members of the Communist Party, (i.e. members of the P.S.P., which dated from 1944) and direct supporters of Castro, in a ratio of 10:13.⁶² In the same month, however, the apparently harmonious cooperation with the communists began to show cracks and rifts. On March 27th Castro launched a bitter attack in a televised speech on Anibal Escalante, a member of the P.S.P. and founder and organiser of the O.R.I. Castro's criticism centred on charges of sectarianism, nepotism and arbitrariness, including arbitrary arrests, leading to an enormous alienation of the people from the party.⁶³

The party secretaries have erected an arbitrary dictatorship over the whole country. Everywhere it has come to despotic measures, to individual acts of violence. Honest revolutionaries have been delivered up to the terror... These gentlemen, who want to force their ideas on others, can scarcely be distinguished from Batista and his hangmen!

[The organisational secretary of the party] Anibal Escalante has called a sect of privileged people into life. The provincial secretaries have behaved like Gauleiters. Nepotism and terrorism are spreading. We have founded ORI but excluded the revolutionary masses. We don't have an apparatus but a yoke, a straightjacket... What does that mean, Integrated Revolutionary Organizations? The only ones who have organised themselves here were the people of the PSP... It's the same in every province: who became the party secretary of the ORI? The former provincial secretary of the PSP. It is the same thing in every local chapter: who became the local secretary of ORI? The former local secretary of the PSP!... If we look at the results we are forced to conclude: that is a pile of shit.⁶⁴

In an attempt to suppress this 'sectarianism', Escalante was sent to Prague and many communists lost the positions which they had just gained. A new method of recruitment was started by the O.R.I. in the summer of 1962 to improve democratisation. Future candidates were chosen and proposed by and from the centres of work, although the party itself retained a veto right over the eventual acceptance of a new member.⁶⁵ Early in 1963 the young organisation of Integrated Revolutionary Associations was given a new name: the P.U.R.S. (*Partido Unido de la Revolución Social*), or United Party of Social Revolution.⁶⁶ According to Enzensberger, the Escalante affair functioned as a powerful brake on the formation of a new bureau-

cratic party elite in Cuba in the 1960s.⁶⁷

In the meantime the economic situation had deteriorated. The 1962 sugar harvest fell far below expectations. To make matters worse, the United States of America had broken all trade relations with Cuba in June 1962, including the supply of food and medicine.⁶⁸ The lack of reserve supplies of spare parts and of know-how seriously affected public transport and other sectors of the economy, while Soviet aid and Cuban planning and organisation were still at a very rudimentary stage. The first food rationing began in March 1962 as a result of shortages of foodstuffs, and this brought with it a change in the attitude of the people.⁶⁹ In 1960 the people had stood behind the revolutionary government: a questionnaire conducted among the Cuban urban population in April 1960 revealed that the majority of city-dwellers found themselves better off than before the revolution, while 75% of them expected a rising standard of living in the years ahead. Around half of the urban population was enthusiastic about Castro, a fact which is even more significant when we bear in mind that from the beginning of the revolution the rural population had supported Castro more strongly than its urban counterpart had done.⁷⁰ With the worsening of the economic situation, however, the people began to express its dissatisfaction. Housewives and others took part in various protest demonstrations in June 1962.⁷¹

To put it briefly, 1962 was a year of economic revision for Cuba. The first three years of the revolution had witnessed a dramatic increase in the standard of living of the poorest sectors of the Cuban population which won the goodwill of this group for the government. This rise was financed by the considerable economic reserves which the new government inherited in 1959,⁷² a time when Cuba was relatively rich.⁷³ After 1962 economic sanctions and other handicaps forced the government to change its economic strategy. In Malloy's analysis:

It was obvious that the dual policy of consumption and investment followed during the previous three years was no longer feasible. If development was to be achieved accumulationist policies, economic logic would have to take precedence over political logic.⁷⁴

A choice was made for equal distribution of the scarce goods available. Free medical assistance, free education and full employment remained goals. Basic necessities were distributed in accordance with need. Luxury goods were distributed according to a bonus system among the best workers.⁷⁵ There was a deliberate choice for moral rather than material work incentives. Mass organisations, political education and moral conviction were the means of achieving the active participation of the people in the necessary process of construction and transformation. The idea of setting up base tribunals was a part of the same policy of mass mobilisation, as will be shown below.

The October crisis of 1962,⁷⁶ when under pressure from the United States of America the Soviet Union withdrew the rockets which it had stationed on Cuba, probably removed any illusions entertained by the Cuban government concerning Soviet military support. Nevertheless, the boycott in which the Cubans found themselves forced them to depend economically on their new trade partner. Castro visited Moscow in May 1963 and in January 1964 a new five-year trade contract between the two countries was signed.⁷⁷ 1962 was the year in which the links with the new trade partner, the Soviet Union, were growing and the influence of the old Cuban communist party on government policy was a fact. However, the Escalante affair, Castro's indignant reactions to the Soviet Union's actions during the October crisis, and the beginnings of an orientation towards China, all made it clear that

the Cuban government was searching for the space in which to create a Cuban model of revolution.⁷⁸ The opportunity was there to form genuinely 'Cuban' institutions. The space was there for the idealistic goal: the speedy attainment of a classless communist society, in which the distinctions between rich and poor, intellectual and manual labour, town and country would disappear. This was the society of the 'new man' (*el hombre nuevo*).

THE FIRST EXPERIMENTS WITH THE BASE TRIBUNALS IN THE BACKWARD AND IMPOVERISHED COUNTRYSIDE

It was during a visit to the University of Havana on 12th October 1962 that Fidel Castro first voiced the plan to establish a new type of popular justice in public. He suggested that the students and lecturers in the faculty of law should go to the most remote and mountainous parts of the country to begin experiments and research activities in judicial administration.⁷⁹ Seven months later, on May 21st 1963, during a visit to the University of Moscow, Castro went into more detail on the new ideas on the future Cuban revolutionary administration of justice:

We impress upon students of law the importance of their study; we explain to them that there are still many procedural questions which need to be resolved in a revolutionary manner; we even recommend them to go to the countryside, to go to the people, so that, under the new conditions of our country, they will be able to suggest a procedure adequate for the solution of all the conflicts which we have and which are less in number than those which arise in capitalist society...

We did not want to do this in an idealist way. We preferred not to hurry, since it is not a good method to think up laws and institutions first and then to try to adapt reality to these ideal forms. *It is not reality which must adapt to the institutions, but the institutions which must adapt to reality.* Our law students have a job waiting to be done, which we urge them to carry out.⁸⁰

The students who left for the countryside and the mountains in 1963 with these instructions did so with the aim of developing new forms of justice at base level, designed to deal directly with the minor offences and conflicts which were characteristic of these areas.⁸¹ A Cuban criminal lawyer later described the 1962 plans as the intention of establishing new base tribunals in which the people would be able to participate directly by means of trial by a bench and short procedures. The tribunals would have an educative function in that they would teach the people to respect the new legality developed through the revolution and at the same time would contribute to the formation and development of a legal consciousness.⁸² They were to be genuine popular tribunals, a new phenomenon in the history of Cuba, according to Cuban sources.⁸³

The plans for a new basic administration of justice to be developed in the future were remarkable in a number of ways. Particularly novel was the idea of adapting directly to the local requirements, of drawing up the new legal procedures in direct contact with the local population. This style of working was intended to stimulate the involvement of the people in resolving conflicts and in living as law-abiding citizens. This was a feature which was in harmony with an important political area of focus in the 1960s: mass mobilisation.

Other general aspects of Cuban revolutionary politics of the 1960s make their

appearance in the experiments in the basic administration of justice. For instance, the pragmatic way of searching for specifically 'Cuban' institutions is typical of this decade. The attainment of the 'new man' (*el hombre nuevo*), the attainment of 'equality' and the rural focus were major items of general policy in the 1960s.⁸⁴ As Castro said in October 1962, new tribunals would be set up for the trial of minor crimes, misdemeanours, offences and disputes.⁸⁵ This implied tribunals which took over the functions of the Correctional Judges.

From 1963 on law students, lawyers who had just finished their training and others went to the countryside and the mountains to start experiments with the new tribunals. It is noteworthy that these experiments were at first confined to the non-urban areas and that they were initially only on a small scale. By September 1966, some three years since the start of the experiment, there were 31 so-called base tribunals in operation in Cuba. 22 of these were in rural areas, 5 in partly urban areas and two per city in the cities of Havana and Oriente.⁸⁶

Unlike the police courts introduced in 1899, the newly developing base tribunals did not start in Havana, the capital of Cuba. These tribunals were not introduced *en masse* in the capital earlier than the spring of 1968.⁸⁷ The experiments began instead in the rough mountain areas and in the countryside among the rural population. If we look for an explanation for this concentration on the countryside in post-revolutionary Cuba, various factors can be taken into account. The large differences between town and countryside before 1959 are obviously relevant, as well as the relatively large isolation of the countryside up to that date. The experiences of the guerrilleros in inhospitable mountainous areas like the Sierra Maestra must have been instructive for those who were to form the future government. It was at any rate a stimulus behind the idealistic goal of doing away with differences between town and countryside and between intellectual and manual labour.

Comparatively speaking, Cuba was a developed country in the late 1950s. In terms of a number of criteria of development it came high on the list. For example, Cuba was the Latin American country with the most extensive system of mass communications. It had the highest percentage of televisions per head of the population and occupied second place with regard to the percentage of radios. In this respect it bore comparison with industrialised countries in the West such as France or Italy. To take another example: there was a relatively high doctor:population ratio, the same as in Sweden in the same period. Within the ranking order of Latin American countries, Cuba was third in the percentage of doctors, fourth in the average level of national income and seventh in the percentage of students in higher education. The overall picture is not at all bad as long as internal differences are excluded. But these differences were enormous! Where was that relatively high percentage of doctors, for example, to be found? Or where was that relatively good average income earned? The answer is: in Havana and a few other large cities. Research carried out in 1957 by a Cuban Catholic university is instructive in this respect. The introduction of the research report stated:

The city of Havana is going through a period of extraordinary prosperity, while the countryside, especially its working people, is living in unbelievable conditions of stagnation, misery and despair.⁸⁸

Table 1: Socio-economic data on Cuba⁸⁹

| Index | Rank (L.A.) | Year | Comparable European country |
|--|----------------|------|-----------------------------------|
| | | | |
| Gross national product per capita of the population | 4th | 1957 | Rumania |
| Commercial energy consumption per capita of the population | 6th | 1955 | Yugoslavia |
| Percentage of population able to read and write | 5th | 1950 | Yugoslavia |
| Distribution of newspapers per 1000 inhabitants | 4th | 1960 | Italy |
| Radios per 1000 inhabitants | 2nd | 1960 | Italy |
| Televisions per 1000 inhabitants | 1st | 1961 | France |
| Students in higher education per 1000 inhabitants | 7th | 1960 | Norway |
| Doctors per 1000 inhabitants | 3rd | 1960 | Sweden |
| | | | |

The research presented the following picture of the living conditions of rural workers. Their annual per capita earnings were not more than 91.56 dollars. Although they formed 33 per cent of the population, they received only 10 per cent of the national income. Their diet was far below all reasonable minimum standards. Only 4 per cent of them ate meat regularly, only 2 per cent ate eggs regularly and only 11 per cent drank milk regularly. Despite the high sickness rates (31 per cent had suffered from malaria, 14 per cent had had tuberculosis and 36 per cent had worms), only 8 per cent of the rural workers received free medical assistance from the state, while another 8 per cent was helped by charitable organisations. About 43 per cent of the rural workers was illiterate. Their housing conditions offered an even worse picture, if that can be imagined: in 42 per cent of the rural workers' houses an average of 6 persons shared one bedroom. 64 per cent of these houses had no toilet and other facilities, and so on...⁹⁰

In an interview with Lockwood in 1965, Fidel Castro described the pre-1959 Cuban situation in the following terms:

If you came to Havana in those days, you saw a city with many businesses, many neon signs, lots of advertisements, many automobiles. Naturally this could have given the impression of a certain prosperity; but what it really signified was that we were spending

what small resources were left to us to support an elegant life for a tiny minority of the population. Such an image of prosperity was not true of the interior, where the people needed running water, sewers, roads, hospitals, schools and transportation, and where hundreds of thousands of sugar workers worked only three or four months a year and lived in the most horrible social conditions imaginable. You had the paradoxical situation that those who produced the wealth were precisely the ones who least benefitted from it. And the ones who spent the wealth did not live in the countryside, produced nothing, and lived a life that was soft, leisurely, easy, and proper to the wealthy... We inherited an overdeveloped capital in a completely underdeveloped country.⁹¹

THE REASONS BEHIND THE FOCUS ON THE CUBAN COUNTRYSIDE

These huge differences between city and interior were not confined to Cuba. So-called *dependencia* theory was elaborated in the 1960s and 1970s to account for this phenomenon that is typical of the whole Latin American continent.⁹² According to the versions of this theory, underdevelopment and development are two sides of the same historical process: capitalist worldwide expansion. In this context only brief reference will be made to the way in which this theory analysed the place of an institutionalised structure of exploitation between town and countryside within an international structure of exploitation in which the rich capitalist West (Western Europe, but as far as Latin America is concerned, the United States of America in particular), pursues its own enrichment at the expense of the developing countries which are economically dependent on it. The Brazilian economist, Theotonio Dos Santos, described the concept of 'dependent development' as follows:

By dependence we mean a situation in which the economy of certain countries is conditioned by the development and expansion of another economy to which the former is subjected. The relation of interdependence between two or more economies and between these and world trade, assumes the form of dependence when some countries (the dominant ones) can expand and can be self-sustaining, while other countries (the dependent ones) can do this only as a reflection of that expansion, which can have either a positive or a negative effect on their development.⁹³

Dependencia theory tends to see dependence as an unequal relation between geographically distinct entities: the centre (the dominant countries) versus the periphery (the dominated countries). Within the periphery, in turn, the opposition is between town and hinterland.⁹⁴ One of the main founders and spokesmen of *dependencia* theory, André Gunder Frank, drew the following conclusion from his study of Latin America:

The capitalist system has a neo-colonial structure through which the imperialist metropolis exploits its Latin American and other colonies (and its Afro-American internal colonies at home) and through which -- through 'internal colonialism' -- the national metropolises of Latin America exploit their provincial centres, and these in turn their respective hinterlands, in a colonial chain that extends without a break from the imperialist centre out to the most

isolated rural region of Latin America and other underdeveloped countries.⁹⁵

In the course of a clear review of such theories, other *dependencia* theorists, Chilcote and Edelstein, state their case as follows:

Within each country, the pattern of metropolis-periphery relations is replicated; the economic surplus of the countryside is drained into the urban areas through a process of internal colonism. The countryside is poor not because it is feudal or traditional but because it has enriched the cities. Latin America is underdeveloped because it has supported the development of Western Europe and the United States.⁹⁶

From the perspective of *dependencia* theory, it is perhaps not so surprising that the problems of the Cuban countryside were tackled so energetically after 1959. A revolutionary government which sought to free Cuba from the international economic relations which it saw as 'exploitative' could not ignore the harsh inequalities between town and countryside which, so the *dependencia* theorists claimed, were entangled within those same relations of exploitation.⁹⁷ At the same time, the political interest in the countryside after 1959 was motivated not just by this kind of theoretical analysis but also by practical and idealistic motives. The critical research carried out by *dependencia* theorists, with its accent on the relation between town and countryside within the periphery, was largely developed after the Cuban revolution. Moreover, it is claimed by some that this theory was also partly a response to the practice of the Cuban revolution.⁹⁸

It was primarily the guerrilla experience of the members of the new government which had forced them to take account of the countryside. Firstly, during the armed struggle there they had directly witnessed how important the support of the rural population was in guerrilla warfare of this kind. The help given to the counter-revolutionary rebels in late 1960 by the peasants of the Escambray mountains was also an important lesson in this respect. The peasants who were arrested in connection with this were treated as 'politically innocent', an innocence which was to be corrected by the ambitious rehabilitation projects which were set up for them, one of which even led to the foundation of a new town, Sandino.⁹⁹

Secondly, the guerrilla experience left a profound ideological impression behind. Fagen attributes to this experience two revolutionary values which were typical of the 1960s: *igualitarismo* and *ruralismo*. The former is an ideology of egalitarianism, or a passion for bringing into line. The latter, the rural character, is that which is typical of the countryside. Fagen writes:

It was even more the extremely mobile life of the guerrilleros in primitive conditions which prevented the development of differentiations and internal privileges. Rifles, hammocks, missions and rank were distributed on the basis of efficiency demonstrated in the Sierra....In this way the situation in the mountains naturally led to the development of a strong sense of identification and respect for the local peasantry, as well as a firm belief in the correctness of the 'opening of career possibilities to those with talent'. The best guerrillero in marching, fighting and encouraging his comrades was the guerrillero who rose in esteem and rank...

The essential principle of this aspect of revolutionary thought is that the countryside is not just the scenario for the most intensive development effort, but that it is also a treasurehouse of values

and ways of life from which every Cuban has much to learn. Rural life is a celebration of simplicity, camaraderie, loyalty, hard work, tenacity, valour, generosity and sacrifice: an idealisation of the personality and behaviour of the peasant guerrillero.¹⁰⁰

One important result of these ideals which were formed during the guerrilla war was the 1961 alphabetisation campaign. Hundreds of thousands of Cubans, schoolchildren, lecturers and others went to the most remote areas of Cuba to give the illiterate 42 per cent of the rural population lessons in reading and writing. The campaign seems to have reduced illiteracy to 3.6 per cent in one year. 67 per cent of the 707,212 people who learned to read and write during this campaign came from rural areas.¹⁰¹ At the same time, the campaign introduced many young people from the cities to the often hard, primitive and isolated life in the mountains and in the countryside for the first time in their lives.¹⁰² In a speech to the brigades of future teachers before they left, Fidel Castro stressed the importance of the countryside for the further development of the revolution:

You are going to teach, but as you teach, you will also learn. You are going to learn much more than you can possibly teach, and in the end you will feel as grateful to the *campesinos* as the *campesinos* will feel to you for teaching them to read and write. Because while you teach them what you have learned in school, they will be teaching you what they have learned from the hard life that they have led. They will teach you the 'why' of the revolution better than any speech, better than any book. They will show you what life has been like in the countryside and how our *campesinos* have lived deprived of everything... Then you will have a better understanding of the relationship between the country and the city, and you will see that it is impossible to achieve greater progress in the city if the rural economy does not develop at the same time.¹⁰³

Another expression of the same ideals is the large amount of voluntary agricultural work that was carried out, particularly during the sugar harvests in the 1960s. The same applies to the 'green belt', a piece of land around Havana where the city residents could grow vegetables, coffee, etc. for collective use from 1967.¹⁰⁴

The decade of the 1960s was one in which an enormous amount of attention was paid to further development of the countryside in both social and economic terms. A first step was, as has been seen, the confiscation of large-scale latifundia, the great landed estates whose rich owners often lived in the towns. In 1963 a second Agrarian Reform Law further reduced the amount of land that was permitted for private possession to a maximum of 160 acres (roughly 65 hectares).¹⁰⁵ Since then much has been done to improve the infrastructure of the countryside, the provision of social services and education.

With the emphasis on modernising agriculture, roads, dams and bridges have been built and electric power has been significantly expanded in the countryside. Hospitals and schools have been built to dispense free medical assistance and to continue the education of the peasants.¹⁰⁶

The definitive option for agriculture, i.e. sugar cane cultivation, as the primary focus of attention for economic development in 1963 only emphasised these priorities even more.¹⁰⁷ A less positive side effect of this development has been the considerable neglect of the towns and cities, particularly Havana, in this period.¹⁰⁸

MOBILISATION OF THE RURAL POPULATION: THE FIRST BASE TRIBUNALS

The traditional isolation of the Cuban interior before 1959 was especially true of its integration within the official administration of justice. In this respect Cuba conformed in essentials to the more general characterisation of judicial administration in Latin America by Karst and Rosenn. They observe that:

The formal legal systems of Latin American countries are modern developed institutional structures... However, this formal legal system has failed to penetrate very far into most Latin American societies. With the exception of the elite and the still relatively small but burgeoning middle class, the great bulk of the population does not actively avail itself of the formal legal system.¹⁰⁹

Santiago Cuba, Attorney-General of the Cuban Supreme Court, called the isolation of specific areas in 1966 a major handicap for the effective functioning of the base tribunals.¹¹⁰ The mountain areas in particular were very difficult to reach. Before 1959 many of these areas had no official administration of justice at all. Despite the official division of the country into areas of jurisdiction, there were areas where no judges or tribunals came. Sometimes a judge was appointed quite at random, completely independently of the official jurisdiction, Santiago Cuba claimed. Besides, if there were disputes, the peasants often preferred to give the last word to a figure of repute from the locality rather than to an official judicial body.¹¹¹ The mountainous regions like those in the Eastern part of Cuba where the experiments with the base tribunals began in autumn 1963¹¹² were particularly troublesome for the pioneers of the base tribunals. As Santiago Cuba expressed it, they were:

Isolated, barely accessible mountainous areas where the inheritance of capitalism was most acutely visible in the abominable living conditions.¹¹³

The isolated tracts of the Cuban countryside were mostly inhabited by small-scale, independent farmers, who were deeply tied to the land on which their livelihood and that of their family was generally completely dependent.¹¹⁴ The cultural level was often very low. The members of the rural population lived in scattered communities, so that the enormous distances and transport problems were an extra obstacle. The experimental tribunals in the new state farms had far fewer problems of this kind to face. The improved living conditions, the socialist nature of the production and the arguably 'politically motivated' residents adapted more easily to the aims of the base tribunals: the involvement of the people of the countryside and the mountains in the revolution and its new 'socialist' legality.

There is little known about the first years of the experiments. Detailed eye-witness accounts are only available for the base tribunals in Havana, which were held from 1968. Official manuals for the lay judges of the tribunals were first issued in 1966. The main document dealing with the early period of the tribunals is a speech held by the Procurator-General of the Cuban Supreme Court, Dr. Santiago Cuba, on September 1st 1966.¹¹⁵ In addition, there is a pamphlet which was probably issued in 1966 by the Ministry of Justice. This pamphlet was designed to inform the people in more detail concerning the new popular tribunals which were to be set up.¹¹⁶ There is also a guide issued by the same ministry for those lay judges who made speeches about the new base tribunals in work places and meetings of mass organisations.¹¹⁷

These sources will be used to help construct a picture of the first experiments.

How was the people organised and mobilised for the establishing of the base tribunals? What attempts were made to ensure a continuing interest of the people in the administration of justice by these tribunals?

The first experiments with the base tribunals were initiated from the University of Havana. In October 1962 Castro had asked the students and teaching staff of this university to set up 'genuine' popular tribunals in the most remote areas of Cuba, areas in which the administration of justice had been conspicuously absent in the immediately preceding period.¹¹⁸ First of all, students and lecturers were made familiar with socialist examples in this field and took part in meetings and discussions with political and mass organisations dealing with the question. In June and July 1963 they left to set up the first tribunals, two in rural areas and one in the Mayabe district of the province of Havana -- not so far from home, for the time being. In the following September and October the experiments were extended to remote areas of Eastern Cuba: Sierra Maestra Sur, Sierra Maestra Norte, Mayarí-Sagua-Moa and Mayarí Arriba.¹¹⁹ A year later, in 1964, it was decided to involve the Ministry of Justice in these experiments. This meant a further spreading of the tribunals to the Escambray mountains, to the centrally situated city of Jagüey Grande and to the province of Pinar del Rio in the extreme West of the island. In October 1964 there were 35 experimental tribunals in existence. The majority were in the interior, and only a few were in urban areas of Cuba.¹²⁰

Base tribunals were first set up in places where it was considered politically and socio-economically wise to do so. Later the jurisdictions of the various tribunals were adapted to fit in with the new politico-administrative division of the country and thereby to the organisational structure of the party. In this way various communities and sections saw the establishment of a base tribunal composed of a nucleus of chief judges and a number of nuclei of local judges.¹²¹ The experiments with the base tribunals took place outside the existing system of judicial administration.

The Ministry of Justice issued guidelines for the functioning of the tribunals.¹²² These were passed on to the various tribunals via the 'legal advisers' (*asesores legales*), who were often law students. In cases where the legal possibility of 'review' existed, this was kept outside the actual system of judicial organisation.

The competence of the tribunals resembled that of the Correctional Judges. They tried less serious felonies and misdemeanours which had previously fallen under the jurisdiction of the Correctional Judges, as well as the pre-criminal state of dangerous behaviour, such as loafing or alcoholism. They also dealt with a number of problems in the sphere of family law, mainly affecting alimony and partition of matrimonial property in cases of divorce.¹²³ According to Santiago Cuba, there were 88 per cent criminal cases and 12 per cent civil cases dealt with by the tribunals in the first half of 1966.¹²⁴

The necessity of gaining the active involvement of the people in the new tribunals was taken seriously right from the start. It cannot always have been easy to carry this out in the relatively inaccessible mountain areas and other extremely isolated regions. The first step was to inform and organise the people. The procedure for this was as follows. Mass organisations such as the C.D.R.s (Committees for the Defence of the Revolution), and very probably in the rural areas the A.N.A.P. (National Association of Small Farmers), called upon the people to attend the electoral meetings for the lay judges who were to be chosen.¹²⁵ In the words of a pamphlet of the Ministry of Justice:

The Communist Party of Cuba and the mass organisations, via the

Commission for Popular Tribunals of the Ministry of Justice, urge you to participate in the setting up of the Popular Base Tribunal for your area. The place and date of the 'Assembly for the Election of Candidates' will be announced in due time by the local mass organisations.¹²⁶

Elio Oliva, a C.D.R. activist who had been actively involved in the preparations for such a meeting in 1966, described his activities as follows:

In preparation for the first meeting we combed every neighbourhood, block by block. People were notified of the meeting by posters, loudspeaker vans and house-to-house calls. This intensive propaganda work had to ensure that the requirements for candidates were well known.¹²⁷

The above citation comes from an activist in Havana and is thus based on the situation in the capital. However, the monthly bulletin of the C.D.R. organisation stated:

The system by which the popular judges are elected and later selected that is in use in the city of Havana is similar to that in operation in other parts of the interior of the country; it is governed by the same principles, which are adapted to the specific circumstances of each locality.¹²⁸

The final electoral assembly was often preceded by a number of information evenings, at which the people were told about the base tribunal which was going to be set up.¹²⁹ The first conditions which a candidate had to satisfy for election as lay judge were: to be more than 21 years old; to have completed six years of secondary school; to have a good attitude to work; to be respected and held in moral esteem by the neighbours of the locality; and, last but not least, to be integrated in the revolutionary process. The function of the new lay judges was not a professional one, which meant that they continued their normal daytime activities as farmers, teachers or factory workers.¹³⁰ The position of lay judge was a secondary function to be carried out in the evenings.¹³¹

After the neighbourhood meetings had been held, at which sometimes more than 1,000 people were present, and everyone had been informed about the procedure, a number of candidates for the position of lay judge were chosen. This took place after detailed discussion and with a majority of votes.¹³² The successful candidates from this round then followed a course lasting ten days, in which they were instructed in the organisation and functioning of the base tribunals.¹³³ Their behaviour during the course was evaluated while their personal records were carefully scrutinised, and these results formed the criteria for the subsequent selection of the final candidate judges. The best candidates were put forward as candidates for the position of chief judge. These were the judges who formed the executive committee of the tribunal.¹³⁴ The selection was carried out by a commission consisting of *compañeros*, comrades from the party and from the Ministry of Justice. The comrades from the Ministry were the legal advisers.¹³⁵ Finally, the local populace expressed its approval or disapproval of the selected candidates in another neighbourhood assembly. Disapproval might be based, for instance, on information which had been acquired later and which was detrimental to the candidate who had been selected.¹³⁶ Depending on the volume of work, the number of judges appointed per tribunal could be some twenty or more.¹³⁷ The zones, the local sections into which a base tribunal was divided, usually worked with between five and seven judges.¹³⁸ The neighbourhood assemblies nominated some ten to fifteen candidates

for the position of judge in a local section.¹³⁹

The first tribunals in the interior were under the supervision of a Governing Body (*Núcleo de Cabezera*). This body had administrative and executive powers as well as juridical competence.¹⁴⁰ It was in charge of pre-trial inquiry and its members held the position of president at hearings of the local sections.¹⁴¹ The first base tribunals in densely populated urban areas such as Havana City and Santiago de Cuba were set up in accordance with a different organisational design. They were led by a Coordinating Body (*Organo Coordinador*) which as such had no juridical powers. It consisted of judges representing the various local sections of the tribunal. These sections had their own management, the Executive Committee (*Núcleo de Dirección*). The simplest organisational structure was that of the first base tribunals on the Isla de Pinos (also known as the Isla de Juventud). On this island, the tribunals fell directly under the control of the Executive Committee (*Núcleo de Dirección*). Unlike the other tribunals, they were not further subdivided into local sections.¹⁴²

Initially it was only the candidates for chief judge who followed their appointment with a course in technical juridical expertise for the duration of one month.¹⁴³ Later the 'ordinary' lay judges also received further training.¹⁴⁴ In complicated juridical cases the judges could call in the help of a legal adviser, who visited the tribunals on a regular basis for this purpose. As a general rule the legal adviser was responsible for the correct functioning of one base tribunal. In cases that came up for review the adviser could also be a member of the bench of judges. In all other cases it was the lay judges chosen by the neighbourhood assemblies who carried out the basic administration of justice without outside interference.¹⁴⁵

The engagement of the people was not limited to the election of judges. The public was often present in considerable numbers at hearings held in the evenings in a C.D.R. meeting hall or in some other neighbourhood meeting place.¹⁴⁶ Santiago Cuba wrote that everyone present at a trial had the right and duty to disclose to the hearing any facts which might be relevant to the case.¹⁴⁷ The elected judges themselves were also subject to supervision which was not confined to the courtroom. It was not enough to pass just and honest sentences:

Having been entrusted with the duty of judging their fellow citizens on the basis of their personal life and their prestige, it is necessary for them to maintain that prestige and exemplary moral standard without wavering, their private and public life complementing their activities as judges.¹⁴⁸

There were two grounds on which a judge could be relieved of office. They were: the committing of a delict; or the tarnishing of his/her prestige in the eyes of the *compañeros* or of the public. A judge accused in this way could be immediately suspended from office by the other members of the tribunal. One of them then instigated an investigation into the allegations. The results of this investigation were discussed by the neighbourhood assembly, after which a vote was taken on whether the assembly agreed to dismissal or not. Santiago Cuba mentions an example in 1966 of a lay judge who was dismissed for the inadequate attention which he paid to his 'legal home' and his incorrect public behaviour.¹⁴⁹

The reports present a picture of genuinely popular tribunals, with lay judges chosen by and from the neighbourhood assemblies. The trials held in the evenings in meeting halls or on the street were well attended. It was the first time in history that the people was able to supervise its lay judges directly. Because the lay judges were also members of the same neighbourhood, a moral watch was kept over their

other activities, and dismissal could be resorted to when necessary.

Comparison with the Correctional Judges justifies the conclusion that the participation of the people in the basic administration of justice had increased since 1962. It is more difficult to gauge the extent of the genuine influence which the people had upon this administration of justice. While a neighbourhood assembly nominated candidates for the position of lay judge, the definitive selection was carried out by a commission of party members and representatives of the Ministry of Justice. The tribunals were set up to conform closely to the requirements of the local population, but on the other hand, as will be seen below, their establishment fitted in with the general policy of mass mobilisation which was characteristic of the period. They were set up to involve the population, especially that in the countryside, in a positive way in the revolution. As 'participation in mass organisations was to be of decisive importance for the formation of a collective consciousness',¹⁵⁰ so 'the base tribunals were to have an educational function in teaching the masses to respect socialist legality'.¹⁵¹ Active participation in all kinds of revolutionary organisations and institutions such as the C.D.R.s and the base tribunals had a positive educational value in itself. As Fagen put it in his interesting study of Cuba in the 1960s:

As we shall see... the regime seeks to forge the new political culture in the crucible of *action*. In the mass organisations, the armed forces, the Party, and the schools, great emphasis is placed on the creative, corrective and salutary effects of immersion in revolutionary activity. With the exception of the Party, one need not be 'pure' in order to join; it is precisely through participation that cultural change and individual purification take place.¹⁵²

At the same time the new basic administration of justice put great emphasis on the 'retraining' of the condemned. As a pamphlet put out by the Ministry of Justice explained to the people:

The aims of the Popular Tribunals are not only to punish anti-social behaviour, but also, and fundamentally, to re-educate the condemned, creating in him a socialist attitude towards work, and respect for the law and norms of society.¹⁵³

The sanctions imposed by the tribunals speak for themselves. They had a wide range of re-educative penalties and sanctions at their disposal to deal with minor offences, misdemeanours and behaviour likely to lead to crime. The penalties most frequently imposed by the base tribunals in 1966 were a public warning (*la amonestación* or *la crítica pública*) and the traditional penalties of a fine (*la multa*) or imprisonment (*la privación de libertad*). Hardly a hearing was concluded without a public warning being expressed. Fines were proportional to the income and liabilities of the accused. Detention always involved productive labour.¹⁵⁴

The following example of the educational value of the basic administration of justice in its early phase is taken from the Attorney-General, Santiago Cuba. It concerned a case that came before the tribunal of San Pedro de Yaguaramas. A middle aged person was brought up for trial because of his degenerate life style, consisting of loafing, alcoholic bouts, offensive behaviour and street brawls. He was sentenced by the tribunal to a public reprimand and a period of 'paid work' on a farm. The reprimand was administered in the presence of the whole neighbourhood, and was accompanied by an analysis of the harm and waste that his behaviour cost the neighbourhood. This public condemnation and the period of detention made such an impression on the man that his work attitude changed. The transformation was

so radical that he requested to be allowed to remain on the farm as a labourer when his period of detention was over.¹⁵⁵

Notes to Chapter Three

1. From a declaration of the Cuban Supreme Court on 21st August 1961, **Revista Cubana de Jurisprudencia**, 1st year, January 1962, no. 1. In 1962 Santiago Cuba referred to the general duty of judges as 'to be zealous guardians of revolutionary legality': **Los Tribunales en el Período de Construcción del Socialismo**, Trabajo leído por el Fiscal del Tribunal Supremo, Apertura de los Tribunales, 1st September 1962, p. 13.

'Socialist' legality implied that the transition to socialism had taken place:

This legality is based in the first instance on the new legislation created by proletarian power and by means of which it organises the new institutions. It does not necessarily exclude the old capitalist legislation which will continue as far as those aspects and laws are concerned which are useful at a particular moment of the phase of the transition to socialism, since there are capitalist forms which only disappear gradually.

Santiago Cuba, *ibid.*, p. 11.

2. There continued to be one Supreme Court at national level and seven so-called **Audiencias** at provincial level. For the pre-trial investigation required by the latter there were examining magistrates (**Jueces de Instrucción**). At the regional level there were the trial judges for civil cases and the correctional judges for felonies and misdemeanours. The correctional judges administered justice according to a special, summary criminal law procedure. At the lowest level there were the so-called municipal judges, who dealt with minor civil cases and who could also deal with misdemeanours as correctional judges. The lowest level of municipal judges dealt with offences at a neighbourhood level. Before 1953 they could be lay judges, but after 1953 this was only allowed in exceptional cases.

Source: interview with Dr. Aldo Prieto Morales, Professor of Criminal Law, University of Havana, 1.3.1983; *Ley Orgánica del Poder Judicial*, 27.1.1909, Jesus Montero, Havana, 1950; A.M.Lazcano y Mazon, **Comentarios a la Ley Orgánica del Poder Judicial**, Vol. 1, Editorial Selecta, 1955, Havana, e.g. articles 7, 8, 12-35 and 136 with commentary.

The correctional judges dealt with misdemeanours and less serious felonies (art. 138), the municipal judges dealt with minor civil cases involving sums of no more than 500 pesos, and at the lowest level even those involving sums of less than 100 pesos (art. 141 secondly). In the absence of a correctional judge, the municipal judges could exercise correctional duties, restricted to misdemeanours (art. 139 and 142). The trial judges were the ones who dealt with civil cases in the first instance, unless these were exceptionally brought before the municipal judges of the **Audiencias** (art. 134 sub 3). They also dealt with appeal procedures against sentences passed by the municipal judges in civil matters (art. 134 sub 5). The **Audiencias** were the appeal courts for sentences passed in the first instance by the trial judges (art. 130 sub 4). They would also have been the appeal courts for sentences passed by the correctional

judges in cases where it would have been possible to appeal against these sentences (art. 131 sub 3). The Supreme Court included in its duties the function of appeal court in cassation and the right of review (art. 125 sub 1, and 127 sub 2). (All references are to the *Ley Orgánico del Poder Judicial*).

3. Fernando Cañizares Abeledo, *Revista Cubana de Derecho*, year 1, no. 2, Oct. 1972; Santiago Cuba, Attorney-General of the Supreme Court at the opening of the courts, *Los Tribunales Populares*, September 1966, pp. 1 and 2; Aldo Prieto Morales, *Derecho Procesal Penal*, Editorial Orbe, Havana, 1977, Vol. II, p. 159; David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba', Ph.D. thesis, University of Surrey, 1973, pp. 159 and 160.
4. The Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*, hereafter *LEC*), promulgated in Spain on September 14th 1882 and in force (with amendments) in Cuba and Puerto Rico by decree of 19th October 1888, Bk. 6, Title I and II, articles 962-982. Cf. Nuñez y Nuñez, *Ley de Enjuiciamiento Criminal*, Jesus Montero, Havana, 1954, Vol. II, pp. 302ff. The *faltas* with which this law dealt were misdemeanours from Bk. III of the Penal Code (*Código Penal*) in force at the time. This Spanish Penal Code of 17th June 1870 was in force on the islands of Cuba and Puerto Rico by a royal decree of 23rd May 1879. Art. 1 of this law established a distinction between offences (*delitos*) and misdemeanours (*faltas*). According to articles 317-335 of Book III, the latter were divided into 'misdemeanours against the public order', 'misdemeanours against the general interests and administration of the townships', 'misdemeanours against persons' and 'misdemeanours against property'.
5. Cf. Abeledo, *op. cit.*, pp. 87-101; Mariano Sanchez Roca, *Leyes Penales*, Vol. II, Part I, Editorial Lex, Obispo, Havana, 1945, p. 1183.
6. *LEC*, Bk. 6, Title I, art. 962.
7. *Ibid.*, art. 963.
8. *Ibid.*, articles 964 and 968.
9. *Ibid.*, articles 969 and 972.
10. *Ibid.*, articles 973 and 203.
11. Literally, 'Judge of Instruction'. See *ibid.*, art. 975.
12. Cf. *Ley Orgánica del Poder Judicial* of 1909, art. 136.
13. *LEC*, articles 977 and 978.
14. *Ibid.*, art. 981. Cf. Abeledo, *op. cit.*, pp. 87 and 88.
15. Thomas, *Cuba, The Pursuit of Freedom*, Harper & Row, New York, 1971, pp. 420 and 436.

16. In 1906 the United States of America interfered in Cuban affairs openly again. From October 1906 to February 1909 they took over the administration of Cuba for a second time. See Thomas, *op. cit.*, pp. 481 and 489.
17. Abeledo, *op. cit.*, p. 88.
18. *Ibid.* Cf. Santiago Cuba, *op. cit.*, p. 5: 'The phrase "Ten days or ten dollars" was notorious in Havana at that time'.
19. Cf. Abeledo, *op. cit.*, pp. 88 and 89.
20. Santiago Cuba, *op. cit.*, p. 4.
21. Abeledo, *op. cit.*, p. 89.
22. The Supreme Court of Justice in a Pronouncement of 9th October 1899 and a Pronouncement of 10th October 1899: Abeledo, *op. cit.*, pp. 90 and 91.
23. Military Decree 152, 15.4.1900: Prieto Morales. *op. cit.*, II, p. 168:
El Gobernador General de Cuba ha tenido a bien disponer la publicación de la siguiente Orden:
 - I La Corte de Policía o Tribunal Correccional que existe en la ciudad de La Habana bajo las órdenes del Gobernador Militar de la misma, continuará en el ejercicio de sus funciones con la jurisdicción territorial que corresponde a la policía de La Habana.
 - II Este Tribunal queda autorizada para conocer, juzgar y castigar las faltas contra las personas y contra el orden público.
 - IV Este Tribunal queda autorizada para imponer penas que no pasen de treinta días de arresto ó multas que no exceden de treinta pesos, ó ambas penalidades al criterio del Tribunal.
24. Cf. Nuñez y Nuñez, *op. cit.*, II, p. 303 and 'Orden Militar' no. 152, 10.4.1900, which specifies under heading VIII:
When the projected Correctional Tribunals are set up in the whole island, the present Tribunal will be adapted to the proposed system, and its powers and functions will be adjusted to the same.
25. 'Orden Militar' no. 213, 'Which Regulates the Holding of Trials of Contraventions', Havana, 25.5.1900, 'General Barracks of the Division of Cuba', in Nuñez y Nuñez, *op. cit.*, II, pp. 304-319.
26. Abeledo, *op. cit.*, p. 95.
27. *Ibid.*, pp. 96 and 97.
28. *Ibid.*

29. Art. XXII Orden 213: Nuñez y Nuñez, *op. cit.*, II, p. 311.
30. *Ibid.*
31. Art. XXI and XXIV, Orden 213: *ibid.*, pp. 311 and 312.
32. Art. XLIX, Orden 213: *ibid.*, pp. 303 and 315.
33. See note 42 below.
34. Articles XLIII and XLIV, Orden 213: Nuñez y Nunez, *op. cit.*, II, p. 314.
35. These were the criminal offences, summed up in art. XLI of the Orden Militar no. 213 of 25.5.1900: Sanchez Rosa, *op. cit.*, pp. 1184, 1211 and 1212. This decision was taken in order to try offences that fell within the competence of the correctional judges by jury. As we have seen, this correctional trial by jury was shortlived.
36. Articles XLVII and XLVIII, Orden 213, 25.5.1900, as reworded by Angel C. Betancourt in the 1911 Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*), 1911, Havana, p. 280.
37. Article 579A of the Social Defence Code and the Third Supplementary Version of the Social Defence Code: Nuñez y Nuñez, *op. cit.*, II, p. 315.
38. Santiago Cuba, *op. cit.*, 1966.
39. Dispensation 11.5.1903, Government Division of the Supreme Court: Prieto Morales, *op. cit.*, II, p. 168.
40. Art. XLIX, Orden 213, 25.5.1900: Nuñez y Nuñez, *op. cit.*, II, p. 315.
41. Art. 204 of the Constitution of the Republic of Cuba, 1940.
42. In 1945 Sanchez Roca attributed the absence of excessive arbitrariness simply and solely to the dutiful and considerate attitude of the judges who were involved in correctional justice. They sometimes had to handle ten to fifteen cases in one morning. In any case, he did not consider that the lack of excesses was a result of the protection offered by the proceedings: *op. cit.*, pp. 1186 and 1187. Cf. Thomas (on the Brook Report), *op. cit.*, p. 437. For statements of Cuban lawyers dating from after 1959 see Prieto Morales, *op. cit.*, II, p. 171; Abeledo, *op. cit.*, p. 98; Santiago Cuba, *op. cit.*, 1966, pp. 4-6.
43. Nuñez y Nuñez, *op. cit.*, II, p. 303; Santiago Cuba, *op. cit.*; Abeledo, *op. cit.*, pp. 96 and 97; Sanchez Roca, *op. cit.*, p. 1185.
44. Cuban criminal law recognises a state of dangerous behaviour on the basis of which the judge can impose so-called pre-criminal or post-criminal security measures. This state of dangerous behaviour is itself based on specific indications laid down in the law, such as insanity, alcoholism, drug abuse and loaf-

ing. We can see in this a typical product of the movement in criminal law which originated in the European *Défence Sociale* movement. This movement was very influential in Cuba around the turn of the 20th century and one of the laws which owes a great deal to it is the *Código de Defensa Social* of 1936.

Social Defence Code, 17.4.1936, edition of 21 July 1959, Jesus Montero, Havana, Third Supplementary Version, p. 197:

The Correctional Judges will be empowered to deal with the following:

- a all the Contraventions listed in Book III;
- b all those felonies included in Book II for which the penalty to be imposed does not exceed six months detention or banishment, or 180 units of currency, or six months suspension or prohibition, or thirty days claustration;
- c the application of pre-criminal security measures in those cases dealt with in article 48 c, and measures taken after the committing of an offence in those cases and according to the regulations laid down in Book IV.

45. Social Defence Code of 1936 (hereafter **CDS**), art. 571ff. Cf. **CDS**, Third Supplementary Version and articles XLVII and XLVIII of Orden 213, Nuñez y Nuñez, *op. cit.*, II, p. 315.

46. *Ibid.*, Articles 585^Aff and 48^E.

47. Orden Militar no. 213, articles XXVII-XL. Art. XXVII laid down:

The jury which has to declare the guilt or innocence of those accused of a crime whose trial falls under the jurisdiction of the Correctional Courts, will be formed in the following way: On the First of June each year the mayors will display a list of individuals eligible for the functions of councillors who are resident in the capital of the district or at a distance of no more than three miles from it. This list will be on display for twenty days in a visible position of the Council House for requests for inclusion of those who have been omitted, which may be made by anyone, and for requests for exclusion of those who do not satisfy the requirements to become members of the jury in some way.

When the twenty days are over, the list, together with requests for inclusion and exclusion and accessory documents will be sent to the Correctional Judge. A Commission presided over by the Correctional Judge, with two councillors nominated by the Mayor and six neighbours, elected by the Judge and the two councillors, will decide about the inclusions and exclusions by majority vote, with no right of appeal...

Article XXIX laid down:

The election of the five members of the jury necessary for the hearings will be held with a regularity demanded by the number of cases to be heard and tried. The procedure will be as follows: When the Correctional Judge is present in the open court [*audiencia*], he will draw ten names out of the urn already referred to, reading

them out for all to hear. The secretary of the jury will note these men in an act which the judge will take and sign, and will take charge of the correspondence which must be sent the same day to notify the selected candidates of their election, requiring them to present themselves within three days from the date of notification and notifying them that failure to appear will be fined with 15 units of United States currency, or, failing that, five days detention, unless they can provide a sufficient excuse, accompanied with proof, under oath or affirmation for not appearing, whether because of some incapacity or inconvenience which has occurred since the putting together of the list of jurors or because of absence, sickness or some other unavoidable circumstance...

Nuñez y Nuñez, *op. cit.*, II, p. 313; Sanchez Roca, *op. cit.*, p. 1184.

48. Cf. e.g. Henry W. Ehrmann, *Comparative Legal Cultures*, Prentice-Hall, New Jersey, 1976, p. 97:
It has been estimated that at present no less than 90 percent of all criminal jury trials the world over, are taking place in the United States.
Cf. also René David, *Les Grands Systèmes de Droit Contemporains*, Dalloz, Paris, 1974, pp. 317, 439.
49. Abeledo, *op. cit.*, pp. 95 and 96.
50. *Ibid.*, p. 93:
La Orden 213 de 1900 instituyó el juicio por Jurado con lo que se acentuaba más el carácter sajón de dicho órgano de justicia que a contrapelo del grado de cultura, psicología social y tradición jurídica de nuestro pueblo, se impuso única y exclusivamente como institución jurídica importada, con la única finalidad de servir de aparato represivo al Gobierno Militar de la Isla.
51. Cf.e.g. R.R.Fagen, 'Mass Mobilization in Cuba: The Symbolism of Struggle', *Journal of International Affairs* 20, 1966, pp. 263-266.
52. Ehrmann, *op. cit.*, pp. 100-101.
53. Orden Militar no. 164 of 1900: Abeledo, *op. cit.*, p. 92.
54. *Ibid.*, p. 94.
55. Orden Militar no. 371 of 1900, published in *Gaceta Oficial*, 18.9.1900: Abeledo, *op. cit.*, p. 94.
56. René David, J.E.C. Brierley, *Major Legal Systems in the World Today*, The Free Press, New York, 2nd ed., 1978, p. 127.
57. Compare Chapters 4 and 6.
58. Compare Chapter 7.

59. Fidel and Raúl Castro estimated that the fighting in the Escambray mountains had cost the revolution some 500 dead and 500 to 800 million pesos. Source: Marta San Martín & Ramón L. Bonachea, 'The Military Dimensions of the Cuban Revolution', **Cuban Communism**, ed. Irving Louis Horowitz, Transaction Books, New Brunswick & London, 1981, pp. 537 and 538.
60. Hugh Thomas, **The Cuban Revolution**, Harper & Row, New York, 1977, p. 594.
61. **Ibid.**, p. 595.
62. **Ibid.**, pp. 598 and 599.
63. **Ibid.**, pp. 601-602.
64. Hans Magnus Enzensberger, 'Portrait of a Party, Prehistory, Structure and Ideology of the P.C.C.', **The New Cuba, Paradoxes and Potentials**, ed. Ronald Radosh, New York, 1976, Morrow Paperback editions, p. 123.
65. **Ibid.**, p. 125.
66. Cf. James M. Malloy, 'Generation of Political Support and Allocation of Costs', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, 1971 [1974], University of Pittsburgh Press, p. 36; Enzensberger, **op. cit.**, p. 126.
67. **Ibid.**, p. 124 (in 1969).
68. Thomas, **op. cit.**, 1977, p. 596.
69. **Ibid.**, p. 599.
70. The research is that carried out by Lloyd A. Free, Institute for International Social Research, New Jersey, **Attitudes of the Cuban people toward the Castro Regime**, 1960. This inquiry turned out to have been conducted in Cuba by an institute with an anti-government attitude: **ibid.**, p. 573. In addition to the results of this inquiry, Fagen adds that the rural population had always been more sympathetic towards Castro than had its urban counterpart: Fagen, **op. cit.**, 1966, p. 268.
71. In Cárdenas, Santa Clara and El Cano, for example: Thomas, **op. cit.**, 1977, p. 608.
72. Fagen, **op. cit.**, pp. 268-269; Malloy, **op. cit.**, p. 28.
73. See note 88 below.
74. **Op. cit.**, p. 33.
75. **Ibid.**, p. 35.

76. The October crisis of 1962 refers to the direct military and political confrontation between the United States and the U.S.S.R. when the United States discovered that Cuba was in the process of installing Soviet rockets on Cuban territory. Cuba was afraid of a new invasion by the United States and the installation of the rockets was part of the Cuban defence preparations for such an eventuality. The United States saw the installation of what were in its own eyes 'offensive' rocket bases as an infringement of the existing international balance of power, as Kennedy stated in a speech of 22nd October 1962. The crisis was finally put to an end with Krushchev's decision of October 27/28th to dismantle the bases. See Thomas, *op. cit.*, 1977, pp. 615-625, 628, 630 and 636.
77. Cf. Thomas, *op. cit.*, 1977, p. 660. According to Thomas (*ibid.*, p. 596), the Soviet Union and other members of the Eastern bloc provided Cuba with help to the value of \$570 million in 1961 and 1962. In this agreement, the Soviet Union was bound, among other things, to purchase Cuban sugar for a period of five years for a previously arranged price. See Edward Gonzalez, 'Relationships with the Soviet Union', *Revolutionary Change in Cuba*, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, 1974, p. 90.
78. The experiments in the 1960s can be seen as variations on this theme: see Chapters 4, 5 and 6.
79. Santiago Cuba, *op. cit.* 1966, p. 1; Abeledo, *op. cit.*, p. 100; Prieto Morales, *op. cit.*, II, p. 159.
80. Cited in Prieto Morales, *op. cit.*, II, pp. 160 and 161; cf. Santiago Cuba, *op. cit.*, p. 2.
81. Santiago Cuba, *op. cit.*, p. 1; Abeledo, *op. cit.*, p. 100.
82. Prieto Morales, *op. cit.*, p. 159.
83. No existen antecedentes algunos de que tanto durante la época Colonial como durante la época de la República mediatizada se haya desarrollado experiencia o modalidad de administración regular de justicia popular en Cuba.
Informe sobre la Jurisdicción de Tribunales Populares, Working Group no. 4, Commission 1 of the National Commission for the Unification and Renewal of the Legal System, Havana, 1973, p. 1.
84. Richard R. Fagen, 'Constantes en la Política Revolucionaria', *Cuba, Camino Abierto*, eds.: David Barkin & Nina R. Manitzas, Siglo XXI, Mexico, 1978, pp. 312ff.
85. Cited in Santiago Cuba, *op. cit.*, 1966, p. 1.
86. *Ibid.*, p. 10. The rural areas were Oriente (10), Camagüey (1), Las Villas (5), Matanzas (3) and La Habana province (3). The 'urban-rural' areas were Oriente (4) and Camagüey (1). As for the urban areas, Oriente and Havana City each

received 2.

87. Booth, *op. cit.*, p. 160.
88. Bureau for Information and Propaganda of the Catholic University Group, 'Por qué reforma agraria', Havana, 1958. Source: José A. Moreno, 'From Traditional to Modern Values', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, 1974, p. 477.
89. Richard R. Fagen, **The Transformation of Political Culture in Cuba**, Stanford University Press, California, 1969, p. 23. His sources were: Data on gross national product, literacy, newspaper circulation, radios, television, higher education and physicians from Bruce M. Russett *et al.*, **World Handbook of Political and Social Indicators**, New Haven, Conn., 1964, tables 44, 64, 31, 35, 37, 62 and 59 respectively; data on commercial energy consumption from Norton Ginsburg, **Atlas of Economic Development**, Chicago, 1961, p. 82. For more details about Cuba in the context of other Latin American countries see Roger Vekemans and J.L.Segundo, 'Essay of a Socio-Economic Typology of the Latin American Countries', Egbert de Vries and José Medina Echavarría, eds., **Social Aspects of Economic Development in Latin America**, I, Paris, UNESCO, 1963. A wealth of data on Cuban socio-economic development before Castro can be found in José R. Alvarez Díaz *et al.*, **Un Estudio Sobre Cuba**, Miami, 1963, esp. pp. 781-1277.
90. Moreno, *ibid.*, p. 477.
91. Cited in Booth, *op. cit.*, p. 129-130. Cf. Lee Lockwood, **Castro's Cuba, Cuba's Fidel**, Vintage Books, New York, 1967, pp. 90, 104.
92. Susanne Bodenheimer, 'Dependency and imperialism, the roots of Latin American underdevelopment', **Politics and Society**, vol. 1, no. 1, Berkeley, 1971; Ronald H. Chilcote & Joel C. Edelstein, **Latin America. The Struggle with Dependency and Beyond**, Cambridge, Mass., 1974; André Gunder Frank, **Capitalism and Underdevelopment in Latin America: Historical Studies of Chile and Brazil**, Monthly Review Press, New York & London, 1969; T. Dos Santos, **Dependencia y Cambio Social**, Santiago, 1970.
93. Theotonio Dos Santos, 'The Structure of Dependence', **The American Economic Review**, LX, May, 1970, pp. 231-236, cited in Chilcote & Edelstein, *op. cit.*, p. 26.
94. This is the view of the tendency within dependency theory characterised by Roel Janssen as 'nationalist': Roel Janssen, 'Afhankelijkheidstheorieën', **Sociale Veranderingen in Latijns Amerika**, red. Geert A. Banck & Henk Bergman, Intermediair Bibliotheek, Amsterdam, 1980, p. 36.
95. Gunder Frank, *op. cit.*, p. 373.
96. Chilcote & Edelstein, *op. cit.*, p. 27.

97. There was an awareness in Cuba of the situation of dependency in which Cuba found itself before 1959. Santiago Cuba, Attorney-General of the Cuban Supreme Court, made the following significant remarks in September 1961:

When the Revolution came to power, Cuban society was subject to a regime shaped by the absolute control of the oligarchy of Yankee financiers, who filled their own pockets in company with a small group of large landholders, industrial magnates and merchants with the fruits of work carried out by the people. This took place via a semi-feudal, semi-capitalist system of large landholdings. It was an underdeveloped and dependent regime...

As a result of the dominant nature of the North American monopolies, Cuba was nothing more than a link in the imperialist world system, within the sphere of influence of North American imperialism. It was characterised by a weak capitalist regime that was developed no further than the point and the level at which its economic backwardness as a mono-producer of semi-processed materials could be maintained...

From: Santiago Cuba, *Memoria, leída por el Fiscal General del Tribunal Supremo*, 1st September 1961, pp. 4-6.

98. The discussion of *dependencia* in Latin America began in the 1960s. The elaboration of discussion and theory reached a peak in the 1970s. Cf. Janssen, *op. cit.*, pp. 34 and 35.

The roots of this theory can be traced back to the writings on 'imperialism' by Lenin and Rosa Luxemburg (e.g. V.I.Lenin, *Imperialism as the Highest Stage*, 26.4.1917; Rosa Luxemburg, *The Accumulation of Capital*, London, 1951). But these theories were not likely to attract widespread and profound interest on the part of the revolutionary cadre of the Cuban revolution because of the 'petit bourgeois' rather than 'Marxist-Leninist' or 'proletarian' nature of the Cuban revolution of 1959, as the Cuban Rafael Rodríguez later defined it (Carlos Rafael Rodríguez, *Cuba en el Tránsito al Socialismo (1959-1963)*, Siglo XXI, Mexico, 1978, pp. 69-83). It was the members of the old Communist Party of Cuba in particular, such as Santiago Cuba and Rafael Rodríguez, who emphasised this theoretical orientation in the period. The main political, or social-psychological, driving force behind the Cuban Revolution must be sought rather in a specifically Cuban political tradition. As Richard R. Fagen indicates in his 'The Cuban Revolution: Enemies and Friends':

In order to understand the appeal and the content of the current Cuban world view, it is necessary to appreciate its historical antecedents and its development. Since at least the time of José Martí and the Spanish-American War, antagonism toward the United States has been a recurring theme in Cuban politics, although its earlier volume and pervasiveness never approached the level attained under Castro after 1960. The most fully institutionalized pre-Castro expression of anti-Americanism came in the first years of the Party of the Cuban Revolution or *Auténticos* which was founded in the 1930's. The 1935 program of the *Auténticos* was organized around the symbolic triumvirate of 'nationalism, socialism and anti-imperialism'. By nationalism was meant national independence and development, and by anti-imperialism was meant disengagement from North American political and economic control. But long before the

Auténticos began to broadcast their own particular brand of anti-Americanism, publicly expressed dislike for the 'Colossus of the North' was heard on the island. For example, in 1922, after developments in the sugar trade and the sugar industry considered by many Cubans to be inimical to their interests, one Havana newspaper printed the following two-page headline: 'Hatred of North Americans Will Be the Religion of Cubans'. 'The day will have to arrive', the paper continued, 'when we will consider it the most sacred duty of our life to walk along the street and eliminate the first American we encounter.' Fidel Castro has seldom used more virulent language.

The tapestry of anti-Americanism from Martí through the **Auténticos** to Castro is not, however, all of one piece. Much of the rhetoric and symbolism -- the bloated Uncle Sam, his pockets stuffed with dollars and guns, the Wall Street millionaires hand in hand with corrupt Latin American politicians and landowners -- are common to most varieties of Cuban nationalism. Similarly, the themes of North American economic exploitation, political domination, and the necessity for Latin solidarity in the face of Yankee aggression continue at least sporadically throughout the twentieth century.

Source: **Enemies in Politics**, ed. David J. Finlay, Ele R. Olsti, Richard R. Fagen, Rand McNally & Co., Chicago, Ill., 1967, p. 217.

T. Draper expressed it as follows:

...generations of Cubans were brought up in the shadow of the hateful Platt Amendment and grew to political maturity waging a struggle against it. The major, longterm U.S. investments were made in precisely this period and, therefore, reeked of old-style imperialism.

If there is one form of foreign ownership most wounding to the national consciousness, it is foreign ownership of the most elemental of natural resources -- the land. In the case of Cuba, U.S. ownership of vast tracts of land was all the more politically vulnerable because they were not ordinary tracts -- they were **sugar** lands, bearing the crop that was the sustenance and affliction of the people...The main U.S. investment was situated at the sorest and more vulnerable point not only of the Cuban economy but of the Cuban national psyche, and whatever was or had ever been wrong with the sugar industry was linked in the most direct and intimate way with U.S. capital and trade. Foreign ownership of public utilities runs foreign ownership of natural resources a close second in political offensiveness, and Cuba had an excess of both.

From: **Castroism, Theory and Practice**, New York, Praeger, 1965, p. 108.

99. Cf. Donald W. Bray & Timothy F. Harding, 'Cuba', Ronald Chilcote & Joel Edelstein, **op. cit.**, p. 633. For more information about the town of Sandino, see the brochure 'Cuban Women Speak' [in Dutch], published by Venceremos, Organisation for Solidarity with Cuba, Utrecht (Cuba series 3).

100. **Op. cit.**, 1978, pp. 318-320.

101. Moreno, *op. cit.*, pp. 477, 478.
102. See for instance the novel *El Comandante Veneno* by the Cuban writer Manuel Pereira Quinteiro, Havana, 1975. [A Dutch translation is available: *De Commandant*, Wereldvenster, Bussum/NOVIB, The Hague, 1981].
103. Fidel Castro in his speech on the departure of the literacy brigade 'Conrado Benitez' in Varadero, 14.5.1961: *El Mundo*, 16.5.1961, pp. 6-8, cited in Fagen, *op. cit.*, 1969, p. 183. I have been unable to ascertain the number of (young) Cubans who took part in this campaign.
104. Booth, *op. cit.*, p. 139.
105. Moreno, *op. cit.*, p. 477.
106. *Ibid.*, p. 478.
107. Booth, *op. cit.*, p. 129. A first hand account of how this definitive decision was reached can be found in Edward Boorstein, *The Economic Transformation of Cuba*, Modern Reader Paperback, New York & London, 1969, pp. 181-225. As he indicates, such ideals as rapid industrialisation and diversification of export products and trading partners had to be put in the background in 1962 for the time being as a result of the accelerating trade deficit and other economic problems. It was no longer possible to avoid planning a long-term policy based on Cuba's traditional export product -- sugar:
 Everything pointed to increasing the export of sugar as the main solution to the deficit. Sugar was not subject to the uncertainties surrounding products in which Cuba was short of experience.
 Boorstein, *op. cit.*, p. 198.
108. Booth, *op. cit.*, pp. 129-132,
109. Kenneth L. Karst & Keith S. Rosenn, *Law and Development in Latin America*, University of California Press, Berkeley, 1975, p. 65.
110. *Op. cit.*, 1966, pp. 8-9.
111. Interview 1.3.1982 with Dr. Aldo Prieto Morales, Professor of Criminal Law, University of Havana in 1980, 1981 and 1983. From 1959 he served for years as district attorney in the province of Pinar del Rio and had under his jurisdiction extremely isolated mountain towns and villages such as Mantua, Duane and Las Martinas. He told me that his grandfather exercised such a mediatory function before 1959 in the region of Pinar del Rio among his fellow rural neighbours.
 See Karst & Rosenn, *op. cit.*, pp. 65, 574-629, where such practices are described as typical for Latin American legal culture and practice. Cf. too P. Friedrich, 'The Legitimacy of a Cacique', 1969, Karst & Rosenn, *op. cit.*, pp. 659-664.

112. Ministry of Justice, Commission for Popular Tribunals, '¿Qué son Los Tribunales Populares?', Havana, 1966?, p. 7. [The Catalogue of the José Martí National Library in Havana gives the year of publication as 1968?]. Cf. Santiago Cuba, *op. cit.*, 1966.
113. Santiago Cuba, *op. cit.*, p. 8.
114. Alongside the establishment of state farms, the small farmers have been allowed to keep the private land that they acquired in some cases after 1959. They are represented today in the National Organisation of Small Farmers (**Asociación Nacional de Agricultores Pequeños**), which had 232,358 members in 1978. Cf. André and Françoise Demichel, **Cuba, Comment ils sont gouvernés**, Pichon/Durand Auzias, Paris, 1978, p. 91; Jorge I. Domínguez, **Cuba, Order and Revolution**, The Belknap Press of Harvard University Press, Cambridge, 1978, pp. 445-463; Bray and Harding, *op. cit.*, pp. 632-633.
115. *Op. cit.*
116. See note 112.
117. Ministry of Justice, National Front for Instruction and Propaganda, Popular Tribunals, 1968, Havana: 'Guía para ofrecer conversatorios sobre los Tribunales Populares'. This and the publication referred to in the preceding note go back to the first experimental years of the tribunals in their commentary.
118. Cf. Fidel Castro in his speech of 12th October 1962 (note 79 above); interview 3.3.1983 with Ismaél Séfer Zárate, National Advisor to the National Management of the Popular Tribunals from 1968 to 1973 and Head of the Department for Extension and Legal Information of the Supreme Court of Cuba from 1983; informal interview 3.3.1983 with Dr. Corona and Dr. Juan Vega Vega, Professors of Criminal Justice, University of Havana at the time.
119. Ministry of Justice, 'Guía...', *op. cit.*, p. 5.
120. *Ibid.*, pp. 5-6; **Informe sobre la Jurisdicción de Tribunales Populares**, Working Group no. 4, Commission 1 of the National Commission for the Unification and Renewal of the Legal System, Havana, 1973, pp. 1-2.
121. Santiago Cuba, *op. cit.*, 1966, pp. 7-8.
122. *Ibid.*; Ministry of Justice, 'Guía...' and '¿Qué son...?', *op. cit.*
123. Santiago Cuba, *op. cit.*, pp. 13-14.
124. *Ibid.*, p. 14.
125. See note 114 above.
126. Ministry of Justice, '¿Qué son...?', *op. cit.*, p. 5.

127. R. Alberto Maso, 'La Constitución de los Tribunales Populares', **Con la Guardia en Alto**, January 1967, p. 45.
128. *Ibid.*; Santiago Cuba, *op. cit.*, p. 13.
129. Santiago Cuba, *ibid.*
130. *Ibid.*, p. 12; Ministry of Justice, '¿Qué son ...', *op. cit.*, pp. 13-14; *id.*, 'Guía...', *op. cit.*, p. 7.
131. Ministry of Justice, **Cursillo Pre-selectivo**, published in 1966 by the National Management of the Popular Tribunals. This course includes both procedural and substantive legal regulations for base tribunals. On p. 11, under d, no. 4, it states: 'Non-working hours will be fixed for the holding of hearings.' For the holding of hearings in the evenings, see the eye-witness account from 1968 in Jesse Berman, 'The Cuban Popular Tribunals', **Columbia Law Review**, Vol. 69, December 1969, p. 1346; Booth, *op. cit.*, p. 184. This was officially fixed by an instruction from the Ministry of Justice: Instrucción no. 19, 'Sobre los días y horas hábiles para la celebración de juicios en los Tribunales de Base', 12.6.1973, Havana.
132. Ministry of Justice, 'Guía...', *op. cit.*, p. 14, under V 2^b.
133. *Ibid.*, pp. 14-15, V^c; *id.*, '¿Qué son...', *op. cit.*, p. 14; Santiago Cuba, *op. cit.*, 1966, pp. 12 and 19.
134. Ministry of Justice, 'Guía...', *op. cit.*, p. 10; *id.*, Cursillo Pre-Selectivo, 1966, *op. cit.*, pp. 10 and 11 under c.
135. Interview with Ismael Sefer Zárato, *op. cit.*
136. Santiago Cuba, *op. cit.*, pp. 12 and 13; Ministry of Justice, '¿Qué son...', *op. cit.*, pp. 13-15; *id.*, 'Guía...', *op. cit.*, p. 15 V c, d.
137. Ministry of Justice, 'Guía...', *op. cit.*, p. 9 IV, no. 3.
138. *Id.*, '¿Qué son...', *op. cit.*, p. 11.
139. *Ibid.*, pp. 11 and 13; Santiago Cuba, *op. cit.*, p. 12.
140. Ministry of Justice, 'Guía...', *op. cit.*, p. 10.
141. *Id.*, Cursillo Pre-Selectivo, *op. cit.*, pp. 10 and 11, c; *id.*, '¿Qué son...', *op. cit.*, p. 11. This type of tribunal was to be found in the provinces of Pinar del Rio, Havana Campo, Matanzas, Las Villas, Camagüey and Oriente: see a pamphlet entitled 'Estructura de los Tribunales Populares' and interview with Ismael Séfer Zárato, *op. cit.*
142. Ministry of Justice, Cursillo Pre-Selectivo, *op. cit.*, pp. 10 and 11, c.

143. Santiago Cuba, *op. cit.*, p. 19; Ministry of Justice, 'Orientaciones para el Curso de Capacitaciones a los Jueces de Núcleos de Cabecera' (n.d.). The course specified in these guidelines lasted three weeks, from Monday to Saturday, six hours per day. A number of manuals were used, including those referred to above.
144. Ministry of Justice, '¿Qué son...', *op. cit.*, p. 11.
145. *Id.*, 'Guía...', *op. cit.*, p. 15; Santiago Cuba, *op. cit.*, pp. 19 and 20.
146. Cf. the eye-witness account in Berman, *op. cit.*, p. 1343. Similarly, Santiago Cuba, *op. cit.*, p. 15: 'at which the presence of the greatest number of neighbours is assured'. Cf. interview 26.3.1983 with Abel Miguel González, who in 1965 was elected as lay judge for Havana Centre, Section Dragonales (now Havana Municipal Centre, San Leopoldo).
147. Santiago Cuba, *op. cit.*, p. 15. Later authorities and laws make no reference to this.
148. *Ibid.*, p. 18.
149. *Ibid.*
150. *Granma Weekly*, 27.9.1966, p. 2; Janse de Jong et al., 1981, p. 67.
151. Prieto Morales, *op. cit.*, II, p. 159. The lay judges of the tribunals addressed the people in the informative meetings as follows:
Likewise, as popular justice is a genuinely public act, formed by neighbours, it is the adequate way of educating the workers, cultivating in them a socialist legal consciousness, respect for the laws, for socialist property and the rules of living together. They learn to avoid antisocial behaviour through the warning and lessons to be drawn from the trial of antisocial behaviour.
From: Ministry of Justice, 'Guía...', *op. cit.*, pp. 7-8.
152. Fagen, *op. cit.*, 1969, pp. 7, 9 and 10.
153. Ministry of Justice, '¿Qué son...', *op. cit.*, pp. 8 and 9; *id.*, 'Guía...', *op. cit.*, p. 8, III 1^a.
154. Santiago Cuba, *op. cit.*; Booth, *op. cit.*, p. 185.
155. Santiago Cuba, *ibid.*, p. 14.

AN INDEPENDENT POLITICAL COURSE:
INTERNATIONAL SOLIDARITY AND IDEALISM 1966-1968

It has been shown that the experiments with the base tribunals before 1966 were confined to the rural areas. After this date the newly designed basic administration of justice attracted attention at an increasing rate. The Attorney-General of the Supreme Court of Havana addressed the tribunals in an important inaugural speech of that year, while at the same time an official handbook was issued for the lay judges of the tribunals.¹ In the spring of 1968 base tribunals were introduced in Havana *en masse*.² The running of the base tribunals was integrated in a revised system of judicial organisation in 1973.³ Why was it the period 1966-1968 which saw such a rapid extension of this judicial administration at base level? In what follows an attempt will be made to relate the introduction of base tribunals in the whole of Cuba in this period to the general political and socio-economic developments which took place at the same time, as was done for the period in which the experiments began. A glance at the developments between 1965 and 1970 shows an intensification of a number of characteristics which have already been mentioned for the early 1960s. An economic debate that was introduced in 1963 and 1964 led in 1966 to a radical 'Cuban' economic policy, stressing central planning, moral work incentives and mass mobilisation. The mass mobilisation policy reached a peak between 1966 and 1970. The aim of achieving the 'new man' (*hombre nuevo*) and the implementation of equality between people, between intellectual and manual labour, between town and countryside, etc., never received more emphasis during the Cuban revolution than in the late 1960s. The specially 'Cuban' style of the revolution was more central than ever. In foreign policy Cuba was not hindered by the trade contracts with the U.S.S.R. from following an independent line which deviated sharply from the Soviet Union in this period. In this respect the years 1966-1968 are the most striking. It was serious economic problems and other frustrated hopes which finally led to a drastic change of direction in foreign policy in 1968 and in domestic policy in 1970. The relations with the Soviet Union became warmer again. These changes were to set the pattern for the 1970s.

AN ECONOMIC DISCUSSION

1963 and 1964 may be described as relatively peaceful years for Cuba. In 1964 an important long-term trade contract was signed with the Soviet Union, which included in its terms the stipulation that Cuba should supply an annually increasing volume of sugar at a fixed price until 1970. Cuba's attempt to fulfil this agreement and thereby to reduce the foreign debt to the U.S.S.R. led to an economic disaster

in 1970. Despite enormous efforts, the target of 10 million tons of sugar proved to be unrealistic.⁴

In 1964 this future setback was still far away. For the time being it had been decided to give priority to a rapid development of agriculture, especially the export crop, sugar. This still left time and space for a fruitful discussion of the advantages and disadvantages of various types of economic organisation. There were two parties to this debate. One group, led by the former PSP leader, Carlos Rafael Rodríguez, and the Minister President of the National Bank of Cuba, Marcelo Fernández, was supported by Czechoslovakian, Soviet and other foreign experts. This group hoped to encourage production by material work incentives, the promotion of capitalist market and profit mechanisms at a local level and decentralised economic planning. The other group, whose ideological leader was the Minister of Industry at that time, Che Guevara, made economic growth dependent on the political awareness of the workers. The latter group recommended moral work incentives, a total elimination of money and market mechanisms and a centralised economic planning and supervision.⁵ The success of this model depended on the creation of a 'new man' endowed with a revolutionary consciousness, the altruistic and socially aware *hombre nuevo*.⁶

Neither tendency was able to impose its viewpoint on Cuba in this period. Fidel Castro abstained from taking a stand in the debate and Cuba seemed to follow a middle course between the extremes of moral and material work incentives up to 1966. Wages were levelled as far as possible, but good work records were rewarded with special luxury items such as refrigerators and cars.⁷ In 1965 Castro stressed:

We cannot choose idealistic methods which conceive of all men as guided by the concepts of duty...[and] expect...men to make a maximum effort...just because it is their duty...⁸

The proponents of both views were able to experiment with different types of economic organisation in various economic spheres during this period.⁹

RADICALISATION IN FOREIGN POLICY

From 1965 onwards Cuban foreign policy was marked by radicalisation. Despite Castro's attempts to normalise the relations with the United States of America in 1964,¹⁰ the failure of these overtures and the increasingly aggressive intervention of the United States of America in Vietnam from the middle of 1964 seemed to indicate that the chances of improving these relations were definitively closed from now on as far as Cuba was concerned. Che Guevara's speech to the assembly of the United Nations in December 1964 revealed a resumption of the hard line towards the United States of America. In his speech, which was largely devoted to a call for the 'liberation of Latin America from North American domination', he declared:

As Marxists, we have maintained that peaceful coexistence does not include coexistence between exploiters and exploited, between oppressor and oppressed.¹¹

This added up to the open putting into practice of the Second Declaration of Havana (February 4th 1962), by which Cuba had pledged itself to support the continental liberation struggle of Latin America.¹²

The new, strong line on international solidarity in the anti-imperialist fight was reinforced in January 1966 at the First Conference of the Organisation for Solidarity between the Peoples of Africa, Asia and Latin America (OSPAAL),¹³ at

which many Latin America representatives of the guerrilleros were present. The historic words sent in his absence by Che Guevara to the organisation give an impression of the Conference:

How close we would be to a bright future if there were two or three Vietnams on the face of the world, with their death-tolls and their massive tragedy, their everyday heroism, their repeated blows against imperialism, driving it to use up its strength in the face of the growing hatred of the peoples of the world...

America, a continent forgotten in the most recent struggles for political liberation, which begins to make its presence felt via the Tricontinental (OSPAAAL) in the voice of the vanguard of its peoples, the Cuban Revolution, will have a much more important duty : the creation of the Second or Third Vietnam in the world.¹⁴

The same support for an unremitting anti-imperialist struggle led in the same month, January 1966, to the establishment of a new Latin American solidarity organisation, the OLAS (*Organización Latinoamericana de Solidaridad*).¹⁵ At the first meeting of the OLAS, held in Havana in August 1967, Che Guevara, who was once again absent, was elected honorary citizen of Latin America by the 160 Latin American and Caribbean delegates. Most of those present were not aware of the serious difficulties which Guevara and his guerrilla group were facing in Bolivia at the time. In October 1967 he was captured and killed by a counter-insurgency battalion of the Bolivian army, trained and supervised by the United States of America.¹⁶

Cuba's explicit decision to lend active support to the anti-imperialist armed struggle as that was being waged in many Third World countries was not in complete harmony with the foreign policy of the U.S.S.R. At a conference of the Moscow-supported Latin American communist parties held in Havana at the end of 1964, Cuba had still been able to reach a compromise. Under specific conditions the Soviet Union agreed to Cuba's active support of the armed struggle in a number of specified countries.¹⁷ However, from 1965 on the Cubans began to attack the Soviets openly in their Third World policy. The Soviet Union's reserved attitude to Vietnam and the 'revisionist' attitude of many Latin American communist parties which condemned the use of armed struggle in their own country were to a large extent responsible for this.¹⁸

The economic foreign policy of the socialist 'great powers' came under criticism from Che Guevara in Algiers on April 24th 1965:

This all leads to one conclusion: the development of those countries which are now starting on their road to liberation must be paid for by the socialist countries....

We believe that this is the spirit in which the responsibility to help the dependent countries should be seen. We should no longer speak of developing trade on a mutually beneficial basis, in terms of the prices laid down for the underdeveloped countries by the law of value and the international relations of unequal exchange, themselves a product of the law of value...

If we can establish the existence of that kind of relation between the two groups of countries, we must recognise that the socialist countries are in a certain way accomplices in imperialist exploitation.¹⁹

On March 13th 1965 Castro made a different criticism, this time of the attitude of the communist giants -- China and the Soviet Union -- towards the war in Vietnam. He condemned the way in which they both stood by and watched the genocide and extermination of the Vietnamese people without intervening, while all that they did was engage in ideological squabbles with each other and compete for the hegemony of the revolutionary movements in the world. During this speech Castro declared:

Our position is simple: we are for the giving of all the help that is necessary to Vietnam! We are in support of giving that help in weapons and manpower! We are in support of the running of the necessary risks for Vietnam by the socialist camp!²⁰

It was unlikely that Moscow or Peking would welcome such attacks, or those made when Armando Hart repeated them as the Cuban delegate to the 23rd Congress of the Soviet Communist Party held in Moscow in the following year. His words were more guarded on this occasion; after all, the chances of survival of the Cuban revolution depended largely on the economic help of the Soviet Union:

Ideas, tactics, and methods...of twenty years ago are obsolete.

And as examples of how the communist parties should analyse the world situation, he referred to the tricontinental conference, OSPAL, which had been recently held in Havana.²¹ When Hart concluded with the claim that priority must be given to the armed liberation struggle, which in this context meant the supply of decisive military help to the liberation movement in Vietnam, not one of the 5,000 delegates to the congress applauded, not even the Vietnamese delegates. Brezhnev's indirectly negative reply was:

Our class brothers around the world realise that the main help to their revolutionary struggle and our main contribution to it lies in the construction of communism in our own country.²²

The same points of difference with regard to principles and to tactics led to similar conflicts in Latin America itself. The diplomatic and trade relations which the Soviet Union established in the late 1960s with Latin American regimes such as those in Chile, Colombia and Venezuela were a source of irritation to the Cubans. For Cuba supported the armed struggle against the regimes in a number of these countries,²³ convinced that this was the only way for Latin America to free itself from the 'imperialist yoke'.²⁴

The same dilemma marked the conflicts between Latin American communist parties and guerrilla groups. In a number of cases, the former explicitly distanced themselves from the armed struggle that was being waged in their own country with Cuban support. The most well-known instance was that of the kidnapping of a Venezuelan minister. The Communist Party of Venezuela openly condemned this action.²⁵

The OLAS conference held in August 1967 can be seen as having inserted a decisive dividing line between the Cuban government under Castro and the Latin American communists with their Soviet allies.²⁶ Castro's final remarks to this conference were addressed to the relations which the U.S.S.R. had established with Latin American regimes:

We refer to the problem of the financial and technical aid given by any socialist state to these countries...

We condemn all that is connected with financial and technical aid to any of those countries which are repressing the revolutionary

movement, countries which are accomplices in the imperialist blockade against Cuba...

And if internationalism exists, if solidarity is a word worth saying, the least that we can expect from any member of the socialist camp is that it does not give financial or technical aid to any of those governments.²⁷

As will be seen, Cuba was not able to maintain this policy of independence *vis-à-vis* the foreign policies of the superpowers for long. Che Guevara's death in Bolivia in October 1967 created a mood of great disappointment. The failure of his guerrilla group, which, incidentally, had not been able to count on the support of the Bolivian Communist Party, was a heavy blow for the political goals described above. Other guerrilla groups supported by Cuba had suffered heavy setbacks in Venezuela, Guatemala and Peru. In combination with the seriously deteriorated economic situation in Cuba, it meant the definitive end of Cuba's independent foreign alignment.

What were the domestic problems which Cuba faced at that moment? How had they come about and what remedies were tried?

THE SOCIALIST AWARENESS OF THE NEW MAN

The choice of an independent foreign policy in 1965 was in line with similar changes in domestic policy. From 1966 the latter was also characterised by a specifically 'Cuban' style. Up to 1965 Cuba had adopted a middle position between two extremes. On the one hand was a system of central planning, moral work incentives and radical egalitarianism. On the other hand was a system of decentralisation, market mechanisms and material wage incentives. In 1966 a definitive option was made for the first system as a 'Cuban' way of achieving communism quickly. On May 1st 1966 Castro rejected market mechanisms and material work incentives as 'capitalist' methods. He considered it incorrect to first aim for 'socialism' and only later to work for 'communism', as the Soviet ideology laid down.²⁸ Four months later he added:

We are faced with new situations and new questions which require us to do our own thinking. Our task is no less than that of constructing socialism and heading towards communism. How is socialism constructed? How is communism constructed? It is precisely on questions like these that there is a wide variety of opinion in revolutionary thought and that there are many tendencies in the revolutionary movement. It would be impossible for us all to think alike. However, we believe that the road to communism is entirely new; humanity has no experience in it. Of course, it can happen that a country believes itself to be constructing communism while it is in fact constructing capitalism. What we want is to construct communism. Since there is no manual, no index, no guide, since no one has followed that road yet, we have the right to attempt it with our own means, our own procedures and our own methods.²⁹

The capitalist methods of getting people to produce were to be replaced by a 'socialist consciousness'. The head and heart of the 'new' communist person should no longer be concerned with the idea of 'money'.³⁰

We will not make a socialist consciousness and a communist con-

sciousness with a peso sign in the hearts and minds of the men and women of this country...

We will never make a socialist consciousness, and even less a communist consciousness, with a shopkeeper mentality.³¹

The removal of material work incentives was accompanied by a growing parcel of free social services. A draft law by which all urban rents would be cancelled came up for discussion.³² In 1968 education, health care, new housing, crèches, sport, local telephone calls, cinemas and burials were free. In a number of experimental communes in the countryside no rent was paid and electricity, school clothing and school meals were free.³³ The presupposition behind all this was that money was not important if the people had the essentials of life. Political consciousness was an adequate means of getting people to work. As Castro put it in 1968:

To offer a man more to do more than his duty dictates is to buy his conscience with money. To give a man participation in more collective wealth because he does his duty and produces more and creates more for society is to turn political awareness into wealth...

As a step on the road to communism the revolution aims to give all workers the same income from bottom to top, irrespective of the duties they carry out.³⁴

In this idealistic vision, the social and political awareness of the new man of the future was to be created with the help of education, mobilisation, voluntary work and a moral system of incentives. Mobilisation and education took place in various ways. The mass organisations which played an important role in them will be discussed later.³⁵ One method that was used in education was that of examples, particularly when these examples were set by the leaders themselves. Symptomatic is the publicity which was given to the voluntary work of Castro and his entire council of ministers in the sugar harvest of April 1965.³⁶ The effects of the base tribunals, with which experiments began in the early 1960s, in terms of education and mobilisation have already been discussed. Consistently with this, these experiments received more attention from 1965 on in the light of the further intensification of education and mobilisation. Other developments point in the same direction, such as a renewed strong emphasis on the 'national' roots of the Cuban revolution and on the Spartan living conditions and heroic struggle of the guerrilleros in the Sierra Maestra before 1959.³⁷ This meant a new stimulus to develop specifically 'Cuban' institutions, inspired by what had already taken place in the countryside. Santiago Cuba's speech of September 1966 dealing with the experiments with base tribunals in the countryside was timed perfectly to suit these developments, and the same can be said of the handbook for lay judges in the base tribunals which was issued in the same year.³⁸

THE DRIVE TOWARDS INCREASING DEMOCRACY

There were more respects in which Cuba made it clear that it did not want to follow the Soviet example. Although Cuba had accepted a one-party system and this Cuban party was called the Communist Party of Cuba (*Partido Comunista Cubano*, PCC) from October 1965, it was, in Castro's words, a party which had its origin in the people. The new socialist regime in Cuba was indeed a 'dictatorship of the proletariat' over the former exploiters, Castro said, but it was a full 'democracy of

the proletariat' for the Cuban people itself. In this respect too Cuba followed its own path of development:

We live in a complex and changing world. It is necessary that each country in this situation -- that of a Marxist-Leninist revolution -- , each ruling party, knows how to interpret the doctrine satisfactorily and to apply it satisfactorily in each specific case...

What the duty of each revolutionary party is in each concrete situation is a matter for that party and its people to decide...

As far as ideas and experiences are concerned, we are the ones who must act and create; we are the ones who must arrive at the most adequate interpretation of the ideas of Marx, Engels and Lenin. We must make our own contribution in the new situations and conditions.³⁹

The need for increasing democracy was being clearly felt and expressed. One sign of this was the local government which was chosen from the people in 1967.⁴⁰ More than a million members of the mass organisations took part in these elections.⁴¹ At work meetings workers discussed and criticised old and new production plans.⁴² In 1966 Castro stated:

Under socialism, or rather, under communism, it is said that the state disappears. By 'state' a coercive force is understood. Engels said that the government of people would be replaced by administration of affairs.[Engels' words were: *An die Stelle der Regierung über Personen tritt die Verwaltung von Sachen und die Leitung von Produktionsprozessen.*] This is the society which we want to create and which we are striving to achieve, a society in which the masses have a maximum participation, total participation.⁴³

At the same time as this increase in local level democracy, a fierce attack was launched on the Cuban bureaucracy, which was seen as a power in itself and as a threat to the new revolutionary line. The Secretary of the PCC, Armando Hart, put the problem in these words in early 1967:

As long as the state exists as an institution and as long as organisation, administration and policy are not all fully of a communist nature, the danger will continue to exist that a social stratum of citizens will form in the heart of the bureaucratic apparatus which directs and administers the state.⁴⁴

In September 1967 31,500 civil servants were dismissed because they were 'unproductive'. All the remaining civil servants without exception must follow the example that the Council of Ministers had set in April 1965 and carry out physical labour on a regular basis to avoid losing contact with the people. The PCC made unprecedented efforts to enrol as many civil servants as possible in the party. As a result, by the end of 1967 the PCC and the civil service had become a unity.⁴⁵ Technical knowledge and bureaucratic red tape were rejected. More than ever before, decisions were taken on the basis of primarily social and political factors. Mass mobilisation was the keyword.⁴⁶

A relatively small communist party had assumed the leadership of production and mass mobilisation.⁴⁷ Not long afterwards -- in 1968 -- the experiments in increasing local democracy were called to a halt. Other priorities had taken their place.

ECONOMIC PRESSURE AND THE RELATION WITH THE U.S.S.R.

Mass mobilisation had two aims : the creation of loyal, politically aware citizens and the raising of production levels. On January 2nd 1967 Castro had this to say:

We are engaged in an enormous effort to develop the nation's economy, particularly in the agricultural sector. Next spring we shall mobilise 150,000 young people to work for six weeks on the land. But we shall also mobilise tens of thousands of soldiers, we shall mobilise technicians.⁴⁸

An important motive behind the drive to increase sugar production was the long-term contract with the Soviet Union, by which Cuba was committed to the delivery of 24.1 million tons of sugar between 1965 and 1970. By the end of 1967 Cuba had only been able to ship 6.8 million tons of sugar to the Soviet Union instead of the 9.1 million tons which had been agreed upon.⁴⁹ There was a lot at stake in Cuba's ability to meet its commitments, since failure to do so would involve a considerable financial and moral setback. The insecurity in the field of the economy was increased by the enormous demands which must be made upon the Cuban people. The question was how long this could continue without repercussions. At the same time as the mobilisation of the people to make greater economic efforts, both luxury items and essential daily necessities were becoming increasingly hard to get. The sugar cane agriculture and refinery was swallowing up more and more energy and resources. A Cuban told me that in the late 1960s sugar was sometimes the only product to be found in the kitchens of Cuban families. This is probably an exaggeration, but it is indicative of the awareness of a severe shortage.⁵⁰ By January 1969 the situation had become so bad that the government had to impose sugar rationing on the Cuban people.⁵¹

It was in 1968 that the U.S.S.R. finally began to tighten the economic screws in reaction to Cuba's peculiar and unorthodox political line. In the middle of January of that year Moscow sent a new ambassador, Alexandr Soldatov. In contrast to his jovial predecessor, Soldatov was a serious and highranking expert.⁵² On the 28th of January the Cubans were taken by surprise by the news that a mini-fraction led by Aníbal Escalante was accused of clandestine propaganda against the PCC and of the undermining of Cuba's international relations. Two members of this mini-fraction, both prominent members of the PCC, were expelled from the party on the spot.⁵³ It seemed as if for the second time in the history of the Cuban revolution the frictions with the Soviet Union were to be fought out internally via a campaign against Aníbal Escalante. On February 3rd it was announced that a Revolutionary Tribunal had sentenced 34 members of the group to prison sentences, including Escalante, who received fifteen years. One of the main accusations of the PCC against the mini-fraction was that they had held a number of secret meetings with East German and Soviet officials, at which they had passed on detailed information concerning the Cuban economy and had warned that a catastrophe in the Cuban economy was imminent. They were accused of having asked the Soviet and German comrades to take measures against the Cuban government.⁵⁴

The Soviet Union replied on March 22nd 1968. On that day the trade contract for 1968 was finally signed in Moscow after long delays, but its terms must have been a blow for Cuba. The increase in the mutual exchange of products, which had been 23% in 1967, had now dropped to 10%. Besides, the contract did not include any provisions for an increase of the oil supply to Cuba, despite Cuba's serious oil deficiency.⁵⁵ The Soviet newspaper 'Pravda' published an article on March 19th

which could be construed as a commentary. This article sharply condemned Cuba's foreign policy for its support of armed struggle in Latin America.

The 'discrete' economic pressure exerted by the Soviet Union on Cuba yielded results. After all, Cuba was still under the economic blockade of the United States of America as well as of other Western and Latin American countries. To the surprise of many, Cuba presented an official declaration on August 23rd 1968 in which the Soviet invasion of Czechoslovakia which had taken place on the 21st was approved. A passage of the carefully worded declaration is as follows:

The essential point to be accepted, or not accepted, is whether or not the socialist camp could allow a political situation to develop which would lead to the breaking away of a socialist country, to its falling into the arms of imperialism. And our point of view is that it is not permissible and that the socialist camp has a right to prevent this in one way or another.⁵⁶

Had the pressure of events become too great, after the setback in Bolivia, the economic strain and the tight circumstances of the population at home? Was this the reason for Cuba's open legitimization of the action of the Soviet Union? Or was Castro right when he claimed at the time that it was in the interests of the 'world-wide class struggle' alone that the Cuban leaders had taken up this position?

Whatever the case may be, the remarkable Cuban standpoint was soon followed by a change in Cuban foreign policy in Latin America. No longer was it 'made in Cuba' and independent of Moscow. Cuba quickly abandoned the idea of openly propagating the Cuban revolution in Latin America⁵⁷ in favour of a reappraisal of Soviet policy. When Fidel Castro returned to the theme of the relations between the Soviet Union and the countries of the Third World on January 2nd 1969, the tone had changed:

In these times it must be said how significant the solidarity of the socialist camp has been for us, particularly the solidarity of the Soviet Union. On occasion we have held different views on certain questions, and we have expressed them in all openness. But at the same time that same honesty compels us to recognise that that assistance was of decisive importance for our country in these difficult years...

The result of this, in combination with international solidarity and the economic cooperation which our country receives, blockaded as it is by the imperialists, will be a surprise for our enemies and a source of pride for the revolutionary movement in the world. Cuba's triumphs are not triumphs of Cuba alone, but of the revolutionary movement. They are an example for the underdeveloped nations of the world, offering a way out for those who endure hunger, misery, underdevelopment and exploitation.⁵⁸

Moscow's satisfaction with the new Cuban attitude found expression in 1969 and 1970 in new bilateral trade agreements which were much more favourable to the Cubans than that of 1968 had been.⁵⁹ However, the Soviet Union and the other countries of the Eastern bloc made no attempt to help the Cubans out of the enormous problems of shortages which plagued Cuba in 1969.⁶⁰ The fight for a ten million ton sugar harvest in 1970 had to be fought by Cuba and Cuba alone.

THE FIGHT FOR THE HARVEST OF TEN MILLION TONS OF SUGAR

Despite the bleak economic prospects, the government stuck to its domestic policy without change. In fact, political awareness and mass mobilisation became even more important as the supports on which the economic developments between 1968 and 1970 rested. The only changes were a slightly more rigid control and an increased measure of austerity from 1968 on. Some observers, such as the political scientist Halperin, see the publicity surrounding the political trials against the mini-fraction of Aníbal Escalante at the end of January 1968 as the sign of the start of a new, harder line. The activities of the members of the fraction against official government policy were seen by all to have been punished with severity.

Six weeks later the Revolutionary Offensive began. This was a peak in the struggle against capitalist tendencies in the Cuban economy. In a six-hour long speech delivered on March 13th 1968 Castro announced the nationalisation of all private businesses and concerns that were still in existence. This affected small restaurants, shops, bars and one-man businesses: some 57,000 in all.⁶¹ The reasons he gave were the following:

If there is something for which this Revolution can be reproached, it is not that it has been extremist...but that it has not been sufficiently radical. There is not a moment to lose in further radicalising this Revolution. We must once and for all create a revolutionary people...

Capitalism, parasitism and exploitation of man by man had to be dug up by the roots...

This is the kind of communism we are proclaiming here...true communism.⁶²

Castro expressed his disapproval of the 955 bars in Havana whose owners made fat profits from the people who worked extremely hard for the collective good. The bar proprietors had it good:

There is still a *crème de la crème* which grows fat on the work of the rest and enjoys a considerably higher standard of living for which it sees the rest work. They are good for nothings in perfect physical condition who start up some business or other to earn 50 pesos a day, breaking the law and the regulations on hygiene and paying no respect to others, while every day wagon loads of women go past these bars on their way to work in the Green Belt on the outskirts of Havana or to pick tomatoes in Guínes or elsewhere.⁶³

The slogan was self-sacrifice and hard work for the good of the community: the economic development of the country. However small they might be, small-scale private enterprises designed to make individual profit did not fit into this scheme of things. They served only to demoralise those who carried out voluntary work or did overtime under conditions which could hardly be described as luxurious. The government was further driven by the shortages to ration more and more goods, including milk and sugar.⁶⁴ In 1969 the need to employ every available worker in the week-ends and holidays even led to an official postponement of the Christmas and New Year festivities until after July 1970, when the sugar had been harvested.⁶⁵ Some sources describe the 1968-1970 period as a time of militarisation.⁶⁶

The experiments with local government elected from the population were put into cold storage in 1968. A relatively small communist party decided how the production targets were to be reached, while the army was also assigned an important function in the fight for the 1970 harvest. The population was mobilised *en masse* to carry out voluntary agricultural work. Every Cuban was seen as a soldier in the enormous people's production army.⁶⁷ For example, in August 1968 there were

350,000 workers, students, soldiers and farmers working as volunteers on the land. The Cuban army (FAR) began courses to train volunteers from the Communist Youth Organisation (UJC).⁶⁸ The army had the lion's share in this massively organised sugar harvest from November 1969 to the summer of 1970. Some 100,000 soldiers were assigned agricultural posts, particularly in administrative and supervisory positions.⁶⁹

The enormous demands made on the people turned out to be an extremely uncertain factor in the fight to win recognition for a specifically 'Cuban' independent economic development. Official complaints about absenteeism began from the moment that political consciousness and social mobilisation were introduced as work incentives.⁷⁰ The sugar industry alone had absenteeism percentages of between 6 and 7 in the 1960s.⁷¹ Between 1965 and 1967, when there was such a strong emphasis on political consciousness and moral incentives, shirkers were sometimes even sent to special military labour camps. Popular protest led to the closure of these camps by the government again in 1967.⁷² In the meantime the problem of absenteeism became especially serious for agriculture, despite the amount of voluntary work that was done there.⁷³ Lack of experience affected production levels and negligence was often the cause of the careless treatment of machinery and other materials.⁷⁴ At the same time the period after the Revolutionary Offensive in the spring of 1968 saw a wave of acts of sabotage, according to the official Cuban sources, while the rising crime rate was also a cause for concern.⁷⁵ The most frequent crimes were robbery and theft, which the authorities attributed to the shortages with which the population had to deal.⁷⁶ A large proportion of these criminals were youths.⁷⁷ Castro's harangues proved unable to stem the rising tide of juvenile delinquency. In September 1967 Castro had expressed his indignation at the numbers of young people who had enjoyed extra opportunities for training and study compared with what they had received in the past and yet neither worked nor studied.⁷⁸ In 1968 groups of (long-haired) youths became a cause for concern. They were hardly affected by the work ethic of their surroundings, and spent their time idling on the streets, carrying out acts of vandalism, such as damaging public telephones or tearing down posters of Che Guevara, or indulging in other forms of petty crime.⁷⁹

This was the atmosphere of social and economic tension when the Committees for the Defence of the Revolution (CDRs) were mobilised *en masse* to patrol their districts and neighbourhoods against crime. This took place during 1968.⁸⁰ This was also the background to the introduction of base tribunals for the first time throughout the whole country. The rapid extension of the tribunals began in 1966 with the reinforcement of the radical 'Cuban-style' line in Cuban policy. When the Revolutionary Offensive began in spring 1968 they were permanently set up in all the districts and neighbourhoods of Havana. The tribunals provided the opportunity of letting the neighbours themselves try cases of petty crime and antisocial behaviour, including 'idling'. The advantage of lay judges as a cheap way of overcoming the shortage of professional judges was especially welcome at a time when rapid economic development called for heavy sacrifices and petty crime increased rapidly at the same time. The educational value of these neighbourhood tribunals fitted perfectly into the general political aims of the government: mass mobilisation designed to enhance the moral and political consciousness of the population. The tribunals must have appeared invaluable in this period.

The political and socio-economic situation described above helps to explain why a large proportion of the population eagerly supported the new institutions of

'mutual' social control, such as the patrols of the CDRs and the fundamental administration of justice by neighbours. The heavy social emphasis on morally correct behaviour, i.e. revolutionary behaviour, the severe work discipline and the austere living conditions will have tended to make the people more rather than less intolerant towards deviant behaviour on the part of petty thieves, robbers and idlers. The new institutions offered a means of tackling these problems at a level which was accessible, linked as it was to the familiar surroundings of the people themselves. Moreover, the criteria for these tribunals were not abstract, juridical formulae, but followed the general political line.⁸¹

SELF-APPRAISAL AND A NEW CHANGE OF DIRECTION

The high levels of the planned sugar harvest in the late 1960s proved unattainable. The harvest in 1969 was 4.5 million tons, only half of the target for that year. The target of 10 million tons for 1970, to which so much prestige was attached, also proved to be beyond the capacities of the people, despite the involvement of the whole population in the effort and the diversion of all other sectors of the economy to this end. The 8.5 million tons which were harvested in the end were a historic record, but they still meant a heavy moral and economic blow.⁸² The result was seen as a personal failure by the leaders of the government. 'The administrative apparatus and the leaders of the Revolution are the ones who lost the battle' is how Fidel Castro put it in a speech on 26th July 1970.⁸³ In retrospect five years later, Castro subjected the socio-economic model of the late 1960s to a fundamental critique:

It is necessary to speak about mistakes. Revolutions tend to have their utopian periods when their protagonists...believe that the historical goals are much closer and that men's wills, wishes and intentions are superior to the objective facts. It is not that revolutionaries should not be able to dream, nor that they should lack an iron will...

But sometimes the utopian attitude goes together with a certain disdain for the experience of other processes...

The Cuban Revolution certainly made important contributions to the world revolutionary movement. The fact that this is the first Socialist Revolution in this hemisphere has assured Cuba of a special place in history...

But from the very beginning the Cuban Revolution failed to profit from the rich experience of other peoples who had undertaken the construction of socialism long before we had. Had we been humbler, had we not overestimated ourselves, had we been able to understand that revolutionary theory was not sufficiently developed in our country and that we lacked solid economists and Marxist scientists to make really significant contributions to the theory and practice of the construction of socialism...

Even though we were faced with an extremely difficult situation, due to the economic blockade and to underdevelopment, the intelligent utilisation of those experiences would have been a great help to us.⁸⁴

The system of economic organisation in operation in the late 1960s proved to be too inefficient.⁸⁵ Other sectors of the economy and agriculture had suffered

enormously as a result of the 1970 sugar harvest, since all resources and manpower had been mobilised as far as possible for the sugar harvest.⁸⁶ The demands made on the people turned out in the end to have been too high. Popular discontent reached a high level in the middle of 1970. According to Castro, absenteeism sometimes reached a level of 20% in August and September of that year. In the agricultural sector absenteeism percentages as high as 52 were recorded!⁸⁷ The system of moral work incentives had become counterproductive. In this respect too, Castro's words of five years later provide a new insight and a revised ideological position:

By failing to take into account the work carried out in the payment of wages, there was a marked rise in the amount of money in circulation, while there was a scarcity of goods and services available. This created the conditions and breeding ground for absenteeism and lack of work discipline...

When we seemed to be approaching communist forms of production and distribution, we were in fact distancing ourselves from the correct methods for first constructing socialism.⁸⁸

Faced with the economic contradictions and the growing unrest among the people, the Cuban leadership was full of self-criticism in mid-1970. The far-reaching centralisation and bureaucratisation, the swallowing up of the civil service within the PCC, the great influence of the state on social life as a result of the weak and undemocratic position of the mass organisations -- these were all points of criticism. Castro promised measures at the end of 1970 to improve things in the future. The government was to be decentralised and made more democratic, and the functions of the PCC were to be given a much clearer definition.⁸⁹

For Cuba it meant the initiation of a process of institutionalisation which was to lead in 1976 to the popular power elected by the people, *Poder Popular*. It was a process in which state institutions and social organisations were assigned specific, legally defined functions. The reorganisation of administrative and constitutional law was laid down in the 1976 Constitution. A revised system of judicial organisation, laid down in a law of 1973, was revised in accordance with the changes in the organisation of administrative law in 1977.⁹⁰ As will be seen, the final version of the new judicial organisation which was eventually laid down in the 1977 legislation was influenced to no small degree by the Soviet Union. According to authorities such as Mesa-Lago and Halperin, the same is true of the constitutional revisions which were introduced in this period and of the restructuring of the communist party.⁹¹

The change of attitude towards the Soviet Union thus left its mark on domestic policy. The drastic changes which were introduced in the economy after 1970 were a result of Soviet pressure and insight derived from the evaluation of past errors. Unlike the situation in the past, planning and technical knowledge began to occupy an important position. The first five-year plan, for 1976-1980, was prepared in 1975. From 1971 emphasis was put on material work incentives⁹² and the use of voluntary labour was reduced and made more efficient.⁹³ An important pioneer of the new economic developments was Carlos Rafael Rodríguez, Guevara's opponent in the economic debate of 1963-1964 and a former member of the PSP, the forerunner of the Cuban Communist Party. He had also been the founder and chairperson of the Soviet-Cuban Commission for Economic, Scientific and Technical Cooperation, which had been founded in December 1970.⁹⁴ In mid-1972 Cuba became an independent member of the COMECON (East European Council for Mutual Economic Assistance).⁹⁵ At the end of 1972 the Soviet Union increased technical aid to Cuba

considerably and concluded favourable loans and trade contracts again with its distant Caribbean ally.⁹⁶

The close cooperation with the Soviet Union in the 1970s and the increasing economic dependence which this implied for Cuba have left visible marks on the style and design of those Cuban institutions which were revised in this period. The new laws affecting judicial organisation and criminal justice will be dealt with later.⁹⁷ For the time being it is sufficient to note that, with the exception of a few fundamental alterations, the first laws of 1973 affecting judicial organisation and criminal justice integrated the base tribunals of the 1960s entirely within a revised judicial administration.

Notes to Chapter Four

1. Santiago Cuba, Attorney-General of the Supreme Court at the opening of the courts, '**Los Tribunales Populares**', September 1966; Ministry of Justice, Dirección Nacional de los Tribunales Populares, **Manual de los Tribunales Populares**, Havana, 1966; David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba', Ph. D. thesis, University of Surrey, 1973, p. 60.
2. Santiago Cuba, *ibid.*
3. **LOSJ**, 1973, articles 83, 84 and 47; **LPP** (1973), Book V, articles 365-391.
4. Cf. Donald W. Bray & Timothy F. Harding, 'Cuba', Ronald Chilcote & Joel Edelstein (eds.), **Latin America: The Struggle with Dependency and Beyond**, Cambridge, Mass., p. 658; Maurice Halperin, **The Taming of Fidel Castro**, University of California Press, Berkeley, 1981, p. 292. The agreement was made between Castro and Khrushchev on 21st January 1964. Between 1964 and 1970 Cuba was to supply the U.S.S.R. with 24.1 million tons of sugar. In the end Cuba was not able to supply more than 13 million tons in this period. The price was 6.11 cents per pound. Cf. Edward Gonzalez, 'Relationships with the Soviet Union', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, 1974, p. 90; Eric N. Baklanoff, 'International Economic Relations', *ibid.*, p. 262.
5. Bray & Harding, *op. cit.*, pp. 658, 659; Halperin, *op. cit.*, pp. 78-85.
6. Cf. Carmelo Mesa-Lago, **Cuba in the 1970s. Pragmatism and Institutionalization**, 1978, University of New Mexico Press, Albuquerque, p. 6.
7. Bray & Harding, *op. cit.*, p. 660.
8. Fidel Castro, 'Speech on the occasion of the presentation of diplomas to the workers who distinguished themselves most in the first national sugar refinery', **El Mundo**, 25.7.1965, pp. 8-9. Cf. Bray & Harding, *op. cit.*, p. 660.
9. Nelson P. Valdés, 'The Cuban Revolution: Economic Organization and Bureaucracy', **Latin American Perspectives**, Issue 20, Winter 1979, Vol. VI, no. 1, p. 14.
10. Halperin, *op. cit.*, pp. 93-111; *id.*, **The Rise and Decline of Fidel Castro**, University of California Press, Berkeley, 1974, pp. 280-297.
11. Ernesto Che Guevara, Minister of Industry for Cuba, at the XIX General Assembly of the United Nations on 11th December 1964. Source: **Política Internacional**, no. 8, cuarto trimestre, Institute of International Policy, Ministry of Foreign Affairs, Havana, Cuba, pp. 259-270 (citation p. 261).

12. Cf. Hugh Thomas, **The Cuban Revolution**, Harper & Row, New York, 1977, p. 702; Ernesto F. Betancourt, 'Exporting the Revolution to Latin America', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, 1974, p. 107.
13. This conference was held in Havana on January 3-15th 1966.
14. Ernesto Che Guevara, cited in **Tricontinental**, Special Supplement, 'Commandant Ernesto Che Guevara; Message to the Tricontinental', pp. 16 and 22.
15. Halperin, *op. cit.*, 1981, pp. 190 and 258; Thomas, *op. cit.*, p. 704.
16. Halperin, *op. cit.*, 1981, pp. 258-260, 262-263, 267.
17. *Ibid.*, p. 116.
18. See for example the conflict with the Communist Party of Venezuela: Halperin, *ibid.*, pp. 233-235.
19. Che Guevara, Minister of Industry, 24.2.1965 in Algiers. Source: **Política Internacional**, no. 9, primer trimestre, pp. 237-244 (citation from p. 238). The same theme is developed by André Gunder Frank in a study dating from 1980: **Crisis in the World Economy**, Heinemann, London.
20. Speech of Fidel Castro Ruiz before the University of Havana, 13.3.1965. Source: **Política Internacional**, no. 9, primer trimestre, 1965, Institute of International Policy, Ministry of Foreign Affairs, pp. 257-264 (citation from p. 262). Che Guevara adopted the same stance in a letter addressed to the Organisation of Solidarity between the Peoples of Africa, Asia and Latin America, OSPAAAL, in **Tricontinental**, Special Supplement, 16.4.1967, p. 8.
21. Greeting from the Central Committee of the Communist Party of Cuba to the XXIII Congress of the Communist Party of the Soviet Union, **Política Internacional de la Revolución Cubana**, Havana, Editorial Política, 1966, Vol. I, pp. 279-291. Cited from pp. 280-282 and 286 in Halperin, *op. cit.*, 1981, pp. 208 and 209.
22. Adam S. Ulam, **Expansion and Coexistence: The history of Soviet Foreign Policy, 1917-1967**, p. 729, cited in Halperin, *op. cit.*, 1981, p. 209.
23. Cf. González, *op. cit.*, p. 91.
24. Cf. Régis Debray, **Révolution dans la Révolution et autres essais**, Maspero, Paris, 1972.
25. Cf. Halperin, *op. cit.*, 1981, pp. 233 ff.; González, *op. cit.*, p. 91.
26. This is the opinion of González, for one: *op. cit.*, p. 92.

27. **Granma**, Weekly Review, 20.8.1967, p. 5: Speech of Fidel Castro at the Termination of the First Conference of the Organization for Latin American Solidarity (OLAS), held on August 10th 1967.
28. Halperin, *op. cit.*, 1981, pp. 212 and 213.
29. Fidel Castro in his final remarks to the XII Congress of the C.T.C., 29.8.1966: **Granma**, Weekly Review, 4.9.1966.
30. *Ibid.*
31. Fidel Castro in a speech on the occasion of the sixth anniversary of the foundation of the CDRs, 28.9.1966, Plaza de la Revolución, **Granma**, Weekly Review, 2.10.1966, p. 4.
32. Halperin, *op. cit.*, p. 217 and 218.
33. Valdés, *op. cit.*, pp. 18 and 19.
34. **Granma**, Weekly Review, 28.7.1968, pp. 4 and 5: Speech of Fidel Castro on 26.7.1968, on the occasion of the anniversary of the attack on the Moncada garrison on 26th July 1952.
35. See Chapter Five.
36. Halperin sees this event as the sign of the beginning of a new romantic phase in the Cuban revolution: *op. cit.*, 1981, p. 167.
37. As in Fidel Castro's speeches of late 1965: Halperin, *op. cit.*, 1981, pp. 180 and 181.
38. Santiago Cuba, *op. cit.*, 1966; Ministry of Justice, *Manual*, 1966, *op. cit.*
39. Speech Fidel Castro, 2.1.1965, on the occasion of the sixth anniversary of the Revolution: **Política Internacional**, no. 9, primer trimestre 1965, pp. 107-127 (citation from pp. 114 and 118).
40. **Granma**, Weekly Review, 9.4.1967, p. 6.
41. Jorge I. Domínguez, **Cuba, Order and Revolution**, The Belknap Press of Harvard University Press, 1978, p. 282.
42. Bray & Harding, *op. cit.*, p. 662.
43. Fidel Castro in his concluding remarks to the XII Congress of the CTC, 29.8.1966: **Granma**, Weekly Summary, 4.9.1966, p. 5. The citation of Engels is taken from **Herrn Eugen Dührings Umwälzung der Wissenschaft**.
44. Armando Hart, 1967, cited by Valdés, *op. cit.*, p. 21.

45. Valdés, *ibid.*, p. 21.
46. *Ibid.*, p. 20.
47. In 1969 this party had only 55,000 members out of a population totalling 1 million: Mesa-Lago, *op. cit.*, pp. 68 and 71.
48. Speech by Fidel Castro Ruiz on the occasion of the Eighth Anniversary of the Triumph of the Revolution, 2.1.1967, in Havana: **Política Internacional**, 17, primer trimestre 1967, Havana, Cuba, p. 187. In this connection there were 45,000 soldiers mobilised in 1967 and 70,000 in 1970: Halperin, *op. cit.*, 1981, p. 223 (from **Area Handbook for Cuba**, Washington, 1976).
49. Halperin, *ibid.*, table on p. 292.
50. Discussion with a young Cuban in Havana in April 1981.
51. Fidel Castro announced this in a speech on 2.1.1969: Halperin, *op. cit.*, 1981, pp. 320 and 321.
52. Halperin, *ibid.*, p. 271. Source: **El Mundo**, 17.1.1968.
53. They were José Matar, head of the CDR organisation, and Ramón Calcines, leader of the sugar cane workers in Las Villas: Thomas, *op. cit.*, p. 692.
54. Halperin, *op. cit.*, 1981, pp. 271-276; González, *op. cit.*, p. 93; Thomas, *ibid.*, pp. 692 and 693.
55. Halperin, *ibid.*, p. 297; González, *ibid.*, p. 94.
56. **Granma**, Weekly Review, 25.8.1968, p. 2; Halperin, *op. cit.*, 1981, pp. 307-317.
57. Betancourt, *op. cit.*, pp. 112-113.
58. **Granma**, Weekly Review, 5.1.1969, Speech by Fidel Castro Ruiz, First Secretary of the Party and First Minister of the Revolutionary Government, on the occasion of the Tenth Anniversary of the Victory of the Resistance, 2.1.1969.
59. González, *op. cit.*, p. 95; Sergio Rocca, 'Cuban Economic Policy in the 1970s: The Trodden Paths', **Cuban Communism**, ed. Irving Louis Horowitz, Transaction Books, 1981, using as his source: Report of Fidel Castro in **Bohemia**, 12.1.1973, pp. 34-44.
60. K.S. Karol, 'The Reckoning: Cuba and the USSR', **Cuba Communism**, ed. Irving Louis Horowitz, Transaction Books, New Brunswick & London, 1981, p. 635.
61. E.g. Thomas, *op. cit.*, p. 669, **Granma**, Weekly Review, 15.4.1968.
62. Fidel Castro, speech of 13.3.1968: **Granma**, Weekly Review, 24.3.1968, p. 6. Cf. Halperin, *op. cit.*, 1981, p. 282.

63. **Ibid.**
64. The milk distribution had already been drastically cut in early 1968. In the same year petrol was rationed, and sugar followed in early 1969: Halperin, **op. cit.**, pp. 279 and 321.
65. Halperin, **ibid.**, p. 320; Thomas, **op. cit.**, p. 660.
66. Karol, **op. cit.** p. 644; Marta San Martín y Ramón L. Bonachea, 'The Military Dimensions of the Cuban Revolution', **Cuban Communism**, ed. Irving Louis Horowitz, Transaction Books, New Brunswick & London, 1981, pp. 554-559; James M. Malloy, 'Generation of Political Support and Allocation of Costs', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, 1971, University of Pittsburgh Press, p. 41.
67. Cf. Castro's appeal to the Revolutionary Offensive as a quasi-moral war in his speech of 13.3.1968, **Granma Weekly Review**, 24.3.1968.
68. Founded on 4th April 1962: André & Françoise Demichel, **Cuba, comment ils sont gouvernés**, Pichon/Durand Auzias, Paris, 1978, p. 93.
69. Martín y Bonachea, **op. cit.**, pp. 555-557; Castro in a speech of 4.11.1969 in a theatre of the MINFAR: **Política Internacional**, VII, no. 26, 1969, pp. 351 and 339; Mesa-Lago, **op. cit.**, p. 3, Table 1.
70. See Chapter Eight.
71. Josefa González Carvajal et al., 'La Vagancia, Conducta Antisocial, Su Evolución Histórica', **Revista Cubana de Derecho**, no. 5, year 2, April-June 1973, Havana, Instituto Cubano del Libro, p. 143.
72. See Chapter Eight.
73. **Granma**, Weekly Review, 4.8.1968: Halperin, **op. cit.**, p. 291. See also Chapter Eight.
74. **Granma**, Weekly Review, 24.11.1968 and 15.12.1968: Fidel Castro in speeches of 15.11.1968 and 8.12.1968 respectively. Cf. Halperin, **op. cit.**, pp. 289 and 290.
75. Fidel Castro in a speech of 28.9.1968: **Granma**, Weekly Review, 29.9.1968. Cf. Halperin, **op. cit.**, pp. 286 and 287 on Castro's speech of April 9th 1968; Thomas, **op. cit.**, p. 696.
76. See Chapter Five.
77. In 1968 youths under the age of 18 committed 27% of the total thefts and 12% of the total robberies, according to Vice-Minister of Domestic Order, Pedro Pupo Pérez during a television broadcast on the National Forum of Domestic Order, 5.5.1969: **Granma**, Weekly Review, 11.5.1969, p. 10.

78. Castro in a speech of 28.9.1967: Halperin, *op. cit.*, pp. 228 and 229.
79. Castro in a speech of 28.9.1968: **Granma**, Weekly Review, 29.9.1968, p. 5.
80. See Chapter Five.
81. See Chapter Six.
82. The 8,535 million tons of sugar harvested was a new historical record. The record previously held had been 7,290 million (1952): González, *op. cit.*, p. 98.
83. Cf. Bray & Harding, *op. cit.*, p. 667. Source: **New York Review of Books** 21-23, Sept. 24.
84. Fidel Castro in 'Report to the First Congress of the Cuban Communist Party', **Balance of the Cuban Revolution** [in Dutch], Harold Suivas, Sjaloom, Odiijk, 1976, pp. 82-83; **Granma**, Weekly Review, 4.1.1976, p. 2.
85. There is an overview of the improvements introduced since 1970 in Mesa-Lago, *op. cit.*, pp. 30-61.
86. Cf. Bray & Harding, *op. cit.*, p. 667: milk production dropped by 25%, steel supply by 38%, cement production by 23%, etc.
87. **Granma**, Weekly Review, 8.9.1970, p. 5; **Bohemia**, 65, no. 26, 29.6.1973, pp. 91-92.
88. Fidel Castro: see note 84, p. 86.
89. Bray & Harding, *op. cit.*, p. 667; Mesa-Lago, *op. cit.*, p. 65.
90. The Law of Organisation of the Judicial System of 1973, revised in 1977, Law no. 4, G.O. no. 36, 25.8.1977.
91. Mesa-Lago, *op. cit.*, pp. 112-115; Halperin, *op. cit.*, p. 328.
92. Mesa-Lago, *ibid.*, pp. 45-49.
93. *Ibid.*, p. 50.
94. *Ibid.*, pp. 32 and 33; Halperin, *op. cit.*, p. 326.
95. *Ibid.*, pp. 16 and 17.
96. Halperin, *op. cit.*, p. 326.
97. See Chapter Seven.

CRIMINAL PROCESS AND THE COMMITTEES FOR THE DEFENCE OF THE REVOLUTION

It is impossible to understand Cuban society after 1959 independently of the role of the mass organisations. Likewise, a balanced picture of Cuban criminal procedure as it developed after 1959 cannot ignore taking these mass organisations into account. It was particularly the Committees for the Defence of the Revolution (CDRs) which formed the backbone of the 'campaign against crime' in Cuba.

The CDRs were set up as a collective combat force against the counter-revolutionary forces which were so active in 1960. During the course of the revolution, the CDRs expanded to become a national organisation with a number of tasks. Administrative and politico-ideological tasks were combined with far-reaching provision of assistance in the sphere of criminal law. It was in the late 1960s, the high point in the development of the base tribunals, when CDR members were first used in large numbers for the detection of petty crime, for social prevention and for the rehabilitation of ex-convicts. How did the CDRs arise, what was their function during the first ten years of the Cuban revolution, and how did their involvement with the system of criminal law further develop in the late 1960s?

It goes without saying that the profound transformations through which Cuban society went after 1959 could not have taken place without the active support and involvement of the people. The developments affected not only the state apparatus and economic relations, but also social organisation and the cultural pattern of values. It was in the 1960s that strong emphasis was laid on the creation of a 'new social consciousness'; when the people was mobilised on a mass scale to take an active part in the revolutionary process; and when *El Hombre Nuevo*, the new, solidarity-conscious and politically engaged man was the model for the ideal citizen of the future society.¹

These were the years in which the mass organisations in Cuba played an important role in securing the active support of the people for the revolutionary transformations. In 1961 the union for small farmers, the *Asociación Nacional de Agricultores Pequeños*, was set up to supplement the *Central de Trabajadores de Cuba*,² which had been established in 1931. Women were united in the *Federación de Mujeres Cubanas* in 1960, and for students and school children there were the FEU and the FEM.³

The most inclusive of these mass organisations were the Committees for the Defence of the Revolution, which were organised by the people at district and neighbourhood level from 1960.⁴ Their sphere of influence extended right into the daily family life of every Cuban. Their activities varied in the course of time from vigilance against counter-revolutionary and common crimes to the mobilisation of the people for voluntary work, the responsibility for a socially harmonious climate in the neighbourhood and a good political and ideological education for its residents.

The committees involved the people in national and local campaigns and in general political discussions. It has been said that participation in these activities gave the average Cuban a better idea of the revolution and the possibilities for occupying his or her own place in it.⁵ It had a strong educative effect. And political participation as a result of mobilisation led in the present case to political socialisation.⁶

Together with the Cuban Communist Party, the mass organisations were the main link in this period between the government and the people. It was not until 1976 that this function was partly taken over by the system of popular power chosen by general election: *Poder Popular*.

COMMITTEES OF DEFENCE AGAINST COUNTER-REVOLUTIONARY SABOTAGE

The direct motive for setting up the system of CDRs was the need for security. In the course of 1959 and 1960, as has been stated, Cuba was increasingly faced with sabotage and violence from within and military intimidation from outside.⁷ In these early years of the revolution many attacks on Cuba were carried out by Cubans who had fled to the United States.⁸ The first foreign bombs fell on 11th October 1959 on a sugar factory in Pinar del Rio, to be followed by many others.⁹ The winter of 1960 was marked by a continuous and extensive infiltration of CIA agents and Cuban refugees.¹⁰ At the same time, opponents of the regime at home carried out an intensive campaign of sabotage and acts of terrorism: bombs exploded, sugar and tobacco plantations and oil refineries were set on fire.¹¹ Counter-revolutionaries had assembled in the Escambray mountains in the centre of Cuba as a base for actions against the new regime.¹² Rumour of armed invasion increased daily.¹³ In short, the situation was dangerous and difficult. It called for the support of the people and a good defence system. The result was the establishment of defence committees, the CDRs, on September 28th 1960.

At a mass meeting held on August 13th 1960 an official document was approved which contained the following words:

Taking into account the criminal aggression which the imperialist Yankees unleashed against Cuba and our Revolution;
taking into account the conspiracies and provocations by the counter-revolutionaries, the traitors and the deserters, the stool-pigeons and the hypocrites, the adventurers, mercenaries and troublemakers who act as slavish lackeys of the imperialist United States, etc.;

we pledge our oath:

to use all our means, our efforts, self-sacrifice and dedication, our blood and our lives to defend the Revolution which our Fatherland is making, which makes us possessors of our own land, which gives us liberty, which gives us the right to determine our own destiny and to struggle for progress, for prosperity which we have earned by our own efforts, for happiness and for peace.¹⁴

After a long speech before the United Nations, in which he sharply condemned the 'criminal policy of the United States towards Cuba',¹⁵ Fidel Castro addressed a large crowd in Havana on September 28th 1960. And while two bombs exploded near the square in front of the presidential palace, Castro spoke to the thousands who were gathered there and to the hundreds of thousands who were watching it all on television:

We are going to set up a system of collective vigilance; we're going to set up a system of revolutionary collective vigilance. And then we shall see how the lackeys of imperialism manage to operate in our midst. Because one thing is sure, we have people in all parts of the city; there's not an apartment building in the city, not a corner, not a block, not a neighbourhood, that is not amply represented here. In answer to the imperialist campaigns of aggression, we're going to set up a system of revolutionary collective vigilance so that everybody will know everybody else on his block, what they do, what relationship they had with the tyranny, what they believe in, what people they meet, what activities they participate in. Because if they [the counter-revolutionaries] think that they can stand up to the people, they're going to be tremendously disappointed. Because we'll confront them with a committee of revolutionary vigilance on every block.[...] When the masses are organised there isn't a single imperialist, or a lackey of the imperialists, or anybody who has sold out to the imperialists, or any tool of the imperialists, who can operate.¹⁶

It was a fact that a large proportion of the Cuban population which supported the revolution was also prepared to defend it in practice. Almost immediately after Castro's appeal on that evening, hundreds of Cubans met to form committees for the defence of the revolution.¹⁷ Committees were set up not only in the neighbourhoods or districts, but also in the factories, shops, offices and schools. In this early period CDRs were even set up on large ships and in prisons. They soon developed other activities besides their original duty of exercising vigilance.¹⁸

All Cubans, young and old, from intellectuals to farmers, could become members of a CDR. The only ones excluded were 'the enemies of the people, the parasites and the exploiters who lived from the work of others'.¹⁹ After all, these were the objects against whom the struggle was directed.

The first committees seem to have taken their task of collective vigilance very seriously. The main drawbacks were excess and arbitrariness. As the monthly journal of the organisation, *Con la Guardia en Alto*, was to write years later, watch was kept twenty-four hours a day in the neighbourhoods and workplaces.²⁰ A large number of war criminals and spies were arrested and imprisoned with the help of the CDRs. For instance, an important leader of the counter-revolutionary organisation MRP was shadowed for five months by members of the committees before his arrest.²¹ However, not only active counter-revolutionaries were the object of the committees' attentions. Those Cubans who disagreed with the political developments and wanted to leave the country for that reason were not left out either. When they had managed to get abroad, they complained that they had been plagued by CDR members and nicknamed *gusanos* (worms). They had often been under severe psychological pressure as a result of the feeling of being 'bespied' by their own neighbours.²²

The Bay of Pigs invasion in April 1961 marked a peak in the security activities of the CDRs. A military invasion had been on the cards, especially after the breaking of diplomatic relations between Cuba and the United States on January 3rd 1961. From then on the newspapers referred daily to the need to be 'alert'.²³ At the end of March the CDRs were called upon by their National Direction to be on the alert day and night at work and at home so as to be ready for any kind of aggression which the enemy might try.²⁴ When the first attacks from the air were made on

April 15th and the Bay of Pigs on the South coast of Cuba was invaded two days later,²⁵ the CDRs were given every opportunity to help in the struggle. On April 17th Fidel Castro declared the island to be 'on alert' and ordered the CDRs to redouble their security activities and to detect and turn over counter-revolutionaries.²⁶ It was an order which the committees carried out very conscientiously. They helped the army and popular militia at the Bay of Pigs as guides, cooks and blood donors. In the rest of the country they rendered potential opponents harmless. Between April 15th and 17th the CDRs arrested around 100,000 people on charges of counter-revolutionary activities and/or sympathies.²⁷ Unfortunately, there were also innocent people and even good revolutionaries who were the victims of the enormous zeal which the CDRs displayed in these actions.²⁸ As Fidel Castro said a few days later, the excitement of the moment was not always favourable to moderation and the making of fine distinctions:

The Committees for the Defence of the Revolution were active as well as the military forces. It was necessary to arrest all those who fell under suspicion, all those persons who for some reason or other could be active, could perform actions or be induced to help the counter-revolution. In such a situation it is natural and inevitable that some acts of injustice will be committed. Faced with a dangerous situation, with aggression of this kind, the country has to take all measures to defend itself. And this is the reason why the Committees for the Defence of the Revolution proceeded to arrest those persons who for some reason or other... I repeat that there could have been cases of injustice, even cases of the arrest of revolutionaries by mistake, but a genuine revolutionary can understand this.

Besides, apart from the measures taken... Well, now that the moment of attack is over and this aggression has been repulsed, we can start to normalise the situation, to release those persons against whom the only charge is that they could, for some reason or other, be considered likely to help the enemy, and to hold under arrest, of course, those whose counter-revolutionary activity is proven or notorious.²⁹

The task for which the CDRs were established, the fight against counter-revolution, remained one of their tasks. In the course of time the threat of direct acts of violence became less acute and the counter-revolutionary struggle took on more ideological forms. Fidel Castro referred to these changes in a speech to the CDRs in 1968.³⁰ At the first Congress of the CDRs held in 1977 the same development was voiced in one of the theses presented there, 'The CDRs and the Defence of the Revolution'. This thesis comments on the enormous capacity of the CDRs to uncover enemy activities in the past, which they did 'better than a spy network of CIA agents'. Now, however, the emphasis must be laid on the ideological struggle against counter-revolution:

It is necessary to educate the members of the CDRs in the new and subtle weapons which the enemy is using by wanting to introduce our country to moral corruption, pornography, and the anti-communist and antisoviet propaganda and literature that is originating from the capitalist countries...

These ideological deviations are not accidental or fortuitous; they are a part of the policy of imperialism...³¹

FROM DEFENCE COMMITTEES TO NATIONAL ORGANISATION

The popularity which the revolution had gained among the people as a result of the successful driving back of the invasion at the Bay of Pigs was expressed in a rapidly rising number of members of the CDRs. At the time of the invasion the CDR members numbered 70,000. Six months later the organisation had 1,000,000 members and by September 1962 its ranks had swelled to 1,500,000.³²

With the growing influence of the communists, or rather the members of what had been the *Partido Socialista Popular*, the spontaneously established totality of separate committees was incorporated in a structure in 1961 and 1962. A year after their foundation the CDRs still functioned relatively independently of one another, without clear structures of communication and control. After 1962 this rapidly changed. Simultaneously with the setting up of the New Integrated Party (ORI)³³ organised by Anibal Escalante, the leadership of the CDRs acquired a hierarchical structure which linked the national level with the chairpersons of the separate committees via provincial, district and section councils. The national coordinator of the CDRs was José Matar Franye, who had probably been closely connected with the earlier PSP.³⁴ Officials at neighbourhood and section level were chosen by the CDR members themselves and did their work voluntarily. In the higher echelons of the hierarchy there were only paid officials, who were appointed by the National Direction of the CDRs. In September 1962 the organisation had 6 provincial offices, 150 district divisions, 1,360 section divisions and 100,000 base CDRs.³⁵ Within the organisation 'fronts' were set up to cope with the rapidly growing variety of tasks. In 1962 there were thirteen fronts, including 'organisation', 'vigilance', 'public health', 'revolutionary instruction' and 'education'.³⁶ The responsibility for these fronts and their duties was assigned at each level.

The general criticism which Fidel Castro made in March 1962 of the style of work of the new elite which had risen to the top with the newly created ORI, was also applicable to the CDRs. It led to a reorganisation of the committees. Ten days before his sharp attack on Escalante, Castro said in one of his speeches:

It is necessary to combat errors on all fronts; in every Committee for the Defence of the Revolution, for example.

Who can deny that the Committees for the Defence of the Revolution are necessary? Who can deny that they perform a great service for the Revolution? Who can deny that they contain many good citizens? And yet, a few days ago we listened to complaints about the Committees for the Defence of the Revolution during a discussion with a group of comrades in a crèche. These were young girls who had also worked as domestic helps and who had followed a course to work in the crèche. They were girls of the people and girls worthy of the people; they were no counter-revolutionaries, oh no! They were simple girls of the people, sympathetic towards the Revolution, and every one of them had complaints about a Committee for Defence.

And why? Because they make mistakes, because they commit faults, because they are not careful, because they are inefficient, because they sometimes accord themselves special privileges, such as putting something aside for someone in the store-room; and then, when people see that, they are naturally indignant. Our people has a strong sense of justice and a strong sense of indignation when

things are not done properly. And since a revolution requires the assistance of the whole people to act and work in its defence, it is disgraceful when a lot of people make mistakes, for the mistakes of thousands and thousands have consequences for thousands and thousands of others.

That is why it is so necessary for a revolution to struggle against these mistakes. The Revolution must not be weakened, damaged or wounded; and nobody must be upset without reason or justification.³⁷

In reaction to this criticism and the purges within the party and state organisations, the committees held meetings at which the members' motivation was tested, opportunists and careerists were criticised and new members recruited. Membership cards were introduced at the end of 1962. The achievements of the various committees were raised by means of *emulación socialista*, a form of socialist competition which can be found in all Cuban institutions and organisations. It is a form of competition that serves one common purpose: the development of the country and the Cuban revolution.³⁸ For the committees this emulation meant an incentive to compete with one another in terms of specific criteria such as high attendance percentages at meetings and the efficiency of the system of neighbourhood vigilance. This cleaning up operation did not affect any of the members of the National Direction of the CDRs.³⁹

1966 heralded a more general political focus on mass mobilisation and moral incentives, which implied a number of organisational changes for the CDRs too. The national coordinator, José Matar, was replaced by Luis González Marturelos, who has been called a Fidelist,⁴⁰ unlike Matar, who was associated with Escalante.⁴¹ Under-

the leadership of Marturelos, the dual organisation of the CDRs along work and residence lines was dropped. Since 1966 CDRs have only been organised along neighbourhood and district lines, and not along factory, office, etc. lines. This implied a temporary drop in the number of committees, which fell drastically from 103,000 in 1966 to 72,000 in 1967, while the number of members, who had often been counted twice in the past, was similarly reduced.⁴² Table 2 illustrates these changes.⁴³

Table 2

| | Number base CDRs | Number zone c'tees | Number section c'tees | Number section or munic. c'tees | Number district offices | Number regional direc- tions | Number prov. direc- tions |
|---------------|------------------------|--------------------------|-----------------------------|--|-------------------------------|---------------------------------------|------------------------------------|
| Sept. 1964 | 102,787 | - | 4,285 | - | 183 | - | 6 |
| May 1969 | 65,943 | 5,609 | - | 360 | - | 45 | 7 |

Source for 1964: Baltasar Enero, 'Un invento cubano', *Pueblo Organizado*, Havana, Ediciones Con La Guardia en Alto, 1965, p. 14.

Source for 1969: Dirección Nacional CDR, 'Control de Organismos y Miembros -- etapa 2 de enero al primero de mayo' (mimeo), 15.5.1969.

With the intensification and widening of the tasks of the CDRs in the subsequent years, an attempt was made at the same time to increase membership.⁴⁴ It doubled from 1,704,689 in 1967 to 2,216,400 in 1968 and 4,751,963 in 1973.⁴⁵ A campaign in the summer of 1969, for instance, brought the membership figures up from 2,370,600 on May 1st to 3,222,147 on September 28th.⁴⁶

THE MOBILISATION OF NUMEROUS VOLUNTEERS

Besides fighting counter-revolution, the CDRs were involved in other functions from the very first. The literacy campaign of 1961, for example, received considerable assistance from the CDRs. They participated in the counting and mapping of illiterates, arranged classrooms and involved thousands of volunteers themselves. Later the CDRs were also given other administrative duties. The execution of all kinds of campaigns and programmes that the new government initiated called for an extensive national organisation, while the existing traditional structure of local government proved inadequate to the task.⁴⁷

The territorial structure and heterogeneous composition made the CDRs an effective instrument for reaching and mobilising the population in every corner of Cuba. The committees could make use of neighbourhood meetings and posters for this purpose. The members approached residents in their neighbourhood and spread information from door to door. They also organised mass meetings, demonstrations, and so on.

The first explicit demands made on the CDRs in this direction came in July 1961 when rationing became necessary. As a result of the economic boycott and the changing national economic situation,⁴⁸ it had become necessary to limit the consumption of oil and fat. The CDRs were at first given the task of drawing up consumer lists. Later they also received assignments for the distribution of these and other rationed consumer goods⁴⁹ and a special front for provisions was set up within the organisation.⁵⁰ The large-scale campaigns on public health were also channelled through the CDRs. For instance, many informative meetings were organised with the help of the committees. There was a massive response on the part of CDR members to the call for blood donors in 1962.⁵¹ As a result of help from

the CDRs more than two million children were vaccinated against polio in the first years of the revolution.⁵² Another example of the contribution of the CDRs in the field of health care can be seen in their participation in the programme for the prevention and detection of cervical cancer. They managed to involve almost three million women in this campaign.

The late 1960s also mark an intensification of the involvement of the CDRs in administration. In 1966 and 1967 attempts were made to involve the people more closely in local administration through *Poder Local*. Thousands of CDR members apparently came to occupy leading positions in the local administration at that time via local elections.⁵³ The CDRs went through a new period of expansion in this respect with the Revolutionary Offensive of 1968. When 55,000 small businesses and restaurants were nationalised in a short time at the end of March 1968, supervision of the operation fell into the hands of inspectors chosen by and from the ranks of the CDRs.⁵⁴ The experiments with local government elections were then temporarily brought to a halt.

From the first the CDRs also played an important role in the mobilisation of the population for voluntary work. They encouraged their members to carry out all kinds of tasks which varied from shiftwork in the collective surveillance to the collection of old paper and empty bottles as economy measures. The committees also devoted themselves to improving and cleaning the neighbourhood, repairing houses, schools, streets, and so forth.⁵⁵ There was a good deal of voluntary work in the 1960s, particularly in the agricultural sector and the sugar harvests. In 1969, for example, CDR members carried out 16,7 million hours of volunteer labour, at a time when the membership of the organisations was 3,222,147.⁵⁶ Later, in the 1970s, the volume of voluntary work dropped and help was concentrated more on construction works.

POLITICO-IDEOLOGICAL EDUCATION OF THE PEOPLE

The CDRs did not confine their activities to voluntary work and the carrying out of administrative duties. They also carried out important politico-ideological work. *Granma*, the organ of the Communist Party, wrote in 1966:

This extraordinary workingforce, the CDR, oriented and directed toward accomplishing tasks in local administration, recreation, social service, education and public health no doubt constitutes a form of organisation that not only will be useful for doing pressing and immediate jobs, but also will aid decisively in the formation of a new collective conscience concerning the acceptance of social responsibilities.⁵⁷

On the one hand, the mobilisation of the people to take an active part in all kinds of tasks and revolutionary changes was in itself an educative pursuit. The help provided in the sugar harvest in the late 1960s by highly placed officials was an example of this. Although their contribution to the agricultural activities was naturally directly beneficial, the picture of top officials hacking away at the sugar cane had a more important function as an educational model. The same is true of the voluntary work of the CDR members themselves, the neighbours from the street and the colleagues from work. As Castro expressed it in 1961:

Because one of the things which you must constantly bear in mind is that being a member of the Committee for Defence means having a spirit of self-sacrifice, serving as an example for other citizens,

working, looking out for counter-revolutionaries; but, also, carrying out the work of recruitment and winning new members.⁵⁸

To support and supplement this practical participation, the CDRs organised study groups and activities which were directed towards politico-ideological education. Weekly neighbourhood meetings started, where the day to day policies and important speeches of revolutionary leaders were discussed and explained. These meetings, which were led by members of the neighbourhood, were called *Circuitos de Estudios*.⁵⁹ At a higher level of organisation there were the *Circuitos de Instrucción Revolucionaria* (Schools of Revolutionary Instruction), where CDR members became acquainted with the principles of Marxism-Leninism in three-month courses.⁶⁰ There was a national CDR cadre school, where students received lessons in political economy and philosophy. The manuals used for this purpose were of Soviet origin, circulated by the Schools of Revolutionary Instruction of the Party.⁶¹ The base level schools grew rapidly in number and popularity. In September 1962 there were almost 7,000 committees with study schools, and a year later this number had more than trebled.⁶² The Schools of Revolutionary Instruction expanded from 945 in September 1962 to 2,373 in 1964. In 1974, for instance, 69.1% of adult CDR members took part in such a political study course; in 1975 the percentage was 56.⁶³

The traditionally strong family bonds were a central feature of the CDRs' politico-ideological work. In revolutionary Cuba the family is still viewed as the cornerstone of society.⁶⁴ The First Congress of the CDRs, held in 1977, is indicative: it included a special thesis on 'CDR work and the family'.⁶⁵ As neighbourhood committees the CDRs in fact organise the families in their neighbourhood; their influence actually reaches into every family. Given this fundamental role of the family in the education of youth, the CDRs have organised special activities for parents. The 'Movement of Model Parents', for example, which was concerned with improving the relations between parents, pupils and schools, dates from 1968.⁶⁶ This implies that parents, or other adults who are involved in school activities -- in other words, those who are concerned with incentives for the performance of children at school and disincentives for truancy -- are held in high esteem by the CDR organisation as 'model parents'. A parent who is given this title is thereby encouraged to take part in other practical activities. For instance, model parents or parents who tried to win this title -- 1,231,000 in the first half of the 1978 school year -- shared in repairs to the schools where their children studied.⁶⁷ In cases of children with problems at school, it was often members of the neighbourhood CDR who went to talk about them with the parents.⁶⁸

FROM REVOLUTIONARY SURVEILLANCE TO COMBATTING CRIME

The CDRs owe their strength to the extensiveness of their organisation and their far-reaching influence on the Cuban people, reaching into the daily family life of every neighbourhood and district. This was one of the main reasons why the committees played such an important role in the execution of the various national campaigns, of which only a few have been mentioned here. It was also the reason why the CDRs held an important politico-ideological function and why they were such a key weapon in the fight against counter-revolutionary activities. If we turn to the relations between this influential organisation and criminal law, how did the role of the committees evolve in the prevention of common crime and antisocial behaviour and the apprehension of criminals and antisocial elements? What were the judicial functions they held relating to criminal proceedings? How were the CDRs

involved in the carrying out of punishments, the rehabilitation of ex-convicts and social prevention in general?

The CDRs were active on all these fronts. Their oldest and most important task, 'revolutionary vigilance', will be discussed first. Next, the other juridical functions of the CDRs will be reviewed, such as the making of reports on suspects for the judge and the involvement of the CDRs in the execution of penalties. This leads naturally on to the tasks of the CDRs in rehabilitation. The important function which the committees carried out in providing information on the new legislation and other aspects of 'socialist legality' are dealt with explicitly in the account of the CDRs in the 1970s.

As we have seen, the function for which the CDRs were originally set up, the fight against counter-revolution, came to assume other forms in the 1960s. The threat of violent counter-revolutionary acts, sabotage, invasions, and so on had become less acute and had taken on a more ideological guise. The system of collective surveillance by the CDRs was also used for the fight against common crimes and other anti-social behaviour. If we examine the course of this transition, we can note that it was only from 1968 that there was extensive discussion of the role of the CDRs in combatting common crime and antisocial behaviour. Fidel Castro made official reference to this role in September 1968 during his annual speech on the anniversary of the founding of the CDRs, when he said:

The tasks of the Revolution of the working people are enormous. And the efforts that contribute to development are enormous. And the activities on all fronts carried out by the Committees for the Defence of the Revolution are both enormous and highly valuable. If for a moment we forget that the enemy exists, that the class struggle continues and will continue in deed and in the field of ideology for a long time still, if we lower our guard, they take advantage of any letup in vigilance, any carelessness in the defence and protection of our installations. They have no scruples about thinking that if a factory is left without a guard it is because the workers are all engaged in some task at that moment, and they take advantage of the occasion to do their dirty work.

This country and this Revolution will never permit anyone to attack the working people's most sacred rights, will never permit anyone to destroy with impunity the product of a single drop of the sweat of our people...

The imperialist enemy, the reactionary enemy, the counter-revolutionary enemy, wages its battles on many fields and with many weapons. And, among others, in the ideological field -- let it never be forgotten!...

They have used one field, that of ideology, and in the most subtle ways...

In our capital, in the last few months, a strange 'phenomenon' has developed among groups of young people and some who are not so young...

And so, for example, they began to live in a very extravagant way, to meet in certain streets of the city, in the area of La Rampa ...Some engaged in...promoting prostitution...⁶⁹

Although certain initiatives had been taken before this public speech of Castro, afterwards the committees began to step up quite deliberately their intervention in

the spheres of surveillance and the combatting of crime. Lezcano Pérez, the chairperson of the CDRs, recalled in 1977 that it was from then onwards that the CDRs began to develop methods of combatting common crime alongside their fight against counter-revolutionary activities.⁷⁰ Since then the CDR security system has been fundamentally reorganised. Attempts have been made to improve the contact between the CDRs and the police at the different levels. *Actos de repudio*, the meetings where CDR members and the local police force analysed crimes committed in the neighbourhood, also date from this period.⁷¹ The government devoted considerable attention to problems of crime and surveillance. The police apparatus was screened, the CDRs were encouraged to establish 'security patrols' as their top priority, and the mass media informed the people about the rising crime figures and the necessity of setting up a new system of 'revolutionary vigilance'.

THE FORUM OF DOMESTIC ORDER

Shortly after Fidel Castro's speech of September 1968, high-ranking government officials, including Raúl Castro, the Minister of Defence, attended meetings of the CDR leadership to speak on the importance of a good revolutionary surveillance.⁷² In the spring of 1969 a national forum on domestic order (*El Fórum Nacional de Orden Interior*) was held. A survey of the police apparatus for which it was responsible carried out by the Ministry for Home Affairs had showed that the working methods used by the police were in need of improvement. It was not considered desirable to limit the discussion to the ranks of the police force, but to involve the entire Ministry in the discussion, as well as the Communist Party, the Communist Youth organisation, mass organisations like the CDRs and other organisations. According to the Vice-Minister of Home Affairs at the time, Pupo Pérez, the intention was to create a broad and far-reaching discussion of police work in this way. As he said in a television programme on the Forum:

We want it to be clear that our work is purely social and political. For this reason we should, strictly speaking, not refer to this work as our work but as the work of everybody, coordinated by the police, in the fight against criminal activities.⁷³

The CDRs took part in the forum at all levels. The activists from municipal, sectional and district levels were able to participate in the discussions within the various base sections of the police apparatus. For the regional and provincial levels it was mainly the representatives for 'security' and 'education' within the CDRs who were delegated, and at the national level the entire national executive took part.

Television programmes informed the people about the serious rise in the number of crimes against property and prepared the way for the CDRs to be enlisted in the fight against this tendency. Statistics indicated that the early years of the revolution had seen a relatively large number of crimes against property: in 1961 30,000 such crimes were committed and there was talk of a wave of robberies in Havana. The subsequent drop in crime -- 17,000 property crimes in 1963 and 10,000 in 1964 -- was attributed to the introduction of a severe law in 1973, the Law Number 1098, which even introduced the capital penalty for certain types of robbery. The rising line which could be seen starting from 1965 was now causing problems: in 1968 there were 28,000 crimes to property.

As the Vice-Minister of Home Affairs, Pérez, said in a number of programmes, the reasons for this new rise must be sought in the general scarcity of goods and in the lack of adequately trained personnel in the police. The scarcity of goods was

a result of the difficult economic circumstances in which the country found itself. People were warned to adopt suitable precautionary measures, such as locking up houses, etc. As for the problem of the lack of personnel, Pupo Pérez saw the answer to this in cooperation with the CDRs.⁷⁴ This was confirmed in a later television programme by Antonio Martínez, a member of the National Commission for Vigilance:

As the Minister of Home Affairs said at the conclusion of the Forum (and as comrade Pupo has done in a similar programme to this one), the police forces will not be increased, that is, they will not be improved in quantity, but in quality by specialisation...

There will not be a considerable increase in the size of the police force, but the so-called auxiliary forces will take on the extra responsibilities. In the first instance it is the CDRs who will carry out a number of operations, including patrol and directly related duties, which up to now were performed by the comrades of the DOP.⁷⁵

According to Omilio Valdés and others, this meant that CDR members had to be trained for this new task. They must be instructed in the types of crime: in the difference between theft and robbery. They must also learn how to detect criminals and potential offenders. The CDR members needed to know not only how to catch criminals and hand them over to the police, but also the rudiments of social education and how to prevent young people from entering a life of crime.

REORGANISATION OF NEIGHBOURHOOD PATROLS

All kinds of attempts were made to translate the new priority into organisational terms. In April 1968, for example, a joint project was started involving both the Ministry of Home Affairs and the CDRs. This project concerned motorised surveillance patrols, that is, two members of the police who patrolled each CDR section with a CDR member in the sidecar. They rode through the districts and neighbourhoods within the section, gave instructions for the surveillance of particular spots and assisted where there were problems or where a crime had been committed. The purpose was to strengthen the normal patrols with the help of the CDRs and to concentrate more on those places and buildings which were relatively often singled out as the target of criminal actions.⁷⁶

Later on the reforms led to a new organisation of the system of security patrols. Instead of the system by which a neighbourhood was watched by its own CDR committee, a system was introduced by zone. Zone areas were divided according to the particular buildings or places which were an easy target for acts of sabotage, robbery and burglary. The more high risk points an area had, such as schools, laundrettes, shops and telephones, the more CDR members were set to operate there.⁷⁷ This system was later perfected with a division into A, B, and C zones. An A zone was one where the crime rate was high, a B zone had a lower crime rate, and a C zone was one where no crimes had been committed for some time.⁷⁸ Centres of operations (*centros operativos*) were set up in each zone to coordinate and check patrolling. CDR members started their surveillance duties from these centres, and signed off there when they had finished. Each centre had a telephone, lists of CDR members in service, the surveillance plan for the zone and statistics on the crimes committed in the zone area. The zone representative for 'vigilance' or a substitute must always be in the centre during the night patrols.⁷⁹

Attempts were made to correct mistakes and to fill gaps in the security system by means of the *actos de repudio*. As soon as possible after a crime had been committed -- usually within 24 hours -- a meeting was held at the scene of the crime by the CDR members responsible for the patrolling of the zone. Members of the local police force often took part in these meetings, as well as other organisations which were involved in some way or another with the offence. On the basis of information provided by the police and any other information available, an analysis was made of how and why the crime was able to be committed. A compulsory part of the analysis was a critical evaluation of the functioning of the CDR members. Later meetings were also held after the crime had been solved and the offender arrested. At these *actos de respuesta*, held under the supervision of the Public Prosecutor and the police, the offender was brought before the CDR members and other residents in the neighbourhood at the scene of the crime. The personal statement made by the offender of how he or she had been able to make use of gaps in the security system was used to reconstruct the crime, which was discussed to draw lessons from it.⁸⁰

For special occasions, such as the absence of a large part of the urban population to work on the land, a special security plan was devised: *Cierre* or 'closure'. Extra surveillance points were set up and escape routes for criminals were closed as much as possible by blocks on the roads, rivers and open spaces. Special patrols were given the task of stopping unfamiliar cars.⁸¹

There was considerable enthusiasm about the new security system in 1969.⁸² On the one hand, it had meant a large reduction in the number of CDR members required for operations. Before the reorganisation 100,000 people were needed each night, while afterwards 33,000 were sufficient.⁸³ An individual CDR member was called up for an average of only one night watch lasting three hours per month in the new system. On the other hand, the security measures had gained enormously in their effectiveness. The increased surveillance activities did not lead to more arrests. On the contrary, as the following table indicates, the number of crimes involving property dropped in 1969 from 341.4 to 203.8 crimes per 100,000 residents-

Table 3

Crimes involving property
Number and percentage of total number of crimes

| Year | Number per 100,000 residents | % of total number of registered crimes |
|------|------------------------------|--|
| 1959 | 543.1 | 18.70 |
| 1960 | 482.7 | 18.17 |
| 1961 | 461.6 | 20.37 |
| 1962 | 489.4 | 20.00 |
| 1963 | 232.6 | 9.59 |
| 1964 | 133.2 | 6.55 |
| 1965 | 272.2 | 17.80 |
| 1966 | 317.0 | 19.35 |
| 1967 | 335.2 | 26.40 |
| 1968 | 341.4 | 28.96 |
| 1969 | 203.8 | 33.00 |
| 1977 | 608.3 | 36.64 |

.....

In the words of Omelio Valdés: 'When the enemy sees that vigilance is being exerted, he doesn't act'.⁸⁵ Another CDR official, Eudaldo Torres Jorrín, told that in the zone where he was responsible for 'vigilance and public order' on average 6 crimes were committed per month in 1969 before the reorganisation. After the changes had been introduced, however, -- four and a half months before the date of the interview -- there had not been a single offence committed.⁸⁶ He illustrated the effectiveness of the CDR's operations in his zone with the following example, which occurred at six in the morning when he was on patrol with two other CDR members:

I noticed a man who was hanging around the bus stop cross the street and look through the windows of the barber's shop on the opposite pavement and then through the slits in the metal door of a warehouse. At this I became suspicious...and went on my bicycle up to the man and asked him to identify himself. He asked me if I was a policeman. I replied that I was not, but I let him see my armband with the words 'Surveillance Patrol of the CDR'. I explained that we were asking for his identification because he did not live in the area, and that if he was not up to any trouble it would be no problem for him to identify himself. He refused. After talking a bit more, I asked him to accompany me to the DOP station. He refused this too...At the right moment a DOP motorbike with a side-car came along and I explained the situation to the team. We took the man to the station. The result was: the man had just done five years for robbery and was wanted in connection with another robbery.⁸⁷

THE CDR MEMBERS AS HEROES

It was made quite explicit in relation to this new function that the CDRs were not a military but a political organisation. The work methods were explanation and persuasion.⁸⁸ In areas where the committee patrols were not such a success, ideological and political work was seen as the best way to improve things. Tomás López, secretary for surveillance in a CDR division in Havana, had the following to say about a zone within his division where there was not much enthusiasm for the night patrols:

As a result of the lack of cooperation, crime was on the increase. Faced with this situation, we began with political work. We were supported in this by members of the Party [Cuban Communist Party] and of the UJC [Cuban Youth Organisation], members of the FAR [Armed Forces] and the MININT [Ministry of Home Affairs] who were resident in the area covered by the Zone Committee. Discussions were held in each block. This work was effective, for in the first days eight crimes were discovered and the offenders caught.⁸⁹

Members who refused to help in the revolutionary vigilance were not expelled from the CDRs; it was thought that such repressive measures would only lead to a loss of membership.⁹⁰ Besides, as the Vice-Coordinator of the CDRs, Omelio Valdés, was to say, a good CDR member should be on the alert 24 hours a day:

We consider that a CDR member should be a guardian of the Revolution. Therefore, a CDR member can carry out his patrol from 12 to 3 on Monday morning, but if he travels by bus the next day, he must not forget that he is a CDR member and a guardian of the Revolution; and if he sees a movement in the bus from a pick-pocket or some suspicious character, he must act as a guardian of the Revolution.⁹¹

The same argument that the CDR was not a military but a political organisation was used to legitimise the fact that the CDR patrols were not supplied with weapons.⁹² Nor did the CDRs have the power to arrest suspects.⁹³ On the basis of the criminal law they could, like any other citizens, only arrest people who were caught redhanded, and in such cases the arrested person had to be handed over immediately to the police.⁹⁴ Despite these restrictions, it did sometimes happen that CDR patrols could get involved in major scuffles with suspects whom they had caught in the act or apprehended. After all, it was their duty, as long as they observed the general guidelines, to ask strangers who were out on the streets at night to identify themselves.⁹⁵ Exciting and true accounts of the detection and capture of criminals were a regular feature of the official journal of the CDRs, *Con la Guardia en Alto*. They were examples of the heroic exploits of the CDR members which were held up for other members to follow. The following account, 'A man against a car', illustrates the kind of stories which *Con la Guardia en Alto* offered its readers:

It was a winter night last January. As one shower followed another the air grew colder and colder. Nonetheless, the patrols consisting of CDR members from the neighbourhood of Camujiro, Committee Zone 45, district 4 of the region Camagüey-Ciudad, did not let up their guard. They were organising a special campaign of mass vigilance (the *Plan Cierre*) to combat crime.

José Felipe González, who combines the functions of head of personnel in the Interprovincial Omnibus Company (Unit 3), lay judge and coordinator of zone 45, was thinking that night how fruitful the action had been. He had already been personally involved in the capture of a criminal. Around 1.50 a.m. a suspect had been seen, a baker, carrying a bag with 20 ponds of bread, 15 of flour and 10 of rice. Repeated thefts had been noted at a work place and reported to the DTI;⁹⁶ that case was now solved.

It was now around 2.15 and the air was getting even colder. Suddenly, two headlights burst into the patrol area. Though lost in thought a moment before, Felipe was alert and stopped the vehicle with a wave. He went up to the driver, followed by three CDR members. 'Comrade, your identification and driving licence', Felipe asked, politely but firmly. 'Of course...' was the driver's reply, a young, dark-complexioned man with a round face and rough features. Since the driver took his time to produce the documents, Felipe got nearer to the door and glanced inside the jeep. It was the moment the other had been waiting for: he stepped on the accelerator and shot off like a rocket. Felipe had suspected as much, though. He clung with his right hand to the door and tried to force it open with blows from his left hand. Without a thought for danger, he was prepared to be thrown into the air if necessary. With his fist he tried to get the jeep over to the side of the road. The driver hit back with one hand and sometimes with two, letting go of the steering-wheel to do so. The jeep zigzagged dangerously... Suddenly, a hundred metres further, the driver gave him a heavy blow and opened the door at the same time. Felipe fell under the wheels and a tyre ran over his calf while he received painful bruises in the groin.

It all happened very quickly. Onelia González managed to scream 'Shoot!' and Inés Marrero, who still had the picture of the zone coordinator hanging on the door of the jeep before her eyes, shouted: 'No, or they'll kill Felipe'. While they went to help Felipe, Inés, who had noted the registration number of the jeep, ran as fast as she could to the nearest DOP station. She arrived at the same moment as a driver from the Veterinary Institute who had come to report the disappearance of the vehicle. The net of the security system was closing...At 3.30, the driver of the jeep was caught near a snackbar, Jimbambay, some 20 kilometres further on. Still nervous and panting from the struggle, he was picked up by a CDR patrol when he left the vehicle for a moment with the engine running. He was on the run. He had been convicted for stealing cars, including a security van of the National Bank.

Felipe didn't manage to rest for the 40 days ordered by the doctor. Although he limped and had painful haemorrhages in the groin, there was fortunately nothing broken. Despite his injuries, he will be taking part in the patrols again in a few weeks time. In the meantime he has been promoted to surveillance coordinator of

the district and thereby has become an official member of the cadre of the CDR organisation.⁹⁷

OTHER JUDICIAL RESPONSIBILITIES: LAY DEFENCE AND MORAL SURETY

Their extensive surveillance responsibilities were just one of the ways by which the CDRs came into close contact with the ins and outs of criminal justice. Over the years the committees became familiar with other aspects of the judicial system too. With the experiments with the base tribunals in the 1960s they were given all kinds of extra functions. The committees had a say in the election of the lay judges of these tribunals and could act as advocate. They were also empowered to stand as moral surety for the provisional release of a member who was under arrest.

The support of the local sections of the mass organisations were very important for the setting up of the experimental base tribunals from 1962 on. Although the mass organisations were at first not involved in the election of the lay judges, in fact they had an active role in their organisation. We have already seen how the lay judges of the base tribunals were chosen from local assemblies of the residents of the neighbourhood.⁹⁸ To be more precise, these assemblies chose a number of candidates, from whom the final list of lay judges was selected by a commission consisting of party members and officials from the Ministry of Justice.⁹⁹ In cases where dissatisfaction with a judge led to the question of his dismissal, it was the neighbourhood assembly which considered the case.¹⁰⁰ The calling of the local neighbourhood assemblies in this early period was largely in the hands of the local sections of the mass organisations. These were an influential and enthusiastic instrument for informing the local population, gaining their interest and mobilising them. Elio Olivo, coordinator of a CDR district in Havana, had this to say about his role in the calling of such assemblies in 1966:

In preparation for the first meeting we combed every neighbourhood, block by block. People were notified of the meeting by posters, loudspeaker vans and house-to-house calls. This intensive propaganda work had to ensure that the requirements for candidates were well known.¹⁰¹

It was in the 1970s, between 1973 and 1977, that the mass organisations first acquired a more official role in the election of lay judges.¹⁰² In this period the candidate lay judges were still chosen by and from the neighbourhood assemblies. The definitive selection from the candidates was now, however, made by the municipal and divisional sections of the Cuban Communist Party (PCC) together with one representative from the Communist Youth Organisation (UJC), the Federation of Cuban Women (FMC), the CDRs and the National Organisation of Small Farmers (ANAP). A two-thirds majority within this body was required for appointment or revocation.¹⁰³ Since 1977 the election of judges takes place via the organs of *Poder Popular*.

The base tribunals did not insist on the mediation of an advocate or prosecutor. A suspect could engage in his own defence or have a lay person who had no legal training defend him. The legislation concerning the Correctional Justice had opened the possibility of an 'arbitrary person of good reputation' adopting the defence of the accused during the trial, while the Criminal Procedure Law of 1973 restricted this function to members of the mass organisations.¹⁰⁴ But in the intervening years too the possibility existed of lay defence before the base tribunals.¹⁰⁵

Considering the atmosphere at the time, the 'good reputation' of a lay defence counsel will have been measured by revolutionary criteria then as well. It is thus plausible that members of political and mass organisations occupied a privileged position in this respect.

From 1973 the lay defence counsel must by law be a member of the same mass organisation as the accused and in addition specially delegated for this purpose by the same organisation. In the following year the CDRs gave their members more detailed instructions. They are embodied in the following general instruction:

I When a member of the organisation asks to be defended him/herself or requests the defence of another CDR member before a Popular Base Tribunal, the following must be taken into account:

a The executive of the CDR must issue an evaluation of the moral and revolutionary character of the accused and deliver to the zone in writing its proposal for the defence or not of the accused. This cannot be done without the presence of the president and the organiser of the CDR and the secretaries for Social Work, Vigilance and Ideology.

b In making its proposal the executive of the CDR will have to take account of whether the misdemeanour or offence committed involves a loss of prestige for the accused in public opinion (scandal with public repercussions, regular inebriation, homosexuality, speculation and hoarding, etc.). And whether the accused has previously been sentenced for some misdemeanour or offence.¹⁰⁶

The following could act as lay counsels for the defence: the president of the committee of which the accused was a member; one of the coordinators for 'vigilance' and 'social work'; or any member of the committee who satisfied the requirements. It was not for them to try to justify the offence, but to help in establishing the truth of the case! It was important for the defence to point out circumstances which were in the defendant's favour.¹⁰⁷ In practice this meant that the CDR was only prepared to defend one of its members if there were no objections, according to revolutionary moral criteria, based on personal background and if the offence in question was not too blameworthy. The organisation's role in cases where it did adopt the defence was to highlight the favourable personal aspects of the accused. It was only if the defence counsel was convinced of the innocence of the accused that it could take part in proving it. The defence's function remained that of contributing to the revelation of the objective truth. The possibility of lay defence was abolished in 1977.

The CDRs formulated a similar instruction when they were allowed the possibility in 1973 of standing for moral surety for a member who was detained while awaiting trial. In cases of a good personal background and the supposition that the accused would not try to evade further trial could be justified, it was in the Public Prosecutor's power to impose the provisional measure of a moral surety. In the words of the law, this could be provided by the work centre or social organisation to which the accused belonged.¹⁰⁸ If the CDR organisations stood as moral surety, they were responsible for ensuring that the accused appeared for the trial. In this context too the CDRs formulated general guidelines in 1974.¹⁰⁹ Such moral surety was only provided after the social and political behaviour of the accused had been scrutinised and moreover only to those CDR members who maintained a family as

workers (and fathers!).¹¹⁰ As was the case in the Instruction on defence, this Instruction also excluded those accused of crimes which involved public disgrace.¹¹¹

The procedure for receiving moral surety was as follows. A relative or good acquaintance of the accused could submit a written request for moral surety to the coordinator for social work or another member of the executive of the neighbourhood committee. This was examined in the first instance by the president and the secretaries for 'vigilance' and 'social work' at least. If a positive decision was reached at this level, the request was signed and sent to the zone committee. If it was accepted here too, the zone secretaries for 'vigilance' and 'social work' were the ones whose signatures ratified the final moral surety. The instruction stressed the need for quick decisionmaking to avoid delays as much as possible.¹¹²

THE CDRS AND SOCIAL WORK

Because their field of operations was the neighbourhood, through direct contact with families, the CDRs were very well suited for the responsibilities of rehabilitation. They worked with ex-convicts and were involved in the implementation of suspended sentences and other sanctions. With their politico-ideological projects and their desire for a harmonious social climate in the neighbourhood, the CDRs in fact carried out preventive social work from the moment of their inception. Their involvement with various cases of antisocial behaviour in the neighbourhood is a specific consequence of this.

1968 was the boom year as far as rehabilitation and social work by the CDRs is concerned. It was the same year in which the CDRs were enlisted *en bloc* to patrol the neighbourhoods and to combat crime; in which the committees received more administrative functions of all kinds than they had ever had before; in which the whole people was put under severe moral pressure to support the revolution through performing voluntary work. The attitude of the CDRs towards this work had two aspects: increasing activities in the sphere of surveillance and crime prevention, and involvement in social work in general.

In 1959 'social work and social security' in Cuba were placed under the supervision of the Ministry of Social Welfare (*Ministerio de Bienestar Social*). The ideal was to do away with a pre-revolutionary charitable institution and to replace it with something new. As Fidel Castro put it:

When the revolutionary state devotes attention to this, it is not acting out of charity but out of a sense of duty; that of providing what every man and woman in this country has a right to receive.¹¹³

In 1967 an attempt was made to enlist the mass organisations for that social work which had been carried out mainly by state organisations until then. Commissions were set up throughout the country from the national to the municipal level under the name of *Plan Asistencial*, Social Assistance Plan. Both the state organisations involved in this work and the various mass organisations were represented in these commissions. The CDRs' contribution to this plan was specifically fieldwork in the neighbourhood. Socio-economic research in their own neighbourhood was combined with directly trying to help social problem cases. In 1975 there were reported to be 7,378 CDR activists who were involved in this work on a daily basis.¹¹⁴

What the Cubans referred to as social prevention -- the fight against crime and other antisocial behaviour -- was officially the responsibility of the Department of Prevention of the Ministry for Home Affairs (*Departamento de Prevención del*

Ministerio del Interior) during the first years of the revolution. In this area of work too there were those in the 1960s who felt that this work should be the responsibility of all, i.e. the joint responsibility of the mass organisations. This meant the establishment of Commissions for Social Prevention (*Comisiones de Prevención Social*), in which representatives from all kinds of organisations and state bodies took on the responsibility for rehabilitation from the municipal to the national level. The following participated in these commissions: the Ministries of Home Affairs and Education, the Organisation of Base Tribunals, the Communist Youth Organisation, local executive organs of *Poder Local*, the Cuban Womens' Federation, the CDRs, etc.¹¹⁵

Within the CDR organisation it was the Educational Front that was the first to advocate social prevention as a major focus of attention for the committees in 1968. It claimed that it was important to inform the people adequately about the existing legislation and as a neighbourhood committee to inform the probation officers in the neighbourhood about their clients.¹¹⁶ In the spring of 1969 the National Forum of Domestic Order set up a special Front for Social Prevention within the CDRs.¹¹⁷ Its activities included the organisation of prevention meetings, where problematical antisocial behaviour was discussed at neighbourhood level. This meant behaviour that was likely to lead to the committing of crimes sooner or later or behaviour that was experienced as offensive in itself: alcoholism and homosexuality.¹¹⁸

First of all, individual committees investigated which particular cases of anti-social behaviour were a problem in the neighbourhood. Then, a meeting was called where the individual cases were discussed and where attempts were made to find a solution for each case. At the provincial level, the neighbourhood results were collated and evaluated in an effort to formulate a more general policy.¹¹⁹

CDR members were not only set to work in the patrolling of their neighbourhood against criminal offences and other damaging behaviour. Through the Front of Social Prevention the committees also learned to spot the sources of these kinds of behaviour, and their members were encouraged to do something about the root problems. Within the Front there were highly idealistic views on this. As Wilfred Blanco, national coordinator of this front, said in 1970:

The CDR must be converted into the centre which binds a neighbourhood together, with fair standpoints, without extremism, understanding that the majority of the cases of antisocial behaviour are the consequence of a bad training to be a citizen. This starts in the cradle and is created in a household where there is ignorance about the right road to follow.¹²⁰

Besides these prevention meetings, the Front for Social Prevention also organised special courses for those CDR members who took an active part in the rehabilitation work. Short courses were given in the close vicinity of every aspirant CDR social worker. Those who were involved in the after-care of ex-convicts and support for the families of detainees were given training in criminology, the provision of social help, assistance in compiling reports, etc.

Through the Front the CDR social workers were given cases to round off. These were often those who had been released on probation and who were under governmental supervision during the probationary period.¹²¹ The CDR journal, *Con la Guardia en Alto*, published articles on the experiences of CDR activists in rehabilitation work from time to time. These accounts give a picture of 'revolutionary' volunteers who try to help the ex-convicts and have a deep understanding of the underlying social and psychological factors. An example is that of Marta Martínez,

who was responsible for social prevention within the CDR region in Havana and was enlisted as a social worker in rehabilitation work carried out by this front. In 1970 *Con la Guardia en Alto* published the following account of her activities:

When the case of F.J. had been given to Marta Martínez... she read and made a deep study of the dossier which contained all the data relevant for her to be able to start her work. From the dossier she discovered the place of residence of the ex-convict, who was very young at the time of the crime: he was then only 19 years of age; she learned that of the 20 years to which he had been sentenced he had completed only 9, after having made use of a rehabilitation and re-education plan which helped him enormously in his progress. But in order to carry out her work as successfully as possible, the social worker needed to know more about F.J.'s life style before he had committed the crime, more about the conditions in which he had grown up to become a killer...In order to acquire this and new information about the social background of the ex-convict, Marta approached the base organisation, the CDR, of the district where F.J. lived. After she had included all this information in her dossier and had worked out a plan of work which took account of the socio-economic, political and cultural situation of the ex-convict, she went to visit him and held a long discussion with him.

'We don't want to go through all that happened again. That's history now, along with its consequences. What we want is to help you as much as we can to get you set on the right road now that your debt towards society has been paid off. We want you to be fully aware of your role from now on in society...'

During this first visit Marta began to get to know the essential aspects of F.J.'s personality, character and temperament. She later analysed this sociologically, and was able to establish a relation between these aspects and the conditions which had determined his past behaviour. The first conversation was very long. Marta was skilful in managing the dialogue and in choosing the right moment to introduce new topics. In this way, Marta managed to set up a favourable working relationship with F.J., who grew increasingly confident in her. Marta was like an open book to him and he felt himself morally supported by her. The activist's efforts were rewarded in this first session, which made it easy for her to carry out the rest of the programmed visits, which took place three times every fortnight. Marta carried out her programme in accordance with her analysis of the case, but the repeated contact with F.J. also suggested ways of arriving at the right treatment. Her complete mastery of her work inspired confidence in F.J. which he then projected onto his own future. His first steps in society, now that he felt himself morally free, were closely watched by the CDR in his neighbourhood. He is now responsible for the Ideological Front within that organisation. Today F.J. is a revolutionary, free from all trace of the past; he is a simple but energetic construction worker who, moreover, has asked his work place to allow him to become an 'educator'. Motivated by his desire to help in the devel-

opment of his surroundings, and especially in youth work, he is working as a teacher in rural education.¹²²

While the social workers of the CDRs concerned themselves with male adults who came out of prison or displayed generally antisocial behaviour, the Cuban Women's Federation (FMC) directed its attentions to juveniles up to the age of 16 and to women who were in a similar position. Unlike the CDR members, the FMC social workers did not confine their activities to work outside the prisons and reform institutions, but their work with young people and women took them inside the walls of the centres.¹²³

Both organisations carried out this work on the assumption that the notion of 'family' had acquired an extended meaning since the revolution. If this referred only to a group based on ties of blood in pre-revolutionary days, it was now extended to include all the pro-revolutionary members of a particular area or neighbourhood, according to Wilfredo Blanco, a national CDR officer. The 'nuclear' family of parents with their children functioned in Cuba generally within a wider family network that extended over several generations. Grandparents, in-laws and grandchildren often lived together in the same household. Mass organisations like the CDRs tried to extend this idea and to create a revolutionary fusion of a number of families within one neighbourhood committee.

The social prevention work that was developed in the late 1960s in direct association with the mass organisations was begun and implemented based on this idea and ideal: the family as a major social unit. As Wilfredo Blanco expressed it:

As a revolutionary nucleus which brings the family together, the CDR must concentrate on the eradication of the causes and factors which generate antisocial behaviour.¹²⁴

In this context an FMC official wrote:

The housewife who is a member of our federation is carrying out an important task in the education of her children, the members of her family and the others in her surroundings. By her example and work she can have a genuine influence on the development of social life.¹²⁵

In other words, social work begins within the traditional family and must be developed from there. It was not for nothing that the social workers from both organisations worked with the families of convicts.¹²⁶ It was supposed that changes in the immediate surroundings of a person could be the start of an improvement in personal development. During the first CDR Congress in 1977 a separate thesis on the family also noted the relation between the prevention of crime and traditional family life. It called the organisation's struggle against crime and antisocial behaviour doubly preventive. The fact that a CDR member took part in the system of revolutionary vigilance meant an increase in his or her feeling of responsibility, which in turn would have its effects on the family relations in which the member was involved. The thesis claimed a similar effect for the informative meetings organised by the CDRs to discuss legislation or criminal problems. By the presence of members of the families of detainees or antisocial elements at these meetings, the chances are raised that the family surroundings will be able to help in the rehabilitation of the deviant.¹²⁷

THE SIGNIFICANCE OF THE CDRS IN THE 1960S

In a period of important socio-political change, when severe moral and political demands were made on the people, an institution like the CDRs must have been extremely valuable. The committees originated out of the necessity of involving the people in the fight against the counter-revolutionaries and grew to become a national organisation with a multiplicity of functions within the space of a decennium. From 1973 no less than 80% of the Cuban population above the age of 14 were members of a CDR.¹²⁸

Their main task was to organise and mobilise the people to take an active part in the various campaigns and projects initiated by the revolutionary government. Participation produced a solidarity effect by itself. Involvement often encouraged a certain identification with the revolutionary developments. In addition the committees were active in political training and education.

The demands made on the people by the revolutionary leaders, especially in the late 1960s, were reflected in a sudden rise in the number of functions assigned to the CDRs. The committees were, after all, one of the main instruments for organising and mobilising the people. The influence which CDR members exerted on administration and policy via their participation is hard for an outsider to gauge. In 1967 an attempt was made to institutionalise this influence through elections for local administration, the *Poder Local*. Many CDR members were then elected to hold administrative positions at the local level.¹²⁹ However, this was a unique experiment which was not repeated. As we have seen, in 1970 the far-reaching centralisation and the weak, undemocratic position of the mass organisations were criticised by the government leaders themselves.¹³⁰ Economic pressure had meant a shifting of priorities, such as the fight for the ten million ton sugar harvest.

Finally, the setting up of the committees also meant the establishment of a fine network of social control throughout the whole country. As Castro put it:

We're going to set up a system of revolutionary collective vigilance so that everybody will know everybody else on his block, what they do...¹³¹

Although originally set up against counter-revolutionary attacks, this network had become an institution by the end of the 1960s. It served to keep the areas and neighbourhoods free of ordinary criminals and others who displayed what the Cubans saw as antisocial behaviour. Instead of trying to extend the police apparatus, the preferred course was the enlisting of the population itself to combat the rising crime rate indicated by the official statistics. It gave the people the chance of solving their own social problems in their neighbourhood and keeping their surroundings safe; it was cheap and at the same time it embodied the ideal of non-professionalisation. But there was no doubt a negative side to it as well. 'Everybody will know everybody else on his block, what they do...': deviant behaviour in this period was not tolerated lightly. The strong emphasis on moral, i.e. revolutionary correct, behaviour, the rigorous work discipline and the austere living conditions will have tended to make the people less rather than more tolerant towards petty thieves, robbers and vagabonds. Besides, as Castro's criticism of certain errors within the CDRs in the early 1960s reminds us, such a system of social control is not immune to corruption and the misuse of power. The great difference, however, is that in this case the complaints are not about the police apparatus of a dictator or others in the service of a military dictatorship, but they are about neighbours, acquaintances or colleagues who are as free to criticise you as you are to criticise them.

The mass organisation was not the only means of closely involving the people in the administration of criminal justice in the late 1960s. This was also the high point of the experimental base tribunals.

NOTES TO CHAPTER FIVE

1. For the period 1968-1968 see Chapter Four; Richard R. Fagen, **The Transformation of Political Culture in Cuba**, Stanford University Press, California, 1969; *idem*, 'Mass Mobilization in Cuba: The Symbolism of Struggle', Rolando E. Bonachea & Nelson P. Valdés, eds., **Cuba in Revolution**, Anchor Books, 1971; José A. Moreno, 'From Traditional to Modern Values', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, 1974.
2. André and Françoise Demichel, **Cuba, Comment ils sont gouvernés**, Pichon/Durand Auzias, Paris, 1978, p. 91.
3. **Federación de Estudiantes de la Enseñanza Media and Federación de Estudiantes Universitarios.**
4. *Ibid.*
5. Fagen, *op. cit.*, 1971, p. 208.
6. Fagen, *op. cit.*, 1969, p. 2. Fagen understands by political mobilisation: The inculcation of political information, values and practices, whether formally or informally in planned or unplanned fashion.
7. Compare Chapter Two.
8. At the end of March 1961 some 100,000 people had left Cuba. Most of them went to the United States of America, others to Spain, Mexico and other parts of Latin America. Cf. Hugh Thomas, **The Cuban Revolution**, Harper & Row, New York, 1977, p. 576.
9. *Ibid.*, pp. 465 and 486.
10. In the previous spring President Eisenhower of the United States had accepted a recommendation of the CIA to train and arm Cuban refugees: *ibid.*, p. 493 [source: **New York Times**, 13.6.1961].
11. *Ibid.*, pp. 570 and 571.
12. *Ibid.*, p. 518. According to Thomas, there were around 1,000 rebels in October 1960.
13. *Ibid.*, p. 570.
14. During a speech by Osvaldo Dorticós Torrado, 13.8.1960. From **Revolución**, 15.8.1960, p. 18.

15. Thomas, *op. cit.*, p. 517; Jorge Lezcano Pérez, 'Síntesis del Informe Central al Primer Congreso de los CDR', *Con la Guardia en Alto* (Organ of the CDRs), December 1977, p. 6.
16. Fidel Castro at the Act of Constitution of the CDR, 28.9.1960: *Fidel, sobre los CDR*, Editorial ORBE, Havana, 1981, p. 7.
17. Lezcano Pérez, *op. cit.*, p. 6; Fagen, *op. cit.*, 1969, p. 70.
18. *Con la Guardia en Alto*, 15.6.1962, pp. 26-29; *Verde Olivo*, (Organ of the Revolutionary Armed Forces), Year 11, No. 26, 1961, pp. 60-63.
 In the prison of Castillo del Príncipe, for example, 59 prisoners had formed a committee. Its tasks were the organisation of study courses, the production of brochures with speeches by revolutionary leaders (Aníbal Escalante, etc.), and a literacy campaign inside the prison.
 The prison population of 1959 was the victim of the same system which the revolution had fought, as *Verde Olivo* wrote. The progress of the revolution would reduce the causes of (ordinary) criminality and thereby the prison population. Optimistic conclusions were drawn from the dwindling of the prison population of Castillo del Príncipe from 5,200 in 1959, to 4,360 in 1960 and 1,256 in June 1961.
19. Fidel Castro in a speech commemorating the first anniversary of the CDRs on 28.9.1961: *Fidel, sobre los CDR*, *op. cit.*, p. 19.
20. *Con la Guardia en Alto*, September 1968, p. 18.
21. Lezcano Pérez, *op. cit.*, pp. 6 & 7; Thomas, *op. cit.*, p. 571.
22. R.R. Fagen, R.A. Brody & T.J. O'Leary, *Cubans in Exile: Disaffection and the Revolution*, Stanford University Press, 1968, pp. 80-84.
23. Fagen, *op. cit.*, 1969, p. 72.
24. In view of the recent incidents provoked by elements in the pay of imperialism, and in the execution of its orders to combat the campaign of terrorism, the National Direction of the Committees for Defence issues the following declaration:
 These villains want their crimes to lead to the return of the oppression and subjugation of the past; they want the people to express its lack of confidence in the revolution through terrorism, instead of giving the revolution its support as it is now firmly and courageously doing. But our people's response is more revolutionary vigilance, 24 hours a day, more vigilance so that the fatherland can achieve the full liberation and well-being that our revolution has given it. The worms [*gusanos*] are waiting, lurking in the shadows, to carry out their vile plan of destruction and terror. They are paid with Yankee gold, to which they have sold their souls and consciences. Their acts reveal them to be miserable hirelings and traitors to their country. They plot destruction by means of sabotage and terrorism, in the hope of destroying our sovereignty and handing our

land over to their Yankee bosses. But they will never get more than the land, for as our great leader, Commander Fidel Castro said, 'They will get hold of land, but not of the people'.

We who for the first time are the masters of our destiny, of our land, of our industry, the owners of the wealth of our own soil, are resolved to increase our firm stand and vigilance to ensure that the enemy does not find a weak point to gain entrance...

That is why the National Direction of the Committees for the Defence of the Revolution exhorts the people to redouble its vigilance 24 hours a day, in order to be able to check any aggression on the part of our enemies.

Revolución, 28.3.1961, p. 2.

25. The invasion force, under the leadership of the CIA, consisted of some 15,000 Cubans who had left the island. See Thomas, *op. cit.*, pp. 577-593 and, e.g., Martin Braem, *Cuba, Het Onkruid in de Achtertuin*, Gent, 1981, pp. 35-36.
26. Fidel Castro, 'Declaración del Estado de Alerta', 17.4.1961. Cf. **Fidel, sobre los CDR**, *op. cit.*, p. 49; Omelio Valdés in a television programme of 20.6.1969, in **Con la Guardia en Alto**, July 1969.

The Commander in Chief and First Minister of the Government of the Republic declares the country to be in a state of alert; the rebel army, the militia, and all the security forces are ordered to increase their vigilance and to proceed without delay against those who are apprehended in the act of committing or preparing to commit acts of sabotage, sniping or acts of aggression.

The Committees for the Defence of the Revolution are to redouble their activities of vigilance, detection and denunciation of counter-revolutionaries and counter-revolutionary activities.
27. This is Thomas' estimate: *op. cit.*, p. 587.
28. Fagen, *op. cit.*, 1969, p. 73.
29. Fidel Castro on Cuban television, 23.4.1961. In **Fidel, sobre los CDR**, *op. cit.*, p. 50 and **Con la Guardia en Alto**, September 1969, p. 4.
30. **Con la Guardia en Alto**, November 1968; **Granma Semanal**, 29.9.1968, p. 5.
31. Cf. **Memorias del Primer Congreso de los C.D.R.**, Dirección Nacional de los Comités de Defensa de la Revolución, 1981, Editorial Orbe, Havana, pp. 125-132.
32. Fagen, *op. cit.*, 1969, table on p. 77.
33. Compare Chapter Three.
34. Hugh Thomas, **Cuba, The Pursuit of Freedom**, Harper and Row, New York, 1971, p. 1322, describes Matar as 'a young Communist of the old guard'; K.S.Karol, **Guerrillas in Power: The course of the Cuban Revolution**, Hill & Wang, New

York, 1970, p. 468, suggests that Matar only became a Communist after the revolution; David Booth, **Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba**, Ph.D. thesis, University of Surrey, 1973, p. 90, notes that Matar's sympathy for the PSP was wellknown.

35. **Revolución**, 27.9.1962, p. 4 [cited in Fagen, *op. cit.*, 1969, p. 76].
36. Fagen, *ibid.*, p. 76; **Fundadores**, published on the occasion of the First CDR Congress, Editorial Orbe, Havana, 1977, pp. 103 and 105.
37. Fidel Castro, 'Discurso pronunciado en el antiguo teatro Chaplin', 16.3.1962. In **Fidel, sobre los CDR**, *op. cit.*, pp. 20 and 21.
38. Cf. Fagen, *op. cit.*, 1969, p. 79; **Fundadores**, *op. cit.*, p. 106. On April 5th 1963 the Cuban daily, **Revolución**, published a poster for its readers to hang up at work. This had the following to say about 'socialist emulation':

Socialist emulation is based on the principle of the widespread distribution of the advances made and the widespread exchange of work experiences...

Socialist emulation is based on the principle of raising the level of production in all factories. The most backward industries struggle to attain the level of the most advanced. And the vanguard factories try to attain even higher levels.

And as Che Guevara put it on April 15th 1962:

What is emulation? Emulation is simply competition, but competition which is directed towards the most noble ends: that of improvement, that of placing every workplace, every business, every unit at the head of the construction of socialism. That is to say, the most noble competition is the competition to see within the panorama of the whole country who is constructing socialism the most, the best and the fastest.

Source: **Revolución**, 16.4.1962, p. 2.
39. Booth, *op. cit.*, p. 37.
40. *Ibid.*, p. 40.
41. In January 1968 Matar was expelled from the party on the grounds of participation in the mini-fraction led by Escalante. See Chapter Four.
42. Jorge I. Domínguez, **Cuba, Order and Revolution**, The Belknap Press of Harvard University Press, Cambridge, 1978, pp. 262 and 263; Booth, *op. cit.*, pp. 41 and 42.
43. Booth, *op. cit.*, p. 43.
44. *Ibid.*, p. 41; **Bohemia**, 26.9.1969, p. 52.
45. Domínguez, *op. cit.*, p. 262; **Fundadores**, *op. cit.*, p. 111.

46. Booth, *op. cit.*, p. 41.
47. *Ibid.*, p. 56; James O'Connor, **The Origins of Socialism in Cuba**, Cornell University Press, New York, 1970, pp. 275-276.
48. Compare Chapter Three.
49. See, for example, Law 1105, 12.3.1962, Resolution No. 2, mentioned in **Fundadores**, *op. cit.*, p. 105.
50. Fagen, *op. cit.*, 1969, pp. 91 & 92; **Fundadores**, *op. cit.*, p. 103.
51. Lezcano Pérez, *op. cit.*, p. 8.
52. According to Lezcano, *ibid.*, polio has been banished from Cuba since 1963.
53. **Con la Guardia en Alto**, September 1969, p. 10 and January 1967, p. 31; Domínguez, *op. cit.*, pp. 263-4 and 282; Carmelo Mesa-Lago, **Cuba in the 1970s. Pragmatism and Institutionalization**, University of New Mexico Press, Albuquerque, 1974, p. 85.
54. Fagen, *op. cit.*, 1969, p. 94; **Con la Guardia en Alto**, May 1968, pp. 28 and 29; *ibid.*, April 1968, pp. 10-15 and 20.
55. Committee members arranged the plantation of new gardens and parks throughout the whole country to celebrate the first party congress of 1975 and the World Youth Festival that was held in Cuba in 1978. For the **Plan de Jardín**, see **Con la Guardia en Alto**, May 1974, pp. 4-5 and September 1973, pp. 42-3.
56. Domínguez, *op. cit.*, pp. 262 and 265.
57. **Granma Weekly**, 27.9.1966, p. 2.
58. Fidel Castro, 'Discurso pronunciado el 28 de septiembre de 1961', **Fidel sobre los CDR**, *op. cit.*, p. 19.
59. Cf. Fagen, *op. cit.*, 1969, p. 86; **Con la Guardia en Alto**, August 1963, p. 30.
60. Cf. Fagen, *ibid.*, pp. 86-88 and pp. 104-137 on the Schools of Revolutionary Instruction for party members.
61. Booth, *op. cit.*, p. 38.
62. Fagen, *op. cit.*, 1969, p. 87; **Con la Guardia en Alto**, August 1963, p. 31.
63. Cf. Domínguez, *op. cit.*, p. 265.
64. Código de Familia of 1975 (Law No. 1289, 14.2.1975), **Gaceta Oficial**, 15.2.1975; cf. Riki Holtmaat, 'Cuban women and the Law', (mimeo), University of Utrecht, 16.5.1981; interview with three members of the National Executive of the

Federación de Mujeres Cubanas, 22.4.1980 by a group of Dutch lawyers.

65. **Con la Guardia en Alto**, December 1977, pp. 42-45.
66. **Con la Guardia en Alto**, September 1968, pp. 56-59; February 1969, pp. 32-33; May 1969, pp. 22-23; June 1974, pp. 14-16; January 1981, pp. 16-17.
67. **Con la Guardia en Alto**, October 1978, p. 6.
68. **Con la Guardia en Alto**, June 1974, p. 15.
69. **Ibid.**, Nov. 1968, p. 9; **Granma Semanal**, 29.9.1968, p. 5.
70. Jorge Lezcano Pérez, chairperson of the CDRs, during the first CDR Congress in 1977: **Con la Guardia en Alto**, Dec. 1977, p. 8.
71. **Ibid.**; cf. Thesis 'Los CDR en la defensa de la Revolución', **Con la Guardia en Alto**, Dec. 1977, p. 35.
72. This happened in October 1968 and January 1969, for example: **Con la Guardia en Alto**, Feb. 1969, p. 21 and May 1969, pp. 13 and 14.
73. **Con la Guardia en Alto**, May 1969, p. 11.
74. **Ibid.**
75. **Con la Guardia en Alto**, July 1969, pp. 20-29. The DOP is the **Dirección de Orden Público**.
76. **Ibid.**; also Antonio Martínez, of the National Secretariat for Surveillance, in a television discussion on 'Revolutionary Vigilance'.
77. **Con la Guardia en Alto**, May 1969, p. 14.
78. Cf. **Granma Weekly**, 15.6.1969, p. 3.
79. **Con la Guardia en Alto**, February 1975, p. 12; March 1978, pp. 10 & 11.
80. **Con la Guardia en Alto**, June 1975, pp. 16 & 17.
81. This happened in Morón in the province of Camagüey, for example, when the residents left in large numbers to carry out voluntary labour on the land. They hoped in this way to protect the virtually empty town against the possibility of increased criminal activities. See **Con la Guardia en Alto**, May 1971, pp. 12 & 13.
82. Cf. e.g. **Con la Guardia en Alto**, May 1969, p. 14; Lezcano Pérez, **op. cit.**, p. 8.
83. Lezcano Pérez, **ibid.**

84. Table 3.16 is taken from Luis Salas, **Social Control and Deviance in Cuba**, Praeger, New York, 1979, p. 105. His sources are: Jorge I. Domínguez, **Cuba: Order and Revolution**, Cambridge, Mass.:Belknap, 1978; 'As Servants of the People We Have Been Able to Achieve an Even Greater Understanding', **Granma**, May 11, 1969, pp. 7-9; 'Dictamen sobre el informe de Rendición de Cuentas del Tribunal Supremo, leído por Julia Meceda', **Granma**, July 1, 1978, p. 2; and his Appendix A.
85. **Con la Guardia en Alto**, May 1969, p. 15.
86. **Con la Guardia en Alto**, June 1969, p. 5. Eudaldo Torres Jorrín was responsible for the surveillance of CDR zone 22, Lawton Division, Havana.
87. **Ibid.**, pp. 4-5.
88. Thus Rufino Alfonso, National Coordinator for Surveillance within the CDRs on 20.6.1969: **Con la Guardia en Alto**, July 1969, pp. 20-29.
89. **Con la Guardia en Alto**, Feb. 1975, p. 13.
90. Omelio Valdés, National Vice-Coordinator of the CDR, in a television programme, 20.6.1969, in **Con la Guardia en Alto**, July 1969, pp. 20-29.
91. Omelio Valdés in a television interview, **Con la Guardia en Alto**, May 1969, p. 14.
92. Rufino Alfonso, **Con la Guardia en Alto**, July 1969, pp. 20-29.
93. They only had this power in the short period in 1961 during the fighting at Playa de Girón when Fidel Castro had declared a 'state of alert'. See notes 25 and 28 above.
94. Cf. LEC of 1888, Articles 490 and 496; LPP of 1973, Articles 111 jo 112 and 240, 241 and 243.
95. **Con la Guardia en Alto**, June 1969, pp. 4-5.
96. **Departamento Técnico de Investigaciones**.
97. Text by Alvaro González, in **Con la Guardia en Alto**, May 1971, p. 13.
98. Chapter Three.
99. **Con la Guardia en Alto**, Jan. 1967, p. 45; Ministry of Justice, 'Guía para ofrecer conversatorios sobre los Tribunales Populares', Havana, 1966, p. 14 sub V 2^b.
100. Santiago Cuba, Attorney-General of the Supreme Court at the Opening of the Courts, **Los Tribunales Populares**, September 1966, p. 18.
101. **Con la Guardia en Alto**, Jan. 1967, p. 45.

102. **LOSJ** of 1973, Art. 83, section 2.
103. **Ibid.**, Articles 92 & 93.
104. Articles XXI and XXIV of Military Decree No. 213, Eduardo Rafael Nuñez y Nuñez, **Ley de Enjuiciamiento Criminal**, II, Jesus Montero, Havana, 1954, pp. 311 and 312; **LPP** of 1973, Art. 374.
105. Cf. for example, **Informe Sobre la Jurisdicción de Tribunales Populares**, Grupo de Trabajo No. 4, Comisión 1 of the National Committee for the Unification and Renewal of the Legal System, Havana, 1973, p. 35.
106. **Con la Guardia en Alto**, June 1974, p. 25, which includes sections of Instruction Number One for the CDRs.
107. **Ibid.**
108. **LPP** of 1973, Art. 257: **Con la Guardia en Alto**, June 1974, p. 25.
109. Instruction Number Two, **Con la Guardia en Alto**, **ib.**
110. The pragmatic reasoning behind this -- must a family suffer as a result of pre-trial detention or not? -- is, in my opinion, connected with the experience of committees in other areas of social work. For example, one of their functions was providing support for the families of detainees. Through this work they were faced with the problem of families where the breadwinner, who is usually male, suddenly disappears. In Cuban families at that time it was still mainly the men who maintained the families. It is also mainly men who have to deal with criminal justice in Cuba: cf. Salas, **op. cit.**, pp. 17 and 18. The rule thus seems to be based mainly on practical considerations.
111. The general rule for the conferring of moral surety was restricted in the following cases:
- 1 those accused of criminal offences for which the death penalty or the maximum period of detention were legally prescribed;
 - 2 those accused of crimes against the state;
 - 3 those accused of crimes which involved public disgrace, in accordance with the regulations laid down in the instruction dealing with 'defence'.
- Con la Guardia en Alto**, June 1974, p. 25.
The first two exceptions were official legal restrictions which the CDRs incorporated in their guidelines. The Criminal Procedure Law excluded provisional release on bail for crimes against the state and crimes for which the death penalty or the maximum period of detention were prescribed. See **LPP** of 1973, Art. 256.
112. **Con la Guardia en Alto**, **ibid.**
113. **Con la Guardia en Alto**, May 1975, p. 24.

114. *Ibid.*, pp. 24 & 25: Interview with Dolores González, National CDR coordinator for the Social Security Plan.
115. Ministry of Justice, National Direction of the Popular Tribunals, Social Prevention Division, 'La Prevención Social en los Tribunales Populares', 1973 [or later], Havana, sub 2.
116. *Con la Guardia en Alto*, April 1968, pp. 26 & 27.
117. It worked according to the general guidelines of a National State Commission for Social Prevention: *Con la Guardia en Alto*, May 1969, p. 11 and March 1970, p. 27.
118. The objective of the Front for Social Prevention was described as:
The struggle to do away with bad habits that still exist in society; primarily to prevent them from continuing to run wild in the form of theft, fraud, homosexuality, alcoholism, etc.
From: *Con la Guardia en Alto*, March 1970, p. 27
119. *Con la Guardia en Alto*, Nov. 1971, p. 16, where there is a report of such a meeting in the CDR 'Camilo Cienfuegos' of CDR zone 26, Pinar del Rio-Ciudad.
120. *Con la Guardia en Alto*, March 1970, p. 27.
121. Cf. Article 99 B and C of the CDS of 1936 [1969 ed.]. Recidivism, antisocial behaviour or other indications of pre-criminal dangerous behaviour were a reason for turning the suspended sentence into an unconditional one. Naturally enough, the Social Welfare organs and the mass organisations which were involved in the rehabilitation of those on probation also had an important part in the reports on their behaviour during the probationary period. Cf. CDS of 1936, Art. 99 C.
122. 'Rehabilitación de un ex-recluso', by O.G.Perez, in *Con la Guardia en Alto*, Nov. 1970, pp. 14 and 15.
123. Cf. e.g. Ministry of Public Health, *Temas de Trabajo Social*, Psychiatric Hospital of La Havana, Vol. 2, No. 2-3, May-December 1980, pp. 7ff.
124. *Con la Guardia en Alto*, March 1970, p. 26.
125. Ministry of Public Health, *op. cit.*, p. 7.
126. *Ibid.*, p. 9; Interview, 27.4.1981, with Rolando Gola Cólás, member of the National Direction of the CDRs.
127. Thesis 'El Trabajo Cederista y la Familia', *Con la Guardia en Alto*, Dec. 1977, p. 44.
128. Interview, 27.4.1981, with Rolando Gola Cólás; Ministry of Public Health, *op. cit.*, p. 9.

129. 'Realizaciones del Poder Local y los CDR en Las Villas', **Con la Guardia en Alto**, Jan. 1967, p. 31; **Granma Weekly Review**, 9.4.1977; Domínguez, *op. cit.*, p. 282.
130. See Chapter Four.
131. See note 15.

THE BASE TRIBUNALS AS COUNTRYWIDE EXPERIMENT

The base tribunals in Cuba went through a peak period at the end of the 1960s. What before 1966 had been no more than a series of experiments in the countryside became a nationwide phenomenon after that date. The period in which this took place was one of mass mobilisation, with a great emphasis on equality and moral and political awareness. The Revolutionary Offensive against the last vestiges of capitalism in the Cuban economy, and the mass involvement of CDR members in the fight against crime, both occurred in the middle of this period.

In this chapter the organisation and functioning of the base tribunals at their high point is described. The source material includes the manual issued by the Ministry of Justice in 1966 for the judges of the base tribunals, the *Manual de los Tribunales de Base*,¹ and other later resolutions and directives from the Ministry for these lay judges. A second important source for the base tribunals in this period is the Criminal Procedure Law of 1973 and the Cuban literature devoted to it. The organisational structure and procedure of the tribunals as they developed in the course of time are laid down in these laws.² For sources dealing with the practical functioning of the tribunals in 1968 we have two eye-witness accounts: those by the North American Jesse Berman and by the Englishman David Booth.³

A NATIONAL ORGANISATION UNDER THE SUPERVISION OF THE MINISTRY OF JUSTICE

In September 1966 the Attorney-General of the Supreme Court mentioned only 31 tribunals,⁴ but from that moment on their number increased rapidly. A new period had begun in the basic administration of justice. In the words of Blas Roca⁵ in his preface to the 1966 Manual:

The experiments that have been carried out following the precise instructions of comrade Fidel Castro with the creation of Popular Tribunals, firstly in the mountains and isolated rural areas and then in the towns, has shown the great effectiveness of the Popular Base Tribunals. We are now building on the foundations provided by this experience to make the transition to a new stage: their implementation throughout the country.⁶

Forty-five tribunals were added in the last two months of that year. The first tribunals in Havana were set up in the modern suburb of West-Havana at the end of 1966 and the beginning of 1967. Base tribunals were formally installed in the whole of Havana from January 1968.⁷ This meant that every *municipio*, of which there were 413 in Cuba at the time, now had one base tribunal.⁸

While in 1966 the discussion was confined to the election and appointment of lay judges, by 1968 the whole organisational structure of the tribunals had been reviewed. In 1968 the base tribunals still functioned outside the official system of judicial organisation. They were a separate organisation, which structurally resembled other state institutions. The Ministry of Justice was in charge of the base tribunals through the intermediary National Direction of the Popular Tribunals (*Dirección Nacional de los Tribunales Populares*) which had been specially created for this purpose. By means of this organ the Ministry of Justice provided assistance for the base tribunals, such as taking responsibility for the training of lay judges, and supervised their functioning.⁹ The National Direction consisted of 6 main *asesores*. These were the Legal Advisors who each had the responsibility for the base tribunals in one of the 6 provinces of Cuba. The provincial administration of the tribunals was divided into regions or counties, which were in turn subdivided into sections or municipalities.¹⁰ Each section or municipality had a base tribunal that was composed of four of five local tribunals, the so-called 'zones' (*zonas* or *localidades*). One zone covered between 2,000 and 10,000 inhabitants.¹¹ Each tribunal had 20 to 30 or more lay judges.¹² In May 1968 the Information Division of the Ministry of Justice mentioned 414 base tribunals. Some 8,000 lay judges were spread over 1707 local tribunals.¹³

The internal structure of the base tribunals was given a certain unity in 1968. All tribunals now had a Directive Body (*Organo de Dirección*), comparable to what had previously been the Coordinating Body (*Organo Coordinador*) of the urban tribunals.¹⁴ This directive body had only administrative, coordinating and supervisory responsibilities; the judicial functions had been dropped. Its president represented the tribunal as such. Each local tribunal was headed by an Executive Committee (*Núcleo de Dirección*). There was a difference with the 1966 situation: it was now the local tribunals which held exclusive responsibility for judicial functions during the preliminary investigations and during the public hearing.¹⁵

At the establishment of the tribunals an *asesor legal*, or legal advisor, was appointed at the head of each municipality or section. This meant that each base tribunal had one. After the system of the basic administration of justice had been made nationwide, however, the number of advisors dropped. In the early 1970s there were often no more than one or two *asesores* per county in the Cuban interior, totalling some 57.¹⁶

The advisors worked in close conjunction with the Ministry of Justice, to which they reported four days each month. Together they were responsible for the administration of the organisation of the base tribunals. The legal regulations for the tribunals were issued by the same Ministry of Justice in ministerial instructions and resolutions.¹⁷ The advisors were the only legally trained persons who were officially directly involved in the basic administration of justice. The Manual for the judges of the tribunals which came out in November 1966 was written by a group of six lawyers, mainly *asesores legales* who had had experience with the experimental base tribunals in the countryside. Apart from this manual and a few written courses, the *asesores* were the only juridical support which the lay judges of the tribunals could fall back on. In 1968 the *asesores* conducted both the ten-day introductory course on the basis of which the definitive candidate lay judges were chosen¹⁸ and the three-week supplementary course after the definitive selection, as well as later upgrading courses. They could be consulted about complicated legal problems at the weekly meetings where difficult cases were discussed.¹⁹ They were also empowered

to bring review cases before the tribunal and sat on the bench of judges which dealt with the review.²⁰

ORDINARY NEIGHBOURS AS ELECTED POPULAR JUDGES

The procedure for election had hardly been changed since 1966. It was still the legal advisors of the Ministry of Justice who checked the juridical ability of the candidates put forward by neighbourhood and workers' assemblies, while the local party members did the same according to political criteria. The conditions for becoming a lay judge had not been changed either. Candidates still had to be at least 21 years old; to have attended school for at least six years; to have a good work record and a revolutionary attitude; and to be held in high esteem by their fellow neighbours.²¹

The following are anecdotal examples of the electoral procedures as they were carried out in Havana in 1968. It is impossible for me to tell how far they may be considered as typical. One candidate judge told *Granma* about her election:

The comrades of my Committee selected me as a candidate for people's judge. I was one of twelve originally selected in a CDR assembly. Our nominations were all submitted to the people and approved by them. Our nominators explained to the people their reasons for having nominated us, enumerating the qualities that made us worthy of the honour of having been chosen by our neighbours.²²

This candidate judge, Miriam, was an active CDR member. Besides her work in the Passport Office of the Ministry of Foreign Relations she was in charge of Citizens' Vigilance in her CDR committee. Miriam went on to explain that, after the selection, all nominees were asked to fill out forms giving personal data. Later they were called together and informed that a selective 10-day pre-training course would be given. The best students, selected according to their personal character and the results achieved in the course, would be chosen as people's judges.²³

Abel Miguel González was also an active CDR member when he was chosen in 1965 to be a lay judge in the base tribunal for the Dragones area of the centre of Havana. In an interview held in 1983, he expressed his conviction that his election at that time was due to his revolutionary qualities. He was not only a member but also the founder of the CDR in his neighbourhood. He had taken part in the setting up of the Popular Militia in October 1959 and had fought at Playa de Girón in 1961. In addition to his job as waiter in a small cafe, he studied in the evening to complete his primary education. Like Miriam, Abel was nominated by his neighbours to take the introductory course for candidate judges, and like her too, he went through selection by the Ministry of Justice and the Communist Party and was proposed to the neighbourhood assembly as a definitive candidate for appointment as a lay judge.²⁴

In San Ramón, a residential area of Havana with 35,000 inhabitants, a similar electoral procedure was followed. The following account, like my other references to San Ramón, is based on research carried out between May 1968 and April 1969 by the English anthropologist, David Booth.²⁵ San Ramón formed a section within the organisation of the base tribunals. It was divided into three zones. The zone where Booth carried out his research had 7,127 inhabitants. It was to have one base tribunal. It was mainly the members of the CDR who responded to the appeal to

attend a meeting for the election of the first candidate judges. The neighbourhood was informed beforehand that candidates:

...should be of a high moral calibre, must have a reasonable educational level 'without having to be any kind of intellectual', and should have a humane interest in social problems of the type dealt with by the courts. They should, of course, be revolutionaries, because, after all, only revolutionaries could really comprehend social questions; people who still had selfish attitudes and personalist motives could not start to solve collective problems. But it was not necessary to be a Party member or anything of the sort in order to qualify, for there were many revolutionaries who didn't have Party cards, and no comrade should hesitate to accept a nomination because he was not perfect or because he lacked experience. Gaining experience in practice was what the Revolution was all about.²⁶

The first lay judges of this base tribunal were a mixed group and in terms of their professions they could by no means be called elitist. Eventually four were selected: an older railway worker with a union and PSP background; a young factory worker who, in addition to his daily work was studying at the Peasants and Workers Faculty of the University of Havana and was a candidate PCC member; a student of around 30 years of age; and a middle-aged black woman who was a good revolutionary despite her allegiance to the cult of the saints (*santería*).²⁷

The lay judges of the base tribunals were residents of the neighbourhood which fell under the jurisdiction of the tribunal. They were ordinary workers, housewives, etc. who carried out this function in addition to their normal daily activities. They were judges who were not above cleaning their own courtroom or carrying out any necessary repairs. Berman, for example, describes an evening sitting of a base tribunal in Havana at which the judge who was not on duty filled the water carafe of the other judges.²⁸ An *ex-asesor* told me that the lay judges did everything themselves at that time: tidying up the chairs after the hearings, and so on.²⁹ The judges were familiar figures in the neighbourhood and although they might be qualified as 'respectable and revolutionary comrades', they hardly differed from the accused, the prosecutors or the people in the public gallery.

The reports indicate that the elections were in practice largely in the hands of the neighbourhood CDRs.³⁰ It was mainly their members who attended the electoral assemblies and in all probability it was in many cases their members who were elected as candidate judges. This already implied a positive selection in terms of dedication and involvement in the revolutionary process. After all, 'parasitical and antisocial elements' were excluded from CDR membership.³¹ Both the selection by 'comrades', i.e. *asesores* of the Ministry of Justice and Party members, and the criteria which a candidate judge had to satisfy, provided a second important guarantee in this respect.

THE BASIC ADMINISTRATION OF JUSTICE: INCREASED DEMOCRACY AND POLITICISATION

Both official and unofficial commentaries enthusiastically praised the democratic character of the basic administration of justice. For instance, a plaintiff whose accusations turned out after a thorough investigation to be without foundation still praised the democratic character of the judgement. According to a report

in *Granma*, this prosecutor, Guillermo Chávez, asked whether he could lodge an appeal against the verdict after his complaint had been dismissed. When his question was replied to in the affirmative, he said to the bench:

Comrade judge, it is my opinion that the people's courts are democracy personified, worthy of the people's deepest respect. Therefore, I have no objection to the verdict.³²

Blas Roca said the same in more theoretical language in his introduction to the *Manual for the Base Tribunals*:

Now, with the organisation of the Popular Base Tribunals, we are approaching the culmination of those changes which the Revolution has brought to the administration of justice. With this new organisation which starts with the the Popular Base Tribunals, the revolutionary and socialist content of our justice is made deeper and more complete, while the form, structure and organisation of the tribunals is made to fit this content better.

The fact that the masses choose and elect the candidate judges in a profoundly democratic way is a decisive blow to the widely held opinion that justice is something official that is handed down from above and that is foreign to the people.

The Popular Tribunals come from the people, are chosen by the people and thereby they attract the masses, the totality of the poor, to the government of the nation. The justice administered by the Popular Tribunals is thus popular justice applied by the people itself by means of the tribunals which the people elects.

The fact that Popular Base Tribunals are organised and function in their neighbourhood; that neighbours, friends and acquaintances of the accused can be present at the hearings; that the hearings are genuinely public; that the judges who hold office in them are members of the same community, where they continue to live and work: this all means a reinforcement of the idea that the justice which they administer is the justice of the working people and the expression of its power in the socialist state.³³

It is incontrovertible that the basic administration of justice by lay judges that was introduced on a nationwide scale throughout Cuba after 1966 implied an enormous step forward in increasing judicial democracy. For the first time in Cuban history, ordinary people were massively involved in what had before been the exclusive preserve of lawyers. At the same time, it had its place within the political and revolutionary views which were dominant at the time. The experiments with the base tribunals also served the purpose of mobilising the people for more general political objectives.³⁴ In fact, the basic administration of justice was caught up in a triple movement: large-scale increase of democracy, emphasis on lay instead of professional skills, and politicisation. The traditionally sharp dividing line between official law and everyday neighbourhood life was suddenly blurred by the arrival of the new tribunals. As never before, the two spheres interacted and became a whole.³⁵

The same applied to the traditionally hard dividing line between private life, which for Cubans meant family life, and the more general political and collective aims of the community. The latter now entered everyday neighbourhood life, work and the mass organisations in an unprecedented way.³⁶ Everybody was involved more and more in the construction of the new communist society, even if only

through the volume of voluntary work that was called for and the enormous scarcity with which everybody was confronted.³⁷

A NEW STYLE OF LAW STUDENT

This large-scale increase of democracy, emphasis on lay instead of professional skills, and politicisation of the basic administration of justice had its consequences for the lawyers who came into contact with it. It implied new demands on them, which differed in certain ways from the traditional view of the legal profession.

First of all, the base tribunals had little need of academically trained lawyers. After all, they were manned by lay judges. Moreover, it is striking that the *asesores legales* who advised the tribunals on technical juridical matters were mainly either freshly graduated law students or students who had not yet completed their studies.³⁸ Those with a long standing in the profession were usually to be found in the traditional bastions of the law, such as the *audiencias*, the Supreme Court or the private lawyers' practices.³⁹ This meant that most *asesores legales* associated with the base tribunals, unlike their colleagues who had graduated before 1959, had had a legal training in which political involvement and the interaction between theory and practice were both principles and demands.

Law studies had changed drastically between 1959 and 1968. First of all, the number of law students had dropped enormously. The high esteem in which the legal profession was held before the revolution was reflected in the high percentage of law students. In 1959 a developing country like Cuba still had as many law and literature students as students in engineering, architecture, veterinary surgery and agronomy.⁴⁰ As in other Latin American countries, law studies were for many a means of reaching the high positions in the world of business or government.⁴¹ By 1968 this situation had changed completely. Many jurists of the old school had gone abroad.⁴² Of the 26,899 students at the University of Havana, only 219 studied law in the School for Legal Sciences at this university. Moreover, everything was done to prevent this small group of future lawyers from getting any elitist ideas, as had been done for the Cuban civil service.⁴³ The legal training offered in 1968 lasted four years and included not only 'law' but also 'Marxist thought', psychology and sociology. An important place was given to practical work. Lectures were only given in the afternoons; it was compulsory for students to spend the mornings working in an lawyers' collective or performing legal work in a state institution or business. In the last year of their studies they worked in the evenings as *asesores* for the base tribunals. By way of conclusion, there were a further two years compulsory work after the study had been completed as *asesores* in the provinces.⁴⁴ In addition, voluntary work was compulsory. The law students of the University of Havana worked one evening each week and one weekend each month in a canned food factory in the city. All law students had to be members of the Popular Militia, which meant approximately one day of guard duty per month. In the summer one month of the holiday was spent in voluntary work on the land. A second month of the holiday was reserved for study trips in which criminological field work was conducted.⁴⁵ In 1968 lecturers of the School for Legal Sciences of the University of Havana told Jesse Berman:

The obligation to do voluntary production work (*trabajo productivo voluntario*) is essential to being a *Revolucionario* student, and one who is not *Revolucionario* cannot remain at the University.⁴⁶

The fact that a trial period of work in a base tribunal was a compulsory part of the new programme for legal studies explains why so many of the *asesores* were freshly graduated or not yet graduated law students. In the early 1970s only 13% of the *asesores* associated with the base tribunals were not there as part of their study.⁴⁷ Incidentally, not all *asesores* were young. After the revolution law studies attracted large numbers of older people.⁴⁸ Berman gives an example of such a person:

Mercedes Bosch, 45 years old and a law graduate. Before the revolution she was married and belonged to a rich family. After 1959 Mercedes Bosch took advantage of the opportunity to fulfil a long-cherished ambition and began to study law, while her husband and later her only daughter left for the United States. In 1968 Mercedes told Berman that she had dedicated her life to the revolution. In the morning she worked in a lawyers' collective, in the afternoon she taught English to students in the Faculty of Medicine, and in the evening she was *asesor* to the base tribunals of the Luyanó neighbourhood in Havana.⁴⁹

The lawyers who provided the lay judges of the base tribunals with technical juridical help can be said to have received a training which equipped them excellently in terms of mentality and the concept of their profession for working within the new framework of the basic administration of justice. Political education and direct practical involvement in the day to day reality of the revolution had formed an important part of their training. The fundamental principles of this training were one with those which underlay the practice and ideology of the new neighbourhood tribunals: a direct relating of theory, practice and politics to one another.

For the Latin American legal tradition to which Cuba belongs, such an explicit and direct interrelation between law and socio-political reality is unique. The traditional legal studies in Latin America are extremely legalistic by comparison with their counterparts in the United States or in the Netherlands.⁵⁰ The juridical methods employed are scholastic. As Kozolchyk put it in his study of a law reform project in Costa Rica:

That is, they rely almost exclusively on deductive techniques in the search for abstract concepts. Empiricism is rejected in favour of pure reason, and consequently the deduced legal concepts are devoid of socio-economic content except for that which is assumed in the wording of the major premises.⁵¹

A Brazilian lawyer and lecturer in law, Santiago Dantas, had this to say about the same problem:

In the study of abstract legal rules presented as a system one can easily lose the sense of the social, economic, or political relationships the law is intended to control. The legal system has a logical and rational value, autonomous, so to speak. The study we make of this system, with strictly deductive and a priori methods, leads to a condition of self-sufficiency which enables the jurist to turn his back on the society and lose interest in the matter regulated as well as in the practical significance of the legal solution.⁵²

The large influence exerted by the *Défense Sociale Nouvelle* in Cuba in the 1930s had virtually no effect on this scholastic character of Cuban legal training, in which it was only conforming to the general Latin American model.⁵³

From this perspective, the education and training of lawyers in Cuba had changed radically between 1959 and 1968. The legal textbooks were mainly the same as the ones used before 1959, for most of the laws in operation at the time dated from before 1959, but the nature of the training had changed in its essentials. In particular, the direct confrontation with the practice of the base tribunals must have been a special and a revolutionary experience for the students in this context. They came into contact with the creation of juridical solutions which were not derived from abstract legal rules but from the 'politicised' and everyday reality of the residents of the neighbourhood. Even the manual written by experienced *asesores legales* only named offences and for the rest was based on the actual practical cases with which the base tribunals had to deal in the course of their existence.

The most spectacular of the developments within the basic administration of justice in these years is the attempt to realise the connection between theory, practice and politics in the real world of the ordinary man and woman in the street: the farmer who had no legal training, the housewife, the office clerk or the factory worker. Who of them would ever have taken an interest in the trial of his or her neighbours or colleagues, except in sensational cases and cases in which they were directly and personally involved as victim, relative or friend?

In what follows I shall attempt to show how this involvement was given substance. Perforce on the basis of second-hand material collected by others, I shall present a number of examples of the practical functioning of the tribunals in Havana in this period. What kind of problems faced the lay judges of the base tribunals, i.e. what were the crimes and offences which fell under their official jurisdiction? Which of these were the most frequent in Havana in 1968? How did the tribunals tackle these problems, i.e. what were the official procedures to be followed and how did they operate in practice? What were the preferred solutions? Were the decisions intended to repress, to solve conflicts or to re-educate?

THE COMPETENCE OF THE BASE TRIBUNALS

If they need to know whether a specific crime, offence or claim arising out of the former fell within the jurisdiction of the base tribunals, the lay judges had only to consult the Manual for the Base Tribunals. This Manual contained a list of the offences which fell within the jurisdiction of the tribunals. These were a selection from the crimes in the penal code (the old *Código de Defensa Social* of 1936) supplemented with offences specified in other laws, such as the Health Law of 1914, the Law on Illegal Trade of 1960, the Rationing Law of 1962 and the Law on Speculation in Agriculture of 1962.⁵⁴

The offences and crimes were those related to public law. They concerned the violation of traditional criminal or administrative legal regulations, including the so-called 'state of dangerous behaviour'. In addition, the tribunals also dealt with certain matters pertaining to family law, such as alimony and the custody of children, up to 1970.⁵⁵ They were competent also in respect of the civil liability which derived from criminal actions. In Cuban criminal law it was possible for the injured party to claim compensation within the criminal procedure. Normally the injured party could appear in a criminal trial as a claimant. But this procedure too tended to be informal and vague in the hands of the base tribunals. In practice it meant an alternative educational sanction that could be imposed: compensation of the victim.⁵⁶ The trial of minor traffic offences remained in the hands of the Correctional Judges until 1973.⁵⁷

The Manual justified having recourse to a pre-revolutionary law like the penal code of 1936 as follows:

The penal legislation applicable in the Popular Base Tribunals is contained fundamentally in the Social Defence Code which has been in force in Cuba since 1938. That legislation, which is the product of the bourgeois capitalist society which has been demolished by the Revolution, will be of value to the new socialist society that is being created to the extent that, in accordance with the new juridical conceptions of our society, its regulations are worthy of acceptance.⁵⁸

The Manual gave only the name or title of the offences which had been adopted; the traditional description of the offence was left out. The authors indicated what a particular offence involved by means of striking fictional or real examples from the judicial practice of the tribunals. As the Manual formulated it:

This group of lawyers for more than six months dedicated most of its time to producing commentaries on the applicable legislation, with indispensable technical-juridical rigour, but in simple language, which could be understood by the average popular judge. The resulting commentaries, collectively discussed and finally approved in a similar fashion, are methodologically different from the traditional custom, which is shared by all the legal literature, in the following ways:

- a) they do not include the transcription or literal copy of the legal precepts upon which they comment...
- b) they proceed directly to the clearest and simplest explanation of the meaning of the legal precept which is being commented and of how it should be interpreted and applied in practice;
- c) they utilise concrete examples, based on real practical situations (many of them taken from experiences in the Popular Base Tribunals).⁵⁹

The base tribunals could try both *delitos* and *contravenciones*, which were both labelled as antisocial behaviour.⁶⁰ The former were more serious offences, felonies described by the Manual as actions which had damaged the fundamental interests of the community. The base tribunals dealt with those offences for which the law provided a maximum penalty of six months detention or a fine of 180 units of currency.⁶¹ The misdemeanours (*contravenciones*) from the Social Defence Code automatically fell under the jurisdiction of the base tribunals, at least in so far as they were selected by the Manual.⁶² The result was that the base tribunals came to try misdemeanours and felonies which had previously fallen under the jurisdiction of the Correctional Judges. This situation was laid down in law by the introduction of a new system of judicial organisation in 1973. By this law, the legal right of the Correctional Judges to try misdemeanours, felonies for which the law provided a maximum penalty of six months detention or a fine of 180 units of currency, and the 'state of dangerous behaviour' against which security measures could be taken,⁶³ was officially transferred to the base tribunals and the newly created Regional Tribunals.⁶⁴ The base tribunals kept their experimental character until 1973, and until then their functioning was regulated, not by law, but by ministerial resolutions.⁶⁵

The competence of the Correctional Judges with respect to the 'dangerous state' consisted of the power to impose security measures in cases of indications

prescribed by law of anti-social behaviour (which preceded or followed the committing of a crime) like insanity, alcoholism, drug abuse or loafing. This was a regulation which dated back to the start of the 20th century. It was a typical product of the 'Social Defence' movement which was so influential in Cuba at that time. After the revolution, in 1961, the power to impose security measures in connection with a number of specific cases, such as prostitution, loafing and forbidden games, was transferred from the Correctional Judge to the Ministry of Home Affairs, which received advise in this function from the High Council of Social Defence (*Consejo Superior de Defensa Social*).⁶⁶ This counsel, itself a typical product of the 'Social Defence' movement in criminal law too, was an important organ in prison and rehabilitation work.⁶⁷

The involvement of the base tribunals in such cases was not without restrictions. Both Santiago Cuba and the 1966 Manual mention the powers of these tribunals with respect to a 'state of dangerous behaviour'. That is, they could declare somebody to be in such a condition on the basis of an analysis of his or her behaviour. It was sufficient if that person stood trial for a particular offence, whatever the outcome of the trial was. However, the base tribunals did not impose the security measures themselves. This was done, according to the Manual, by the High Council of Social Defence of the Ministry of Home Affairs.⁶⁸ As far as the 'dangerous state' is concerned, the powers of the base tribunals in the 1960s were limited to:

Propose to the High Council for Social Defence the adoption of security measures regarding those who, having committed an offence, display some sign of being dangerous as specified by the Social Defence Code.⁶⁹

In 1973 both the Correctional Judge and the Ministry of Home Affairs lost their competence regarding the 'state of dangerous behaviour'.⁷⁰ With the new law on judicial organisation, this passed to the newly introduced Regional Tribunals,⁷¹ while misdemeanours and felonies for which the law provided a maximum penalty of six months detention or a fine of 180 units of currency came under the jurisdiction of the base tribunals.⁷²

It seems as though it was not thought advisable to entrust the imposition of security measures on the basis of a 'pre-criminal' or 'post-criminal' state of dangerous behaviour to lay persons. The Correctional Justice which dealt with such cases earlier made no use of lay judges, but only of legally trained professionals. The Regional Tribunals which took this function over differed from the base tribunals in that they had a lawyer as president in each chamber. No doubt this reluctance to put the matter entirely in lay hands had something to do with the far-reaching effects of the security measures themselves. This can be seen from the strict conditions under which the base tribunals were allowed to deal with pre-criminal offences after 1973. The new Criminal Procedure Law of 1973 introduced this possibility for a number of cases where the Public Prosecutor was involved in the case and the legal duration of the measure was halved. In such a case it was not the Regional Tribunal but the Provincial Tribunal that remained the recognised final court of appeal.⁷³

PRACTICE: ASSAULT, CLANDESTINE TRADING AND OTHER OFFENCES

For a picture of the offences, crimes and the resultant complaints and claims with which the tribunals had to deal in the period 1966-1968, we can turn to two

sources: Santiago Cuba (1966) and David Booth (San Ramón, 1968). The most common offences which cropped up in the records of the base tribunals at the time of Santiago Cuba's speech in 1966 were acts of destruction, light assault, insulting behaviour, public disorder, theft and other damage to property.⁷⁴ The statistics he offers are drawn mainly from the rural areas where the experiments began. The capital, Havana, presents a similar picture in 1968, at least if the files from one base tribunal in the locality of San Ramón, where Booth carried out his research, are representative. Booth recorded per offence all the persons who came before this tribunal and were sentenced or acquitted in the period May 1968-April 1969. The following statistics, even if they are not capable of general application, are certainly illustrative.⁷⁵

Table 4

Popular Tribunal, Locality 2, San Ramón:
Accusations, convictions and acquittals, May 1968-April 1969 inclusive
(by principal offence or misdemeanour)

| | Persons Accused | Persons Convicted | Persons Acquitted |
|--|--------------------|----------------------|----------------------|
| A. OFFENCES (<i>Delitos</i>) | | | |
| 1 Assault (Maltrato de obra) | 49 | 42 | 7 |
| 2 Light Woundings (Lesiones Leves) | 13 | 11 | 2 |
| 3 Threatening Behaviour (Amenazas) | 14 | 8 | 6 |
| 4 Insulting Behaviour (Injurias) | 7 | 4 | 3 |
| 5 Disrespect for Authority (Falta de Respeto) | 4 | 4 | 0 |
| 6 Disobedience to Agents of authority (Disobediencia o Resistencia a la Autoridad o sus Agentes) | 3 | 3 | 0 |
| 7 Theft (Hurto) | 14 | 12 | 2 |
| 8 Swindle (Estafa) | 2 | 1 | 1 |
| 9 Prohibited gaming (Juegos Prohibidos) | 3 | 3 | 0 |
| 10 Offences against the People's Economy (various) (Delitos contra la Economía Popular) | 3 | 1 | 2 |
| 11 Clandestine Trading | 22 | 21 | 1 |
| 12 Perjury (Perjurio) | 3 | 3 | 0 |
| 13 False accusation (Denuncia o Acusación Falsa) | 3 | 3 | 0 |
| 14 Violation of sentence (Quebramiento de Sanciones y Medidas de Seguridad) | 3 | 3 | 0 |
| Total of offences | 143 | 119 | 24 |

B. MISDEMEANOURS (*Contravenciones*)

| | | | |
|--|------------|------------|-----------|
| Coaction (Coacción) | 5 | 4 | 1 |
| Verbal Abuse (Maltrato de palabra) | 22 | 18 | 4 |
| Parental Neglect (of minors) (Descuido de menores) | 6 | 6 | 0 |
| Public Disorder (Contravenciones del Orden Público) | 13 | 13 | 0 |
| Public Indecency (Contravenciones de las Buenas Costumbres y del Decoro Público) | 12 | 8 | 4 |
| Damage to Property (Contravenciones del Derecho de Propiedad) | 7 | 6 | 1 |
| Contravention of Sanitary Regulations (Contravenciones Sanitarias) | 9 | 7 | 2 |
| Total of Misdemeanours | <u>74</u> | <u>62</u> | <u>12</u> |
| <u>GRAND TOTALS</u> | <u>217</u> | <u>181</u> | <u>36</u> |

Table 5

Accusations and Convictions: Selected Sub-totals

| | Persons Accused | % | Persons Convicted | % |
|--|--------------------|-------|----------------------|------|
| Assault (Maltrato de obra) | 49 | | 42 | |
| Light Woundings (Lesiones Leves) | 13 | | 11 | |
| Threatening Behaviour (Amenazas) | 14 | | 8 | |
| Insulting Behaviour (Injurias) | 7 | | 4 | |
| Coaction (Coacción) | 5 | | 4 | |
| Verbal Abuse (Maltrato de Palabra) | 22 | | 18 | |
| Public Disorder (Contravenciones del Orden Público) | 13 | | 13 | |
| | <u>123</u> | 56.7 | <u>100</u> | 55.2 |
| theft (Hurto) | 14 | | 12 | |
| Swindle (Estafa) | 2 | | 1 | |
| Offences against the People's Economy (various) (Delitos contra la Economía Popular) | 3 | | 1 | |
| Clandestine Trading | 22 | | 21 | |
| | <u>41</u> | 18.9 | <u>35</u> | 19.3 |
| Other | 53 | 24.4 | 46 | 25.4 |
| | | | | |
| TOTAL | 217 | 100.0 | 181 | 99.9 |

Source Tables 4 and 5: David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba', Ph.D. thesis, University of Surrey, 1973.

Violent behaviour, insults, slander and public disorder appeared to occur significantly often in locality two of the San Ramón district of Havana. Economic and property crimes occupied second place, as Table 5 shows.

Only the claims for compensation for damage to property mentioned by Santiago Cuba were rare occurrences in San Ramón: in the course of one year there were only seven cases of offences against property. This is not a particularly strange finding, however, if we bear in mind that damage to property was a typically rural misdemeanour, concerning actions like hunting or fishing without permission on someone else's property, trespassing on enclosed ground without the owner's permission, walking over land that had been planted or sown, throwing stones at fruit trees or in gardens, etc.⁷⁶ These kinds of misdemeanours will have been more common in the rural areas which were Santiago Cuba's prime concern and where innumerable small farmers still held titles to land, than in the district of San Ramón, in the middle of Havana, where Booth carried out his research.

HOUSING SHORTAGE, INSULTS AND ACTS OF VIOLENCE

The base tribunals thus had to deal with quarrels, maltreatment, insults, slander and the resultant public disorder.⁷⁷ As Rogelio Buznego, head of the provincial administration of the Havana base tribunals put it in 1968, the problems were 'social problems', not 'penal problems'.⁷⁸ The housing shortage was mentioned as one of the factors responsible for the high figures. Buznego told Berman that the overpopulation of Havana was the cause of a lot of quarrels. Children fighting on the street were often the cause of serious conflicts between their defensive mothers. The large increase in divorce since 1959 was also the source of unrest. Couples who wanted to divorce often had to wait for long periods before they could be rehoused, and it was difficult for them to go through the waiting period in harmony. The housing shortage meant that too many people were crammed into too little space. An inquiry held in 1953 had revealed that one in five of Cuban households consisted of no more than one room, which housed an average of five people.⁷⁹ In the cities accommodation of this kind was grouped together in the so-called *solares*. These were decrepit (large) blocks of flats, subdivided into small housing units with collective services. In his research carried out in 1968 and 1969 Booth concluded:

The *solar* (...) was typical of lower class dwelling in the cities generally and in Havana particularly, as, to a large extent, has continued to be the case since 1959.⁸⁰

The focus of attention on the countryside in the 1960s had meant a relative neglect of the housing situation in the towns. It led to the deterioration of a city like Havana. There was little money or energy available for building new houses or renovating old ones. In the San Ramón district there was one *solar*, 'La Corona', a building housing 210 people in no more than 50 units of accommodation. In the rest of the neighbourhood 'La Corona' was seen as a black sheep and its residents as sub-proletariat. The families of 'La Corona' earned very little on average and provided only a few active members for the neighbourhood CDR, while the address 'La Corona' often appeared in the dossiers of the base tribunal.⁸¹ It is an obvious conclusion to connect this with the housing situation. In the *solar* there was very little privacy:

...members of different households often living and sleeping a few feet away from their neighbours, separated from them by a thin

board partition. The ecology of daily existence renders impossible anything but a gregarious style of living and one in which *chismería*, gossip, neighbourly rivalry, feuds and open conflicts play a conspicuous role.⁸²

In official reports on criminality from the period, the housing situation is mentioned as a major object of study of criminologists. For example, study materials for the social workers from the Cuban Womens Federation (FMC), compiled by the 'National Commission for Social Prevention', stated in 1968:

The crowded conditions faced by families in *solares* and *ciudadelas*⁸³ favour the establishment between them of relationships of friendship or enmity, with the result that brawls, insults, etc. frequently occur -- sparked off, generally, by the use of common facilities (lavatories, water taps, etc.). The policy of our Revolution is to have an end with this legacy of capitalism in the same way that it has finished with the so-called *barrios de indigentes* [slum areas].⁸⁴

Three years later Fidel Castro made similar remarks during a speech on the tenth anniversary of the Ministry of Home Affairs, whose jurisdiction included the police and the prison system. On juvenile delinquency, which in 1971 still accounted for a significant percentage of the total volume of crime,⁸⁵ Castro had this to say:

Many of the manifestations of juvenile delinquency still reflect a great number of our problems, still reflect much of our poverty, of our lack of material resources.(...) Housing problems are reflected in all these manifestations; the overcrowded conditions in which many families are obliged to live have a bearing on all this. We must be fully aware of these facts.⁸⁶

An example of arguments about collective services such as water tanks, toilets, etc., is described by Berman:

A charge of 'insult' was lodged against a soldier by one of his neighbours, and the case came before the popular tribunal in the neighbourhood of San Miguel del Padrón in Havana. The roots of the quarrel lay in the sharing of the main water tap. According to the woman who brought the charges, the soldier spent too much time each day in getting his water from the tap, with the result that she did not have enough time to fill her tank. This neighbourhood had running water for only twelve hours a day, and each apartment had to fill its own tank within this time. She claimed that, when tackled on the question, the soldier had insulted and threatened her and forced her to go away. The defendant denied all the charges during the hearing and claimed that it was the woman who had monopolised the water supply. He was a good soldier, so he stated, a member of the army (FAR), while his neighbour was a 'counter-revolutionary'. She found herself a 'good citizen', however, and claimed that the soldier was a 'counter-revolutionary'.

The tribunal's solution was an outstanding example of the 'educational' and 'revolutionary' justice which was the aim of the basic administration of justice. Both parties were cautioned and reprimanded:

Socialism demands a high degree of cooperation, it was stated. Was it not the case that the new citizen, *el hombre nuevo*, was socially

aware and altruistic? The tribunal also drew up a plan for the use of the main water tap in the future.⁸⁷

Another quarrel between neighbours which was brought before the local tribunal, this time involving violence, was not so smoothly sorted out. It concerned two residents of a *solar* apartment. A middle-aged black had brought charges against the man who lived in the room next to hers. On the evening of the quarrel she told the police:

At approximately 6 p.m. today she was ironing in her dwelling when the citizen Andrés González, resident of the same address, room 3, came to her door, using the worst phrases, and saying that he was going to finish off all the blacks in the *solar*. At this, she told him not to get fresh with her. Then the said citizen entered her room and tried to assault her, at which she held out her iron to defend herself; and it was then that he fell onto the floor, owing to the intoxicated state that he was in...

Obviously the citizen took advantage of the fact that her husband and son were not at home to do this. When he drinks, he makes a habit of saying the most terrible obscene words opposite her room. And, since she is at home alone with a minor, she is frightened.⁸⁸

The man in question alleged:

He was in his residence quietly having a beer with some friends, when suddenly he heard the said citizen having a fight with her godchild. At this, he went out and told her she should stop fighting with the minor, because today was Saturday and they were relaxing at home and didn't want any disturbances, at which the citizen gave him a slap. Then she went inside her room and came out with an iron and attacked him with the same, trying to burn his face.⁸⁹

The tribunal convicted the man of 'insulting behaviour' and the woman of 'causing light bodily harm'. They were both given a sixty days suspended sentence on a prison farm where paid labour was carried out.

LARGE-SCALE SHORTAGES: ECONOMIC AND PROPERTY CRIMES

A second category of offences with which the tribunals were often confronted, according to reports from the period, was that comprising economic offences and offences against property. As we have seen, the rapid rise in the rate of property crimes was directly related, as the Cuban leaders themselves saw, to the economic situation in which Cuba was placed: enormous shortages, an increasing dissatisfaction among the population and a black market which grew as the shortages increased. The same is true for economic offences. The increasingly centralised economy had demonstrated a growing need for economic regulations, which in turn opened the possibility of their infringement. At the lowest level, it was the base tribunals which dealt with misdemeanours of this kind. Their jurisdiction extended to thefts of not more than 10 pesos and fraud for not more than 50 pesos. Cases which exceeded these limits were the province of the *audiencias*.⁹⁰

The base tribunals also dealt with violations of the regulations for distribution and illegal trade, for instance. The Revolutionary Offensive of March 1968 put increased emphasis on economic and property offences. The nationalisation of the last small private businesses implied an absolute prohibition of running one's own business, in a period when long queues in front of the shops were no longer an

exception, but had become an everyday event. The temptation must have been great for many people to commit economic offences and crimes against property.

This was probably the reason why an old, retired baker from Havana could easily sell his home-baked bread for 40 centavos a loaf, while the official government price was 15 centavos. People were prepared to pay higher prices to avoid standing in the shopping queue in front of shops where each customer could only buy a couple of loaves. The baker in question was summoned by local members of the militia for illegal trade and came up for trial by the neighbourhood tribunal. He was sentenced to three months house arrest.⁹¹

The black market was flourishing and there were probably few people who did not benefit from it in these difficult times. As a result of the many cheap or free collective services, a situation had arisen in which the level of spending was far below the average income. In 1972 an inquiry showed that 10% of the average income of a family in Havana was spent on rent and 25% on food. The remaining 65% was left over, since education, sport, medical assistance and many other facilities were free. There was thus a surplus, for luxury items of consumption were only available in small quantities, if at all.⁹²

In San Ramón people who had more or less made the black market their profession were given generally heavy sentences, especially when they showed little enthusiasm for the collectivity and lived as parasites from the work carried out by the rest of the population. An incidental offence of this kind, however, was treated with a measure of clemency, probably because everyone had given in to temptation of this sort at some time. Such infringements often never got as far as the judge.⁹³

Booth describes such a case, involving an economic misdemeanour committed by a 52-year old CDR chairperson from the neighbourhood. It was embarrassing for all those involved. The man was a shoemaker by trade and earned the minimum wage of 74 pesos per month. He was unfortunate enough to be caught redhanded by the police while selling a brush for 2 pesos. In his defence, the man denied that it was a case of speculation, since he had bought 8 of them for 1.5 pesos each from someone whose name he no longer remembered. He worked to support himself and this was the first problem that he had had. The judges did no more than issue a warning. They called it 'misuse of people's needs'. The goods had probably been stolen, they added, and also pointed out in detail that a member of the CDR should have known better.⁹⁴

LOAFERS AND OTHER MARGINAL GROUPS

Less revolutionary or dedicated neighbours had a harder time if they appeared before their neighbourhood tribunal or came into contact with justice in some other way. In the case presented above, the shoemaker was able to benefit not only from the fact that his offence was a familiar one but also from the respectable status that he enjoyed as CDR chairperson. The fact that prosecutors, judges and defendants came from one and the same neighbourhood and community meant that the definitive judicial verdict was strongly influenced by considerations in which the attitude and behaviour of the accused had a more important place than his or her isolated action which came in for censure. This is clear in the following case, involving a resident in San Ramón who was on trial for 'threatening behaviour' (*coacción*). The severity of his punishment and the reports which the members of the neighbourhood CDR made on him suggest that it was rather for his 'parasitic' and 'unrevolutionary' life style than for the threatening behaviour that he was

convicted. The man concerned was 48; the accuser was his stepfather, a 61-year old CDR chairperson from the neighbourhood. The written deposition of the stepfather was as follows:

That [the accused] started to say things like 'why didn't they all go off to Fidel Castro's house, so that they could have milk every day' -- because the accuser's two sons, who belong to the PCC, went to eat at Fidel's house. And he started to say that he was going to set the house alight, and that he would get a knife and finish them all off.⁹⁵

The statement went on to explain:

He [the accuser] has had various problems with [the accused] and they have had one court case when he broke up the CDR notice-board. He is a dangerous individual, because he has been in prison several times, and for this reason the authorities are requested to take some action, as he is a *lumpen* who does not work.⁹⁶

The coordinator of 'vigilance' of the local CDR dictated the following report on the accused at the police station:

He has never worked in the nine years that she has known him. He was in prison several times under the previous regime of the *Batis-tato* because of problems with the police; he has always spent his time in gambling and vices, and it was said that he had a drugs business. His morality is thoroughly undesirable, for he mixes with elements with negative attitudes towards the Revolutionary process, and his friends leave much to be desired. In the zone he has had problems with the chairman of the CDR, who is at the same time his stepfather, striking him on one occasion. His relationships are with gambling elements like one Martínez ('The Cripple'), two of the brothers Padilla of [address] and José Padrón of [address], several of whom are presently detained for gambling. He is single, though it is not known whether he has a woman. He drinks frequently and is a habitual alcoholic, making breaches of the peace in the INIT fish restaurant. He is not integrated in any revolutionary organisation; he has always declared that his people (the negative ones) always give him everything he needs, not like his brothers and his stepfather who are revolutionaries but who go hungry, and that it is thanks to his friends that he eats and drinks and has a peso in his pocket. His religion is unknown but he always wears a red handkerchief in his pocket.⁹⁷ In broad daylight he gets together with Martínez 'The Cripple' and another man called 'The Dog'; the last mentioned was sent to a camp in Camagüey for vagrancy, but he declares that 'he will not go there again even if they shoot him'. In addition he has several more friends who get together in the INIT fish restaurant to gamble on the buses that have the highest number. He never showed any interest in studying or in working, but he did always like to be on the fringe of the law.⁹⁸

In his capacity as CDR chairperson, the stepfather had also made a CDR report on the accused. In this document he told the bench of judges:

Whenever they found him some sort of job, he made up a series of excuses and gave it up after a few days. He never wanted to study

either; at that time the district was full of lottery stalls, drug peddlars and *mofuco* drinkers, and it was with these people that his son liked to associate..

At the beginning of the Revolution, seeing that the opportunities were being closed off for continuing to live the life to which he was accustomed, he declared himself an enemy of the Process; and his stepfather and his brothers, who were integrated into the same, were called to account for him. Although the block committee is based in his house, he has taken advantage of the absence of his stepfather at work and the illness of his mother to bring into the same a series of *lumpen* individuals to engage in illicit trading and to drink *alcoholite*.⁹⁹

The accused admitted the facts brought against him and was sentenced to 60 days detention in an open prison farm under the supervision of the provincial department of the High Council of Social Defence.

As stated earlier, the *Consejo Superior de Defensa Social* was the major organ concerned with prisons and rehabilitation. Its functions included the direction of all prison institutions and the selection and treatment of detainees.¹⁰⁰ In 1961 this counsel also acquired the right to decide on conditional release.¹⁰¹ Before the revolution the counsel consisted of academics, high-ranking officials and representatives of charities.¹⁰² After 1961 the revolutionary and social character of the counsel was enhanced through the replacement of a number of its members by representatives of the Trade Union (CTC), Womens Organisation (FMC) and the Rebel Youth Organisation (AJR).¹⁰³ At the same time the Ministry of Home Affairs was given more of a say in the prison institutions.¹⁰⁴

In the case of the stepson, the severity of the punishment -- an unconditional sentence of sixty days detention -- was striking in proportion to the gravity of the offence. No doubt his threat to set the house on fire and to finish off his fellow residents is not the only aggravating factor, given the tone of the reports. Booth does not indicate whether the accused in question was also sanctioned for loafing. In principle this was one of the possibilities provided by the law in view of the references in the CDR reports to behaviour likely to cause a breach of the peace, loafing, gambling and threatening behaviour.¹⁰⁵ These various accusations were by themselves a sufficient reason in law for the Ministry of Home Affairs to decide on a security measure. A positive recommendation by the High Council for Social Defence, under whose jurisdiction the accused fell, would have opened up this possibility.¹⁰⁶

Apart from this question of a possible security measure, it is clear that the punishment of the stepson was primarily in relation to the failure of his life style to satisfy revolutionary criteria and to his lazy, antisocial behaviour in the neighbourhood. In other judicial sentences passed on behaviour that did not gain the approval of public opinion, there is a similar combination of judgement of a person's attitudes and behaviour and judgement of the crime committed. In this period, striking for the hardness of the times and the strong moral climate, it was not just a negative attitude towards work which was censured, but also the life styles which were associated with it, such as that adopted by 'hippies'. The government complained on a number of occasions about the vandalism and other antisocial acts perpetrated by youths like these who were hanging around on the streets.¹⁰⁷ The complaints made at a Congress for Education and Culture held in 1971 were that they wore 'extravagant foreign clothes' (the girls' miniskirts were too short and the

boys' trousers were too tight and their hair too long); they listened to American music; and they liked 'decadent' literature. 'Sometimes these youths were used by counter-revolutionaries against the revolution. Prostitution and homosexuality were also to be found among them.'¹⁰⁸ Castro had made it abundantly clear in a speech of September 28th 1968 that the Cuban communist society that was under construction did not want to tolerate this kind of excess:

And what do these individuals think? Do they think we live under a liberal bourgeois regime? No! We don't have a liberal bone in our body! We're revolutionaries! We're socialists! We're collectivists! We're Communists!

And what do these individuals want?... In a nation that is developing an iron spirit, an iron will? In a nation that must be constantly prepared for the struggle and over a period of many years? What do they think?¹⁰⁹

Other forms of behaviour and life styles which had traditionally met with strong disapproval in the eyes of the public were lumped together with these new versions. Homosexuality, for example, was never tolerated in Cuba, where machismo has traditionally had a strong influence.¹¹⁰

It is in this close intertwining of judicial intervention, public opinion and, on occasions, prejudices that the explanation must be sought, I believe, for the treatment of a young man from San Ramón whose case seems at first sight to have been handled with a good deal of arbitrariness. The 17-year old was picked up on the street by a police officer and accused of public indecency. In the files of the tribunal Booth was able to find the police officer's statement, that of the accused youth and that of the representative of his local CDR. The police officer declared:

That today he was patrolling Trinity Street, and when he reached the corner of the said street he observed the above-named citizen who had his trousers down nearly a quarter of the way and was rearranging his underpants. [The patrolman] therefore asked the said citizen to account for himself, to which he replied that he was doing this because nobody would see it. At this he proceeded to conduct the citizen to this Unit.¹¹¹

The version of the accused was different from the patrolman's. He made the following statement:

That when he arrived at the corner of Trinity Street, owing to the fact that his belt was a bit loose and that consequently his trousers were slipping down, he proceeded to pull them up. And at that moment the patrol-car went past. The patrolman called him over in an incorrect manner and then took him to the Unit, and at no point did he take his trousers down in the manner that the patrolman states.¹¹²

The report of the CDR on the accused and the measures that were taken affecting him without his being brought before the neighbourhood tribunal are interesting. There is no reference to the difference between the two statements. The only points raised for discussion refer to the young man's personal background: his education, his friends and his family relations. The CDR report indicated that the accused had been through and completed his education, but that he had no work. On his family relations the CDR wrote:

His family say that these are good and decent, but that he turned out queer [*salió afeminado*].

As for his relations with the community, the CDR wrote:

These are not known, since he associates with Vedado elements¹¹³ and belongs to the Hippy Gang [*la Banda de los Jipi*]. He is not integrated and is a homosexual.

The dossier and with it the documentation on this case ends abruptly with the following words:

File archived. The minor is already detained in Camagüey as a scum [*lacra*] and a queer, and as a member of the Hippies.¹¹⁴

There was not even a public hearing before the neighbourhood tribunal and the case was probably dealt with by the Ministry for Home Affairs as a case of pre-criminal dangerous behaviour -- loafing and morally reprehensible vices.¹¹⁵

THE TRIAL: AN EVALUATION OF THE WHOLE OF ONE'S LIFE STYLE

The accounts of the functioning of the base tribunals in the late 1960s presented here could be used, with the necessary caution, to reach certain conclusions concerning the kinds of cases which came before them. A large chunk of their activities concerned the resolution of quarrels, mutual insults and minor acts of violence. The Cuban housing problem, which still exists in the 1980s, is probably a factor which must not be underrated in this respect. The rise of property and economic crimes was viewed with concern at this time, a period of economic scarcity. The government encouraged the people to use all its efforts to combat this tendency. One of the ways in which this was done was through the CDR vigilance system.¹¹⁶ The minor offences fell within the jurisdiction of the base tribunals. If these were familiar misdemeanours, they were handled with the flexibility required by the lay judges, especially when the accused had the reputation of being a respectable 'revolutionary'. The fact that everybody knew everybody was in the defendant's favour in such cases. The case was different, however, when the accused fell outside the limits of what was considered moral and revolutionary. In this period in particular, when there was such a general political emphasis on moral awareness, hard work and a life of austerity, people who deviated from this goal were treated with severity. As the examples illustrate, this was certainly true for those who preferred a lazy and comfortable life to the 'lean' and industrious existence of a 'revolutionary' and who tried to achieve their aims on the margins of society. Groups of youths who acted 'under the influence of imperialist propaganda' as if they lived in a 'rich capitalist and liberal country' were also strongly criticised for their immorality, and the same applied to those who followed the traditional paths of deviance, such as open homosexuals.

The direct combination of everyday neighbourhood life and the system of (criminal) justice offered an extra instrument for influencing people's life styles. The crime for which a person was convicted was visible to everybody -- judges, CDR activists and fellow neighbours. But it was usually just a piece of the person's whole attitude and background, in which other factors played a role too. The close connection between general policy and social life in this period must have given such an all-embracing judgement an extra revolutionary flavour. Developments which were due to the Social Defence movement, such as the possibility of imposing security measures on the basis of typical forms of antisocial behaviour fitted very well within this approach, for the 'state of dangerous behaviour' was a label which tended to be applied to generally reprehensible behaviour rather than to a specific kind of behaviour as defined in the Criminal Code. Moreover, this regulation gave

institutions which were not so closely connected with neighbourhood life the opportunity of intervening in such cases. State bodies such as the Ministry of Home Affairs and the *Consejo Superior de Defensa Social* assumed the responsibility and leadership here.

ALTERNATIVE SANCTIONS: REPRIMAND

The various sanctions at the disposal of the base tribunals in these years fitted in with the same approach. The emphasis on 're-education' as a typical feature of *Défense Social* was not only retained by the basic administration of justice, but it also acquired an extra dimension. More than ever, re-education could be tailored to the direct personal situation of the convicted person. The intertwining of neighbourhood life and the administration of justice offered entirely new possibilities for a wider approach in which the offence, the offender, the local situation and general political factors could all be taken into account. The base tribunals had a specific number of sanctions at their disposal.¹¹⁷ We shall now examine what these sanctions were and how they differed from the customary penalties which could be imposed.

The Manual provided the base tribunals with a wide choice of sanctions which could be imposed, some of which were entirely new. In the examples offered earlier, the sanction 'reprimand' cropped up a number of times, as well as the sanction 'detention', which had to be spent in useful agricultural labour on a farm. These were two of the nine sanctions officially at the disposal of the base tribunals.¹¹⁸ The 'fine' mentioned in the 1966 Handbook for Lay Judges was abolished in 1968, a time when money had to be driven out of people's minds;¹¹⁹ it is not included in the list of nine.¹²⁰

New sanctions which had not appeared in the *Código de Defensa*, such as 'reprimand', 'compulsory education', 'the command to remain in a particular place' or 'the command to attend a particular place', were legitimised as follows:

The Revolution has introduced profound political, economic and social changes, which are bound by necessity to affect the juridical superstructure too. The latter changes are inevitably slower than the first, since a legal text dating from before the Revolution which is still in force may no longer correspond entirely to the political, economic and social necessities of the moment. The consequence is that the Revolution itself proposes interpretations and even changes in such a text before it has to be modified or definitively replaced.

In this way, and to a limited extent, popular justice has added to the penalties of detention or fine contained in the *Código de Defensa Social* a wide range of sanctions which are more effective in attaining the educational objectives of the Popular Tribunals.¹²¹

Practice has shown that the first of these sanctions [fine] does not have any educative value; it has only coercive value. As for the sanction of detention in prison, this tears the individual away from the social environment in which he or she develops. It sets the prisoner behind bars, with damaging effects on his or her character and subjects the prisoner to all kinds of humiliations. The prison regime, which is in the process of being transformed in Cuba, can

never lead the prisoner to master his or her faults; its effects are rather to make the prisoner incorrigible.¹²²

The 'public reprimand' (*amonestación pública*) was a new and unique sanction within Cuban criminal justice. It was introduced by the experimental base tribunals and was not included as a general sanction until the Cuban Penal Code of 1979.¹²³ This sanction was applied without fail throughout the experimental basic administration of justice.¹²⁴ An illustration of the importance attached to this sanction is a large poster which hung on the wall of the administrative office of the base tribunals in the San Ramón district of Havana, with the following text:

A Good Admonition Supports the Sanction and Renders it more Efficacious.¹²⁵

After a person had been convicted, there was at least an official 'reprimand' delivered by the president of the court. When innocence was proved, the accuser in question was often given a sound 'reprimand'. The educational value of the reprimand was high because it was delivered in the presence of members of the neighbourhood. It was intended to instruct not only the convicted defendant or the accuser who came in for a reprimand; the public which attended could also benefit from the president's words, which usually had a political tinge to them. Such lessons were in the main incitements to correct revolutionary behaviour. The CDR member in the case presented above¹²⁶ should have known better than to sell brushes outside the economic distribution regulations. A good revolutionary, such as a CDR chairperson, should not commit such acts. At a time when ideological education and moral incentives were the top priorities, the 'reprimands' often made reference to the ideal of the 'new communist man'. An argument about the use of collective services was resolved with the remark that 'Socialism demands a high degree of cooperation'. The aim was not only to solve quarrels, but to use the sanction of a 'reprimand' to teach a revolutionary lesson.

In one case dating from 1969, a woman accused her neighbour of insult. One woman was black and the other white. There were no witnesses, except one who was able to state that the white woman was 'good'. After deliberation, the bench of lay judges stated that it was unable to ascertain the facts of the case precisely. One thing was certain, though, the president declared: 'The relation between two comrades leaves something to be desired. This is not as it should be in a communist society'. The judges thereupon decided on a 'public reprimand'.¹²⁷

Seen in terms of general political developments in Cuba towards the end of the 1960s,¹²⁸ the introduction of the 'public reprimand' with the intention of teaching a moral lesson comes as no surprise. In his introduction to the Manual, Blas Roca had this to say on this sanction:

[It had] a great efficacy as a means of re-education for those who were reprimanded and of education for the rest of the people. In this way they learned the norms and principles underlying socialist society regarding social and personal property, social and labour discipline, loyalty to the Revolution and the socialist fatherland, proletarian internationalism, love of work, honourable conduct, comradeship and a feeling of belonging to the collectivity, in place of the egoism and individualism of the old society.¹²⁹

As a punishment, the 'reprimand' fitted into place within the general policy of mass mobilisation, moral work incentives and ideological education of the people. The presence of large numbers of neighbours gave the 'reprimand' an extra educational dimension.

COMPULSORY EDUCATION

The Manual for the base tribunals introduced a second novelty within Cuban justice: the obligation to undergo training, *Superación Educacional*.¹³⁰ Usually this meant the obligation to complete one's primary education. In some cases a higher educational level was required, but this must never exceed one's academic level.¹³¹

By means of this sanction, the convicted person is obliged to attend a local educational centre; to take part in study groups; or to accomplish a specified task which is seen as a direct educational goal.¹³²

This sanction too was a part of the general policy that was followed in the period. Since the literacy campaign of 1961 the aim had been to give the whole population a primary education. The CDRs in particular devoted considerable time and energy to this project.¹³³ The Manual gave the lay judges an example of the type of case where such a sanction was applicable:

A young man of 20 who had not completed a primary education and who worked as a mechanic in a shop was brought before the tribunal for the second time. This time he was again found guilty of public disorder, which had occurred in the local cinema. The popular tribunal knew that the young man was free each evening and had nothing useful to do -- this idleness was one of the causes of his antisocial behaviour -- and decided to compel him to spend these evenings in the furtherance of his education. His punishment was the obligation to follow evening courses in agricultural or other work until he had completed his primary education...

The tribunal sent the sentence to the head of the school where the course was given. At the same time, the latter was asked to inform the tribunal about the attendance of the young offender during the course, his behaviour and his progress. Should he violate the sanction, the Manual suggested, the tribunal could try to arrange something with his work centre, where it might be possible for him to work night-shifts or to follow evening classes. The tribunal might also give the young man the task of copying by hand a literary or revolutionary work.¹³⁴

The obligation to improve one's level of education was a temporary sanction. It is not included in the *Código de Defensa Social* or in the 1979 Penal Code. The importance of an adequate education can also be seen in other sanctions. For example, the Manual for Lay Judges suggested publicly reprimanding the father of a 10-year old boy who did not send him to school:

In imposing the sanction, the President of the Tribunal indicated the importance of educating all its citizens for the development of our country, stressed the harm done to the boy as a result of the father's apathy or negligence in not sending him to school, and, finally, reminded the father that his obligations towards his children included the obligation to see that they are educated, an obligation which is about as important as that of seeing that they are clothed and fed.¹³⁵

Hearings at which these kinds of reprimands were delivered later came to acquire the special name of 'cautionary sittings'.

DENIAL OF RIGHTS, RESTRICTION OF MOVEMENT, REHOUSING

The other possibilities open to the base tribunals included 'the denial of certain rights' to the convicted person, the prohibition on going to specific places, and the prohibition on remaining in a specific place. The first, *La Privación de Derechos*, was not a new penalty. In general terms, it concerned 'an absolute or special prohibition' affecting certain public rights, such as the right to vote, or the exercise of certain public functions or professions.¹³⁶ In the experimental basic administration of justice, this penalty was applied in cases of specific kinds of behaviour which had led to antisocial or illegal acts. There was a maximum of 180 days.¹³⁷ Berman gives an example in which a ration book was falsified in order to obtain illegal extra clothing. The tribunal decided that the convicted persons could not get any new clothing for six months.¹³⁸

The Manual stresses the need for a due proportion between the antisocial behaviour and the denial of certain rights in the imposition of this penalty, providing the following example:

In a case of a minor disturbance of public order during a dance party in a working people's club, the Popular Tribunal recognises that the offender was drunk at the time and had thereby lost his self-control. The Popular Tribunal decides to impose a sanction of *Privación de Derechos*, consisting of the prohibition for the offender to drink any kind of alcoholic beverage at the working people's club for three months. In its deliberations, the Tribunal considered the possibility of banning the offender from the club for three months, but took into account the fact that the offender is not a habitual drinker and had never acted in such a way before.¹³⁹

The new 1979 Penal Code includes the sanctions of depriving somebody of public rights or prohibiting the exercise of public functions or professions.¹⁴⁰

The second possibility, the prohibition to go to certain places (*Alejamiento*),¹⁴¹ was new: it is not to be found in the *Código de Defensa Social*. It was incorporated in the 1979 Penal Code.¹⁴² When imposed by the base tribunals, there was a maximum duration of two years.¹⁴³ It goes without saying that the implementation of such a penalty called for the cooperation of the convicted person's home and work environment. The prohibition on going to the local café requires the cooperation of the residents, or at any rate it is easier to check its observance if they are prepared to help. This penalty could be effectively implemented with the involvement of the CDRs and other mass organisations in rehabilitation work.¹⁴⁴

The third possibility, the obligation to remain in a certain place (*Confinamiento*), was a special kind of deprivation of liberty, and was sometimes known as such.¹⁴⁵ With its emphasis on the offender's situation, in specific cases such as old age or the responsibility of caring for young children at home, it was in fact a substitute for it. While the sanction of *Alejamiento* prohibited going to certain places, *Confinamiento* obliged the offender to remain in a certain place. Like the ordinary sanction of deprivation of liberty imposed by the base tribunals, this sanction had a maximum duration of 180 days.¹⁴⁶ In the example cited of a young man who caused a disturbance in a cinema, the tribunal could impose this sanction in cases of recidivism. As the Manual indicated, a short sentence of deprivation of liberty would have been in order if the young man had not had his job as a mechanic. The sanction of *Confinamiento* meant that he could be compelled to stay at

home except when he had to leave for work.¹⁴⁷ The implementation of this sanction too depended on the direct neighbourhood of the convicted person, that is, the neighbourhood CDR in cooperation with the local police. Such a sanction would be impossible to check in a large city where daily life is characterised by anonymity. This penalty is not to be found in the *Código de Defensa Social*,¹⁴⁸ but it was later included as one of the main penalties in the 1979 Penal Code.¹⁴⁹

Reference has already been made to the deprivation of liberty (*Privación de Libertad*). This traditional penalty was interpreted by the experimental basic administration of justice in terms of labour, whether carried out in a person's free time, like voluntary work, or internally, usually somewhere on a farm, and sometimes for wages.¹⁵⁰ The work to be done was mainly agricultural labour, which was Cuba's major national activity at this time. The maximum period of deprivation of liberty imposed by the base tribunals was six months.¹⁵¹ The Manual offered the following guidelines:

A farmer who through negligence damages part of the garden of his neighbour with his horse and thereby commits the offence of *daño*, can be sentenced by a base tribunal to voluntary work on two Sundays in the neighbour's garden. Light bodily harm must be punished with sixty days on the local people's farm (*Granja del Pueblo*). If the convicted person is married and has children, he should be paid; a part of his wages should go directly to his family and a part to the injured party to compensate for the damage caused.¹⁵²

The sanction 'rehousing' (*Reubicación*), which could also be imposed by the tribunals, seems to have been used very rarely.¹⁵³ For lay tribunals at the basic level it was a very far-reaching punishment which could in principle affect whole families. Moreover, the tribunals had their hands tied by the housing shortage in Cuba. In cases where this sanction was applied, this took place of necessity in cooperation with the Commission for Control of Housing under the Local Administration and Urban Reform (*Comisión de Control de Viviendas de las Administraciones Locales y con la Reforma Urbana*).¹⁵⁴ Both the *Código de Defensa Social* and the 1979 Penal Code refer to this accessory penalty as banishment (*Destierro*).¹⁵⁵

ACCESSORY PENALTIES AND SUSPENDED SENTENCES

Besides all these main penalties, the base tribunals also had the power to impose two accessory or secondary penalties: 'confiscation of the goods acquired by the committing of an offence and of the instruments used for the committing of the offence' and 'compensation for the victim'.¹⁵⁶ The former is so general that no further explanation is required here. It is included in both the *Código de Defensa Social* and the 1979 Penal Code.¹⁵⁷ The latter penalty concerned 'civil liability' (*responsabilidad civil*), which runs through the whole of Cuban criminal law.¹⁵⁸ Both penalties could be imposed by the tribunals at the request of the injured party or at that of the offender. Compensation could be in money, in kind or in services rendered.¹⁵⁹

Apart from the wide variety of punishments, the judges also had a great degree of freedom in shaping the sanctions in practice according to what they thought fit.¹⁶⁰ At a hearing before a base tribunal held in 1979, the judges devised a penalty which was carried out on the spot. It was a punishment which had elements of both a public reprimand and the obligation to learn. A man had got out

of a full bus by the wrong door and offered as his excuse the fact that he did not want to be late for work. The judges sentenced him to read out the relevant regulation in public before the tribunal. The man could not read properly, however, and even with his wife's help it was difficult going for him to get through the text, to the amusement of everybody present. Yes, the president said, it is embarrassing, but at any rate he won't do it again.¹⁶¹

The suspended sentence (*Remisión Condicional*) was introduced within the experimental basic administration of justice with a view to re-education. If there was no question of recidivism and under certain personal circumstances, such as (advanced) pregnancy, disability or old age, a suspended sentence could be imposed. The criteria for the imposition of this sanction were widened later. By the beginning of the 1970s the public interest or the motive of re-education were sufficient cause for the imposition of a suspended sentence. Undoubtedly the good results achieved in the sphere of criminal prevention were due to this measure. The maximum probationary period was fixed at one year.¹⁶²

SOCIAL PREVENTION AS AN EXTRA DUTY OF THE LAY JUDGE

It was the duty of the base tribunals to pass sentences which were of benefit to the rehabilitation of the convicted person and the education of the population. This duty involved social prevention and general education. In 1968 attempts were made to intensify and extend this. As has been seen, it was in 1968 that the campaign against crime assumed unprecedented proportions. Mass organisations such as the CDRs were used to involve the people in neighbourhood vigilance, rehabilitation work and other tasks of social prevention. Commissions for Social Prevention (*Comisiones de Prevención Social*) were established for this purpose. Ministries, local administrative organs, political and mass organisations all participated in these commissions.¹⁶³

The base tribunals were also involved in the new tasks of social prevention. The close link between lay judges and the neighbourhood where they passed sentence, as well as the direct cooperation between the tribunals and the local political and mass organisations, provided excellent opportunities in this respect. In this period the tribunals started 'preventive' cautionary trials, where parents who regularly failed to send their children to school were tried or where economic offences or sanitary and hygienic offences which occurred on a massive scale were subjected to scrutiny. This concerned behaviour of which large groups of the population were guilty, albeit in their 'ignorance'.¹⁶⁴ According to the Front for Social Prevention of the National Direction of the Base Tribunals:

The objective of these trials is to alert those concerned to the legal and socially harmful dangers of their behaviour without any sentence being pronounced against them.¹⁶⁵

In 1971 300 preventive trials of this kind involving school truancy were held in the province of Havana alone, and 967 in the whole country. Preventive cautionary trials dealing with other kinds of unacceptable behaviour totalled 1,528, attracting a total of 26,056 spectators.¹⁶⁶

Another educative measure introduced in the same period is the so-called 'trial analysis' (*Juicio Análisis*):

These were held according to the common and current procedure of all the popular courts, but after their conclusion and the pronouncement of the sentence, the Tribunal invited the public present

to analyse and express its opinion on various aspects of the case that had been tried, such as the sentence of the Tribunal, the conduct of the case, the general work of the judges, the antisocial behaviour brought to light and that of the convicted person, etc.¹⁶⁷

Unlike the 'consultative trials' (*Juicios de Consulta*), where those present could give their opinion before the pronouncement of the verdict, in these 'trial analyses' the discussions with the public did not have any consequences for the sentence that had already been pronounced. The most that could happen was that the tribunal could afterwards proceed to 'review' of the case on the basis of the new discussion.¹⁶⁸ In the province of Havana 1,386 trial analyses of this kind were held in 1971, compared with only 15 in the province of Camagüey. In the same year, 187,680 Cubans took part in a total of 1,853 trial analyses throughout the whole country.¹⁶⁹

Besides these activities, the lay judges also gave lectures and courses on their work for the social workers from the CDRs and the FMC, and also in work centres and in schools.¹⁷⁰ For instance, in 1971 288 courses were given to CDR members, 110 to FMC members and 320 in places of work.¹⁷¹ 4,493 informative meetings were held in schools and places of work by lay judges, which were attended by 289,277 people.¹⁷²

The lay judges of the base tribunals were also involved in rehabilitation work. They visited prisons,¹⁷³ or worked directly with convicted persons who had not been detained.¹⁷⁴ The same judges carried out educational discussions with social problem cases in the neighbourhood which showed indications of pre-criminal antisocial behaviour.¹⁷⁵ Some judges also specialised -- in youth work, for example -- in order to improve the quality of their work.¹⁷⁶ In 1971 there were 1,185 lay judges specialised in youth work and 1,119 specialised in religious questions.¹⁷⁷

The involvement of the people in criminal procedure via consultative trials and trial analysis; the holding of cautionary trials, where in principle no penalties were imposed except cautionary speeches; lay judges who talked about their work outside the law courts, assisted ex-convicts and tried to help social problem cases: these were all elements in the policy of mass mobilisation and social prevention which reached its peak in 1968. In the words of the 'Front for Social Prevention', it was the intention of the base tribunals to let the work of their lay judges serve as a powerful support for the Commissions for Social Prevention which were set up in 1968:

This implies a radical transformation of the traditional concept of the function of the judge as a simple administrator of justice. By coordinating this work to a close link with social prevention, it becomes daily more and more like what popular justice should be.¹⁷⁸

It was not until the early 1970s that it became apparent what an extra burden of work this laid on the shoulders of the most enthusiastic activists and of the people as a whole. Here too the developments within the basic administration of justice corresponded strikingly to more general developments in domestic policy. 1970 may be seen as a break-point for the political ideals of the 1960s: mass mobilisation and a strong, one-sided emphasis on equality, lay skills rather than professional skills, and moral and political awareness.

WANING ENTHUSIASM: THE BACKLASH?

We have seen how the difficult conditions which the Cuban revolution faced in the late 1960s raised problems for the mobilisation and motivation of the people. The heavy demands made on each individual and the background of austerity against which the contributions to the revolution had to be made, seemed to have reached a limit. A certain level of weariness, dissatisfaction and perhaps inability too was expressed in the high figures for absenteeism at work in 1970.¹⁷⁹ According to a report compiled in the early 1970s, the base tribunals could not escape this general tendency.¹⁸⁰ The strict and severe demands made on the lay judges and the *asesores legales* took their toll: this period witnessed less eagerness to carry out these duties. In the early 1970s only 13% of the 'legal advisors' to the base tribunals were not doing the job as part of a compulsory post-university training period. A reason for the low level of volunteers was sought in the difficult conditions under which the 'advisors' had to work in the Cuban interior. There was a shortage of suitable transport vehicles, while the distances between the tribunals within one 'county' were often quite considerable. In this period there was not usually more than one 'advisor' per county¹⁸¹ and the total number of cars available for these advisors was seven. They were made available to those 'advisors' who worked in the most remote areas, such as Oriente, a mountainous region in the eastern part of Cuba.¹⁸² The housing of the 'advisors' and their food supply were also problematical. It is thus hardly surprising that many 'legal advisors' preferred to return to Havana after the completion of their compulsory training period.¹⁸³ An attempt was made to come to grips with the problem by transferring some of the work of the 'advisors' to the lay judges. To avoid further problems in the future, the report continued, it was decided to set up a special National Training School for the Popular Tribunals in Guane, where a hundred or so lay judges could receive a year's legal training in order to be able to act as non-professional legal advisors in their own district.¹⁸⁴

The problem was not just that of finding candidates for the job of 'advisor', however. In the early 1970s there was not so much enthusiasm to take on the unpaid work of a lay judge either. The report attributed this lack of eagerness to a number of factors. First and foremost, the lay judges did their work in addition to their normal daily work in offices, factories, farms or at home. It was unpaid, voluntary work. Moreover, the specific character of the basic administration of justice required an intensive handling of each case. The report claimed that each case usually took at least one hour.¹⁸⁵ Abel Miguel González, lay judge in Havana from 1967 to 1972, spoke of evenings when the base tribunal was still at work at midnight or one o' clock in the morning. Five cases might be dealt with in one evening, or even ten if they were not too complex.¹⁸⁶ In addition, the work of the lay judges was not confined to pronouncing sentence on the cases that were brought before them. As we have seen and as the report points out, the conducting of trials was only a small part of their duties.¹⁸⁷ Before a case came up for trial, it was the job of the bench of judges of a local tribunal to qualify the offence and to adopt provisional measures.¹⁸⁸ 'The preliminary work, such as issuing charges, or preliminary investigation, was carried out by the lay judges', Abel Miguel González stated.¹⁸⁹ The lay judges were also involved in all kinds of activities of social prevention and rehabilitation. Assemblies for evaluation and analysis required the participation of all judges, while the administrative work which tribunal work entailed was divided between them on an equal basis.¹⁹⁰ For the tribunals with the

heaviest workloads, attempts were made to alleviate the lot of the judges by appointing special administrative personnel, but it was difficult to find suitable candidates because of the difficult conditions and irregular hours in which the work had to be done.¹⁹¹ Finally, it was considered necessary for the proper functioning of the lay judges that they continued to receive juridical, social and political training.¹⁹² As Abel Miguel González put it:

It meant that you were involved in voluntary work day in and day out. Almost every day there were meetings, work had to be done and hearings were held.¹⁹³

It thus seems a justifiable conclusion that the function of the lay judges was an extremely time-consuming way of spending their free time. There was a further problem, the report pointed out: because the judges chosen by neighbourhood assemblies and special commissions were often such popular and well-respected figures, they were only too often asked to do other work too, often without previous consultation with the party or the *asesores*.¹⁹⁴

The later regulations affecting the base tribunals indicate that experience had taught its lesson. While a Ministerial Instruction of 1973 still made it compulsory to hold the public hearings of the base tribunals in the evenings, between 7 and 12 o'clock, the Law on Judicial Organisation of the same year allowed them to be held on ordinary workdays.¹⁹⁵ Also in 1973 the voluntary nature of the work of the lay judges was removed. From then on they were chosen for a three-year period. They were allowed to exercise their judicial functions for four months per year. The contact with their daily work remained intact: their normal salary continued to be paid for the four months in which they did their judicial work.¹⁹⁶

The working hours and conditions of the lay judges were thus relaxed, whereby a special feature of the base tribunals disappeared -- the holding of hearings in the evenings. At the same time, the possibilities of imposing alternative sanctions were drastically cut back. The wide variety of sanctions available to the base tribunals in the 1960s was tightened up in 1973. A Ministerial Resolution which predates the new laws on the judicial organisation stated that the paragraph on sanctions in the Manual was no longer in force:

The system of sanctions contained in the Manual for the Popular Tribunals of November 3rd 1966 is no longer in effect.

The sanctions which can be imposed by the Popular Tribunals consist of principal and accessory sanctions. The principal sanctions are:

- a) Deprivation of liberty
- b) Fine
- c) Reprimand

The accessory sanctions are:

- a) Confiscation of the goods obtained by the perpetration of the offence and the instruments used for the committing of the offence
- b) Placing the convicted person under the supervision of the authorities or of a social organisation in addition to a principal sanction of a fine or a reprimand. The tribunal determines the duration of this accessory sanction. This may not exceed a maximum of 180 days.¹⁹⁷

'Reprimand' was thus the only alternative sanction which had been at the disposal of the base tribunals in 1966 which survived.

Attempts to resolve some of the practical difficulties thus had consequences for the character of the basic administration of justice which had been developed in the 1960s. The new political and ideological developments after 1970 also had their effects on it.

In what follows an account will be given of the proceedings which had been developed for the base tribunals in the course of the experiments in neighbourhood justice. The final results are laid down in a Criminal Procedure Law of 1973.¹⁹⁸

NOTES TO CHAPTER SIX

1. Ministry of Justice, Dirección de los Tribunales Populares, **Manual de los Tribunales Populares de Base**, Havana, 1966.
2. Cf. **LPP** of 1973, Book 5, Articles 365-391; **LOSJ** of 1973, Articles 83-84 and 47.
3. Jesse Berman, 'The Cuban Popular Tribunals', **Columbia Law Review**, Vol 69, December 1969, No. 8; David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba', Ph.D. thesis, University of Surrey, 1973. Berman was in Cuba in August and September 1968 at the invitation of the University of Havana. He visited court hearings and interviewed judges, lawyers and law students.
4. Santiago Cuba, Attorney-General of the Supreme Court at the opening of the courts, 'Los Tribunales Populares', September 1966; Ministry of Justice, *op. cit.*, p. III.
The Department for Information on the Popular Tribunals of the Ministry of Justice circulated the following facts: in October 1964 35 popular tribunals were set up in Cuba, mainly in isolated areas, as well as in a few urban districts. The introduction of the tribunals was continued in the years 1965, 1966 and 1967. See Ministry of Justice, 'Guía para ofrecer conversatorios sobre los Tribunales Populares', Havana, 1968, p. 6.
5. Member of the Central Committee of the Cuban Communist Party and chairperson of the Juridical Commission. At the time this was the Commission for Constitutional Studies of the Cuban Communist Party.
6. Ministry of Justice, **Manual**, *op. cit.*, p. VI.
7. *Ibid.*, p. III; interview with Ismaël Séfer Zárate, 3.3.1983; interview with José Ramón Pedraza, the *asesor* of the Popular Tribunal San Miguél de Padrón in Havana, end August 1968, in Berman, *op. cit.*, p. 1318.
8. According to the Information Division of the Ministry of Justice, the establishment of 414 main tribunals had become a fact by May 1968. These main tribunals formed a central point within a cluster of neighbourhood tribunals. There were some 8,000 lay judges working in 1707 local tribunals: Ministry of Justice, 'Guía', *op. cit.*, p. 6. By the early 1970s the number of main tribunals had dropped to 326 and the number of local tribunals had risen to 2,121. There was one lay judge per 1,000 residents: 'Informe sobre la Jurisdicción de Tribunales Populares', Working Group 4, Commission 1 of the National Commission for the Unification and Renewal of the Legal System, Havana, 1973.
9. Ministry of Justice, 'Guía', *op. cit.*, p. 9.

10. On the basis of an interview that he held with Rogelio Buzgeno, Head of the Base Tribunals for Havana Province, on 19th August 1968, Jesse Berman estimated the number of base tribunals in Cuba in the middle of 1968 at 500:
 If we were to take the figure of sixty-six sections for the province of Havana and assume that there are a total of perhaps one hundred fifty sections among the five other, less populated provinces, and if we further assumed an average of five zones per section, there would be over one thousand Popular Tribunals in Cuba. A slightly larger figure would result if we were to divide Cuba's population by an average zone size of five thousand inhabitants. But since only seventy-six Popular Tribunals had been established by the end of 1966, it is unlikely that as many as one thousand are already in operation, and half that number seems to be a more reasonable estimate.
 Berman, *op. cit.*, pp. 1320-1321.
11. *Ibid.*
12. Ministry of Justice, 'Guía', *op. cit.*, p. 9.
13. See note 8.
14. Compare Chapter Three.
15. Ministry of Justice, 'Guía', *op. cit.*, pp. 12-14.
16. Interview with Ismaël Séfer Zárate, 22.3.1983. Cuba had some 57 regional 'advisors' at that time: 4 in Pinar del Rio, 17 in Havana (according to Berman, *op. cit.*, p. 1320, there were 29 sections in Havana City in 1968), 8 in Matanzas, 9 in Las Villas, 8 in Camagüey and 11 in Oriente. Source: Informe, *op. cit.*, pp. 7-8.
17. It was not until 1973 that the base tribunals were incorporated in the legal system of judicial administration. The new legislation is discussed in detail in Chapter Seven. Compare, e.g., **Instrucciones y Resoluciones del Ministerio de Justicia para los Tribunales Populares de Base**, 1973, published by the Secretariat for Social Work of the Provincial Committee of the Communist Party of Cuba.
18. According to Berman it was the *asesor* who made the selection after the completion of the course in this period: *op. cit.*, p. 1335.
19. Interview with Ismaël Séfer Zárate, 3.3.1983.
20. Berman, *op. cit.*, p. 1338.
21. Compare Chapter Three and Ministry of Justice, 'Guía', *op. cit.*, pp. 14-15.
22. **Granma Weekly**, 17.3.1968, p. 8.

23. **Ibid.**
24. Interview, 26.3.83.
25. Booth, **op. cit.**
26. **Ibid.**, p. 183.
27. **Ibid.**, p. 184. The cult of the saints is a Cuban religious tradition with a strong African influence.
28. Berman, **op. cit.**, p. 1335. This example comes from the section San Miguel del Padrón in Havana. The examples of cleaning and repairing come from the section Luyanó in Havana.
29. Interview with Ismaël Séfer Zárate, 22.3.1983.
30. Cf. Berman, **op. cit.**, p. 1335; Chapter Three, notes 128 & 129.
31. Compare Chapter Five, note 18.
32. **Granma Weekly**, 17.3.1968, p. 8.
33. Ministry of Justice, 'Manual', **op. cit.**, p. VI.
34. Compare Chapter Four for the general political objectives of the period and Chapter Five for the organisation of the mass organisations.
35. In Chapter Three it has been shown how the new structures followed certain traditional informal practices of solving social conflicts by mediation in the Cuban countryside.
36. Cf. Chapters Four and Five.
37. See Chapter Four.
38. Santiago Cuba, **op. cit.**, 1966, p. 19; Berman, **op. cit.**, pp. 1339-1340.
39. Berman, **ibid.**, pp. 1332 and 1339.
40. JUCEPLAN, **Compendio Estadístico de Cuba**, 1968.
41. Cf. Kenneth L. Karst & Keith S. Rosenn, **Law and Development in Latin America**, University of California Press, Berkeley, 1975, p. 66.
42. See Chapter Two.
43. See Chapter Four.
44. Ministry of Justice, 'Informe', **op. cit.**, p. 8.

45. Berman, *op. cit.*, p. 1340.
46. *Ibid.*, based on an interview conducted by Berman with three lecturers from the School of Legal Sciences, University of Havana, 19.8.1968.
47. Ministry of Justice, 'Informe', *op. cit.*, pp. 8-9.
48. Berman, *op. cit.*, 1340, from an interview he held on 22.8.1968 on Isla de Piños with Prof. Antonia Cejas of the School for Legal Sciences; the same emerged from an interview with Edelia Casa Nueva, President of the Civil Chamber of the Municipal Tribunal 'Havana Vieja', 25.2.83. She was one of the many who were given the opportunity to study law after the 1959 revolution. She said that she had combined her studies in the 1960s with her work in a Military Tribunal.
49. *Ibid.*, p. 1339. This illustration cannot be supposed to be representative for typical Cuban law students in this period: I do not have sufficient evidence to be able to make such claims.
50. Karst & Rosenn, *op. cit.*, p.67; discussions in 1982 and 1983 with S. Politoff, Professor of Criminal Law in Chile until 1973 and now attached to the Erasmus University, Rotterdam.
51. Boris Kozolchyk, 'Toward a theory on Law in Economic Development: The Costa Rican USAID-ROCAP Law Reform Project', *Law and Social Order* 681, 1971, pp. 751-754 [cited in Karst & Rosenn, *op. cit.*, p. 67].
52. Santiago Dantas, 'A Educação Jurídica e a Crise Brasileira', 13-14 *Revista Jurídica* 7, 18 (1955) [cited in Karst & Rosenn, *ibid.*, p. 68].
53. Discussions with S.Politoff (see note 50).
54. Ministry of Justice, *Manual*, 1966, pp. 19-32. The selection was based on the Social Defence Code, 17.4.1936, [Jesus Montero, Havana, 1959]; Decree No. 674 of 1914; Law No. 858 of 11.7.1960; Law No. 1015, 12.3.1962, on the optimal distribution of supplies; Law No. 1016, 12.3.1962; and Law No. 1035, 22.6.1962.
55. The tribunals often had to deal with **Actos de Conciliación en la Demanda**. In or around 1970, the base tribunals lost their competence to deal with family matters. This happened through a pronouncement of the Tribunal for Constitutional and Social Guarantees, which declared the trial of such cases by the base tribunals to be unconstitutional. Source: interview with Ismaël Séfer Zárate, 3.3.1983.

It was not until 1973, with the new Judicial Organisation Law of that year, that the base tribunals regained their competence to deal with certain family law cases. They were also empowered to deal with certain civil law cases, such as claims beneath a certain limit. At about the same time the trial of certain minor traffic offences was also brought under the jurisdiction of the base tribunals. Before then, civil and family law cases generally came under the jurisdiction of the Municipal Tribunals (**Tribunales o Juzgados Municipales**) and the Courts of First Instance (**Juzgados en Primera Instancia**). Traffic offences,

as we saw, by way of exception came under the jurisdiction of the Correctional Judges until 1973, who also retained their powers with regard to criminal cases. See Art. 47 of LOSJ, 1973; pamphlet 'Contravenciones y Delitos del Tránsito de la Competencia de los Tribunales Populares de Base' [included in the new Traffic Code in accordance with Legal Decree 2037, Jan. 1955, and the amendments introduced by Law 1238, 31.7.1972 and resolution No. 22, 27.9.1972 of MININT], Ministry of Justice, Republic of Cuba; 'Cartilla para los Jueces de los Tribunales Populares de Base, Derecho Civil, De los Alimentos entre Parientes y De las Obligaciones Y Contratos', 15th Anniversary of the Ministry of Justice, Republic of Cuba.

56. For the formal procedure see LEC of 1888, Articles 101, 107, 108 and 650; CDS of 1936, Articles 110ff; Ministry of Justice, *Manual*, 1966, p. 17; 'Informe', *op. cit.*, 1973, p. 34.
57. The Correctional Judges retained their traditional function and competence up to 1973. Their activities had decreased with the spreading of the network of base tribunals all over Cuba. Inside accounts claimed that the police usually passed criminal cases on to the new base tribunals instead of to the Correctional Judges. Apart from traffic offences, the Correctional Judges were thus left with little to do unless a private individual reported an offence directly to them. Source: interview with Ismaël Séfer Zárate, 3.3.1983.
58. Ministry of Justice, *Manual*, 1966, p. XI.
59. *Ibid.*, pp. XI and XII.
60. *Ibid.*, p. 1.
61. These offences consisted of:
 1. Delitos contra los Derechos Individuales
 1. 1. Delitos contra la Libertad Personal
 - Amenazas: Art. 185 No. 1, 190 A, B y C,
 - Coacciones: Art. 190 D.
 1. 2. Delitos contra los Derechos de Reunión y Asociación, Art. 208 A.
 2. Delitos contra el Orden Público
 2. 1. Instigación a delinquir, Art. 218
 2. 2. Reuniones y Manifestaciones Ilícitas, Art. 220, 222, 228, 229 A, no. 1 y 2 y B.
 2. 3. Desórdenes Públicos, Art. 244 A, 245 A, 249.
 2. 4. Atentado, Resistencia y Desobediencia a La Autoridad o sus Agentes: Art. 254 B y 255.
 2. 5. Desacato a la Autoridad: Art. 258, 259.
 3. Delitos contra la Administración de Justicia*
 3. 1. Denuncia o Acusación Falsa: Art. 272 A, 273, 274.
 3. 2. Ejercicio Arbitrario de Derechos: Art. 291, 292 A.
 3. 3. Prevaricación: Art. 299 B.
 3. 4. Encubrimiento: Art. 341 y 342 A.
 3. 5. Quebrantamiento de Sanciones.
 4. Delitos contra la Fe Pública

4. 1. Falsificación de Certificados Facultativos y Documentos de Identidad u otros análogos: Art. 373 A y B, 376, 377, 379 A y B.
4. 2. Uso indebido de Nombres, Trajes, Insignias o Condecoraciones: Art. 385, 396, 387 A, C, y D.
5. Delitos de los Funcionarios Públicos en el Ejercicio de sus Cargos y Otros Análogos
 5. 1. Denegación de Auxilio: Art. 407 A, B y C.
 5. 2. Desobediencia: Art. 408 B.
6. Delitos contra la Integridad Corporal
 6. 1. Lesiones: Art. 452, 446 A, B, C (Maltrato de Obra), 447 C y D.
 6. 2. Abandono y Maltrato de Menores, Incapacitados y Desvalidos: Art. 450 E, No. 1, 3, 4, 5 y F, 451 A y B.
7. Delitos contra la Salud
 7. 1. Delitos de Propagación de Epidemias y de Contagio Venéreo: Art. 453, 454 y 463.
 7. 2. Profanación de Sepultura y Cadáveres: Art. 458 C y D, 459 A y C.
 7. 3. Adulteración de Alimentos: Art. 463.
8. Delitos contra la Seguridad Colectiva
 8. 1. Delitos contra los medios de Transporte y Comunicaciones: Art. 479 B y 480.
9. Delitos contra las Buenas Costumbres
 9. 1. Abusos Dishonestos: Art. 483 C.
 9. 2. Corrupción de Menores: Art. 488, No. 1, 2 y 3.
 9. 3. Escándalo Público: Art. 490, No. 1, 2, 3 y 4.
10. Delitos contra el Orden de la Familia
 - 10.1. Rapto: Art. 494 B.
 - 10.2. Celebración de Matrimonio Ilegal: Art. 497, 498 A, B, C, D y E.
 - 10.3. Usurpación del Estado Civil: Art. 501 B.
11. Delitos contra el Honor
 - 11.1. Injuria: Art. 507 A, B y C, 508, 509, 510, 511, 513 A y B, 515 A, B, C y D.
12. Delitos contra la Propiedad
 - 12.1. Hurto: Art. 529, No. 1, 2, 3 y 4, 532 No. 1, 2 y 3.
 - 12.2. Estafa: Art. 549 No. 1, 550 No. 1-22.
 - 12.3. Juegos Prohibidos y Rifas: Art. 561 A y B, 563, 564.
 - 12.4. Daños: Art. 567 C, 566 A y B, 567 a 570.
13. Delitos contra la Economía Popular: Art. 389 B, 390 B, C y E, 557 B, D, E y H, 578 No. 24 (Ejercer clandestinamente el comercio).

1. Offences against individual rights
 1. 1. Offences against personal liberty
 - Threatening Behaviour
 - Coaction
 1. 2. Offences against the rights of assembly and association
2. Offences against the Public Order
 2. 1. Incitement to commit crime
 2. 2. Illegal meetings and demonstrations
 2. 3. Public Disorder
 2. 4. Assault, Resistance and Disobedience to authority or its agents
 2. 5. Lack of respect for authority

3. Offences against the administration of justice*
3. 1. False Accusation or Denunciation
3. 2. Arbitrary Exercise of Rights
3. 3. Prevarication
3. 4. Concealment
3. 5. Violation of sanctions
4. False Declarations
4. 1. Falsification of certificates and identity documents, etc.
4. 2. Unwarranted use of names, titles, insignia and decorations
5. Offences committed by Public Servants in the Exercise of their Duty, etc.
5. 1. Refusal of assistance
5. 2. Disobedience
6. Offences against the person
6. 1. Bodily harm (including Assault)
6. 2. Abandonment or Neglect of Minors, Mentally Deficient and Invalid Persons
7. Sanitary Offences
7. 1. Offences involving the spreading of epidemics and venereal disease
7. 2. Sacrilege of burial places and corpses
7. 3. Adulteration of foodstuffs
8. Offences against the Collective Security
8. 1. Offences against the means of transport and communications
9. Moral Offences
9. 1. Indecent acts
9. 2. Corruption of Minors
9. 3. Public Scandal
10. Offences against the Family
- 10.1. Abduction
- 10.2. Illegal marriage
- 10.3. Usurpation of civil rights
11. Offences against honour
- 11.1. Insult
12. Offences against property
- 12.1. Theft
- 12.2. Swindle
- 12.3. Prohibited gaming and lotteries
- 12.4. Damage
13. Offences against the Popular Economy (including clandestine trading)

* Perjurio (perjury) was not yet included in this category.

Ministry of Justice, *Manual*, op. cit., 1966, p. I and Section III. The fine must not exceed 500 pesos: *ibid.*: p. 14.

62. These were:
 1. Contraventions of the public order (*Contravenciones del Orden Público*), Art. 571.
 2. Contraventions of the administration and security of towns (*Contravenciones*

del Régimen y la Seguridad de las Poblaciones), Art. 572.

3. Contraventions of good behaviour and public decency (**Contravenciones de las Buenas Costumbres y del Decoro Público**), Art. 573.
4. Contraventions of Sanitary Regulations (**Contravenciones Sanitarias**), Art. 574.
5. Contraventions of personal integrity, including verbal abuse (**Maltrato de palabra**) (**Contravenciones de la Integridad Personal**), Art. 576.
6. Contraventions of the Law on Property (**Contravenciones del Derecho de Propiedad**), Art. 577.

This concerned Book III of the Social Defence Code of 1936: Ministry of Justice, **Manual**, 1966, p. 1 and Section III.

63. CDS, 1936, Disposición Suplementaria Tercera, 1959 edition, compared with CDS, 1936, edition by the Ministry of Justice in 1973, p. 488 (Disposición Suplementaria Tercera, sub c).
64. Prieto Morales, **Derecho Procesal Penal**, II, Editorial Orbe, Havana, 1977, pp. 163-164.
65. Interview with Prieto Morales, 8.3.1983; interview with Ismaël Séfer Zárata, 3.3.1983; Secretaría de Trabajo Social del PCC, 1973, 'Resoluciones Y Instrucciones'.
66. Art. 1, Law No. 993, 19.12.1961, referring to articles 48, 98 and 586 of the CDS of 1936: Juan Vega Vega, **Legislación Penal de la Revolución**, Editora Universitaria, La Havana, 1966, pp. 102-104; Cf. CDS (1936), Articles 48^{c3} and 48^b.
67. Cf. Part 1, Ley de Ejecución de Sanciones y Medidas de Seguridad Privativas de Libertad, **Gaceta Oficial**, ed. extraordinaria, 11.4.1936, no. 108, included in CDS of 1936, 1959 ed., pp. 205-227.
68. Ministry of Justice, **Manual**, pp. 1 and 9; **Cursillo Pre-Selectivo**, published in 1966 by the National Management of the Popular Tribunals, p. 15, sub IV, 3^e (19).
69. Ministry of Justice, 'Guía...', **op. cit.**, 1966, p. 15.
70. Prieto Morales, **op. cit.**, II, p. 215, based on Articles 411 LPP, 1973, and 45B, LOSJ, 1973.
71. Articles 411 LPP 1973, 45 ad (b), LOSJ 1973.
72. Art. 47(a), disposición transitoria cuarta, sub-section c, LOSJ, 1973.
73. Art. 422, LPP, 1973; CDS 1936, Art. 48 sub c, 1973 ed.; Prieto Morales, **op. cit.**, II, pp. 225-228.
74. Santiago Cuba, **op. cit.**, 1966, p. 14.

75. In Booth's own words:

Table [4] shows the total number of persons accused, convicted and acquitted during the whole period May 1968-April 1969 according to the **Delito** or **Contravención** in question. In cases where more than one offence was alleged -- for instance, Assault with Verbal Abuse -- accusations, convictions and acquittals were counted for the sake of simplicity under the more serious offence. The classification of offences accords with the *Manual de los Tribunales Populares de Base* [Ministry of Justice, **Manual**, 1966] which itself comprises long extracts from the **Código de Defensa Social** of 1936 together with amendments and additions deriving from legislation enacted more recently. The distinctions between Offences (**Delitos**) and Misdemeanours (**Contravenciones**) has the same source. The further categorisation of the offences indicated by the Code-- viz., Against Property, Against the Person, Against Public Order, etc. -- is omitted as overly cumbersome.

Booth, *op. cit.*, pp. 186, 189.

76. Cf. Art. 577 of CDS of 1936 (above, note 62).

77. Berman, *op. cit.*, p. 1319.

78. *Ibid.*, from an interview held in Havana by Berman on 19.8.1968.

79. Booth, *op. cit.*, p. 181.

80. *Ibid.*

81. *Ibid.*, pp. 178-180. Booth claims:

Individuals resident in La Corona accounted for sixteen convictions out of the total of 181, which is a rate of 76.2 per thousand of population, compared with 25.4 per thousand for the locality as a whole.(...) Five of these cases involved Assault, two were for Threatening Behaviour, two for Verbal Abuse, two for Theft, and the same number for Public Indecency (**Contravención de Buenas Costumbres y el Decoro Público**); there were, in addition, one case of Public Disorder and two Sanitary Contraventions.

Ibid., p. 191.

82. *Ibid.*, p. 182.

83. The difference between a **solar** and a **ciudadela** is one of size. The latter is larger, containing more than 100 rooms. See *Granma Weekly*, 29.4.1973, p. 8; Raimundo Rodríguez, *The poor and the Revolution*.

84. 'Nociones de Criminología', Comisión Nacional de Prevención Social, *Material de Estudio Para Las Trabajadoras Sociales Havana*, FMC, 1968, pp. 155-156 [cited from Booth, *op. cit.*, pp. 182-183].

85. Luis Salas, **Social Control and Deviance in Cuba**, Praeger Publishers, New York, 1979, p. 14.
86. **Granma Weekly**, 13.6.1971, p. 4.
87. Berman, *op. cit.*, pp. 1323 and 1324. The case came before the popular tribunal of San Miguel del Padrón, Havana, on August 20th 1968.
88. Booth, *op. cit.*, pp. 192-193.
89. *Ibid.*, p. 193.
90. And probably of the Correctional Judges too. Cf. **Ley del Poder Judicial** of 1909, Articles 131² and 138 section 3.
91. Berman, *op. cit.*, p. 1327. The case was dealt with by the Popular Tribunal of San Miguel del Padrón, Havana, on 20th August 1968.
92. Nelson P. Valdés, 'The Cuban Revolution: Economic Organization and Bureaucracy', **Latin American Perspectives**, Issue 20, Winter 1979, Vol. VI, No. 1, p. 25.
93. Booth, *op. cit.*, p. 196.
94. Booth, *op. cit.*, pp. 196-197.
95. *Ibid.*, p. 197.
96. *Ibid.*
97. Booth, *ibid.* p. 215, states that the bearer of a red handkerchief was identified with the deity Shango in the Yoruba religion practised in Cuba.
98. *Ibid.*, pp. 197-198.
99. Booth, *ibid.*, pp. 198-199.
100. **Ley de Ejecución de Sanciones y Medidas de Seguridad Privativas de Libertad**, *op. cit.*, Articles 7-10, 12, 13, 17, 19 and 24; Constitution of the Republic of Cuba, 1940, Art. 192:

There will be a High Council of Social Defence which will be entrusted with the execution of the sanctions and security measures which involve the deprivation and limitation of individual freedom and the organisation, direction and administration of all the establishments and institutions required for the most effective prevention and suppression of criminality.

This body, which will be autonomous in the exercise of its technical and administrative functions, will also be responsible for the concession and revocation of conditional freedom, in accordance with the Law.

101. Law No. 992, 19.12.1961, Articles 3 and 4, referring to Articles 10 and 12 of the Ley de Ejecución de Sanciones, *op. cit.*, included in Vega Vega, *op. cit.*, pp. 101ff.
102. Ley de Ejecución de Sanciones, *op. cit.*, Articles 4 and 5.
103. Article 1 of Law No. 992, *op. cit.*, refers to the **Central de Trabajadores de Cuba; Federación de Mujeres Cubanas; and Asociación de Jóvenes Rebeldes.**
104. Law No. 992, Articles 6 and 7.
105. CDS of 1936, 1959 and 1969 editions, Ministry of Justice, Havana, 1969, Art. 48B sub 5, 6 and 7 and Art. 48C.
106. See notes 68 and 69.
107. See Chapter Four, notes 78 and 79.
108. Declaration at the First Congress on Education and Culture, **Granma Weekly Review**, 9.5.1971, pp. 4-5.
109. **Granma Weekly**, 29.9.1968, p. 5.
110. See, e.g., Henk van den Boogaard, **Homoseksualiteit: ideologie en politiek, Cuba, SUA**, Amsterdam, 1982; Evelijn Stevens, 'Marianismo: the other face of machismo in Latin America', **Female and male in Latin America**, Ann Pescatello (ed.), Pittsburgh, 1973.
111. Booth, *op. cit.*, p. 200.
112. **Ibid.**
113. Vedado is a district in Havana where groups of young people congregate. Cf. Fidel Castro's speech of 28th September 1968, **Granma Weekly**, 29.9.1968, p. 5.
114. Booth, *op. cit.*, p. 201.
115. On the basis of CDS of 1936, Art. 48B sub 6 and 12 and C sub 3, as amended by Law No. 993 of 1961, *op. cit.*
116. See Chapter Five.
117. Ministry of Justice, **Manual**, *op. cit.*, 1966, pp. 12-18.
118. **Ibid.**, p. 12 and 14.
119. Compare Chapter Four.
120. Berman, *op. cit.*, p. 1329; Ministry of Justice, 'Guía...', *op. cit.*, p. 16.
121. 'Informe', *op. cit.*, pp. 15 and 16.

122. *Ibid.*
123. Articles 28^{2d} and 35, **Código Penal**, 1979, Law No. 21, 15.2.1979, **Gaceta Oficial**, 1.3.1979; Juan Vega Vega, post-academic course, 'El Código de Defensa Social y el nuevo código, tema VI, Las Sanciones', in: 'Conferencias sobre la Parte General del Código Penal Cubano de 1979', University of Havana, s.d.
124. Berman, *op. cit.*, p. 1329.
125. Booth, *op. cit.*, p. 185.
126. See note 94.
127. Observed by S.I.Politoff at a base tribunal in 1969 (personal communication).
128. Compare Chapter Four.
129. Ministry of Justice, **Manual**, *op. cit.*, p. VII.
130. *Ibid.*, p. 13.
131. Ministry of Justice, 'Guía...', p. 16.
132. Ministry of Justice, **Manual**, *op. cit.*, p. 13.
133. Cf. **Con la Guardia en Alto**, September 1968, p. 58. At the first CDR Congress, held in 1977, the project of giving the whole population a primary education was to be realised by 1980: **Con la Guardia en Alto**, December 1977, p. 41.
134. Ministry of Justice, **Manual**, *op. cit.*, p. 13.
135. *Ibid.*
136. **CDS** of 1936, Art. 51 A 6 and 7, B 1 and 2; Art. 56 A and B; Art. 57 A and B.
137. Ministry of Justice, 'Guía...', *op. cit.* p. 16.
138. Berman, *op. cit.*, p. 1330.
139. Ministry of Justice, **Manual**, *op. cit.*, p. 14.
140. **Código Penal**, 1979, Articles 28^{3a} and b, 37 and 39.
141. Ministry of Justice, **Manual**, *op. cit.*, pp. 14 and 15.
142. Vega Vega, *op. cit.*, s.d., p. 10; **Código Penal**, 1979, Articles 28^{3d} and 41.
143. Ministry of Justice, **Manual**, *op. cit.*, pp. 14 and 15.

144. Already in 1966 the Manual indicated the importance of the cooperation of the CDRs in this respect: *ibid.*, p. 15; see too Chapter Five.
145. Vega Vega, *op. cit.*, s.d., 1979, p. 7.
146. Ministry of Justice, 'Guía...', *op. cit.*, p. 16.
147. Ministry of Justice, *Manual*, *op. cit.*, p. 15.
148. Cf. CDS of 1936, Art. 51; Vega Vega, *op. cit.*, 1979, p. 7.
149. **Código Penal** of 1979, Articles 28^{2c}, 32 and 33.
150. Berman, *op. cit.*, p. 1331; Ministry of Justice, *Manual*, *op. cit.*, pp. 15 and 16.
151. Ministry of Justice, 'Guía...', *op. cit.*, p. 16.
152. Ministry of Justice, *Manual*, *op. cit.*, p. 16.
153. Berman, *op. cit.*, p. 1331. The information folder issued by the Ministry of Justice in 1966, '¿Qué son los Tribunales Populares?', does not even mention this sanction (cf. pp. 15-17).
154. Ministry of Justice, *Manual*, *op. cit.*, p. 15.
155. CDS of 1936, Articles 51 B 6 and 62; **Código Penal** of 1979, Articles 28^{3e} and 42.
156. Berman, *op. cit.*, pp. 1331-1332; Ministry of Justice, *Manual*, *op. cit.*, pp. 16 and 17.
157. CDS of 1936, Articles 51 B 9 and 65; **Código Penal** of 1979, Articles 28^{3f} and 43.
158. See note 56; CDS of 1936, Articles 110-120; **Código Penal** of 1979, Art. 70; Prieto Morales, *op. cit.*, II, pp. 52-54; Ministry of Justice, *Manual*, *op. cit.*, p. 16.
159. Ministry of Justice, *ibid.*, p. 17; *idem*, 'Guía...', *op. cit.*, pp. 16 and 17.
160. *Idem.*, *Manual*, *op. cit.*, p. 12. In an interview held on 3.3.1983, Ismaël Séfer Zárate stated that no punishments were allowed which were not to be found in the Manual.
161. Observed by S.I.Politoff in 1969 (personal communication).
162. Ministry of Justice, 'Guía...', *op. cit.*, p. 17 sub VIII. 'Informe', *op. cit.*, p. 17, speaks of **Suspensión Condicionada**.
163. See Chapter Five, note 114.
164. 'Informe', *op. cit.*, pp. 38-39.

165. Ministry of Justice, National Direction of the Popular Tribunals, Social Prevention Division, 'La Prevención Social en los Tribunales Populares', 1973 [or later], Havana, sub 3a.
166. In 1972 the total of preventive trials involving school truancy rose from 967 to 1,586, while the number of spectators dropped from 20,837 to 11,785. The population showed less interest than it had in the previous year. The other preventive trials offer a similar picture: the number of trials rose from 1,528 to 2,795, while the number of spectators dropped from 26,056 to 17,273: *ibid.*, sub 'Prevención Social. Resumen Nacional por Provincias y por Meses, Año 1971, sub 1 and 1.2 and Año 1972, sub 1 and 1.2.
167. *Ibid.*, sub 3b.
168. 'Informe', *op. cit.*
169. In 1972 the number of such hearings increased from 1,386 to 1,739 and the number of those present increased from 187,680 to 188,621: Ministry of Justice, 'La Prevención...', *op. cit.*, sub 2.
170. *Ibid.*, sub 3 c, d and g; cf. too the special guide issued for this purpose, Ministry of Justice, 'Guía...', *op. cit.*
171. In 1972 the totals were 208, 66 and 233 respectively.
172. In 1972 the totals were 5,549 and 289,277 respectively: Ministry of Justice, 'La Prevención...', *op. cit.*, sub 'Prevención Social, Resumen Nacional, Año 1971 and Año 1972, 3.1, 3.3, 3.4 and 4.
173. 490 times in 1971 and 1,392 times in 1972: *ibid.*, Resumen Nacional sub 6.1.
174. *Ibid.*, Resumen Nacional sub 6.2 and 6.3.
175. *Ibid.*, sub 3f and h.
176. *Ibid.*, sub 3e.
177. In 1972 there were 1,680 specialised in youth work and 1,602 in religious questions: *ibid.*, Resumen Nacional, sub 5.1 and 5.2. Ismaél Séfer Zárte, in an interview on 6.3.1983, explained that the religious questions concerned religious groups who were guilty of counter-revolutionary activities. As he stated, the Fundamental Law of 1959 and the 1976 Constitution guarantee religious freedom.
178. Ministry of Justice, *ibid.*, sub 1 Introducción.
179. See Chapter Eight; Chapter Four.
180. 'Informe', *op. cit.*
181. *Ibid.*, p. 8.

182. *Ibid.*, pp. 13 and 14. The provincial division of the province of Pinar del Rio had one car, those of Havana and Matanzas had none, Las Villas had two, Camagüey had one and Oriente three.
183. *Ibid.*, p. 8.
184. *Ibid.*, p. 9.
185. *Ibid.*, pp. 10 and 11.
186. Interview with Abel Miguel González, 26.3.1983.
187. 'Informe', *op. cit.*, p. 10.
188. See further in Chapter Seven.
189. Interview, *loc.cit.*
190. 'Informe', *op. cit.*, pp. 10 and 11.
191. *Ibid.*, pp. 9 and 10. In the early 1970s the province of Havana had 6 administrative personnel, Matanzas, Las Villas and Camagüey each had 2, Oriente had 4 and Pinar del Rio had one.
192. *Ibid.*, p. 11.
193. Interview, *loc. cit.*
194. 'Informe', *op. cit.*, p. 11.
195. Ministry of Justice, Instruction No. 19, 'Sobre los días y horas hábiles para la celebración de juicios en los Tribunales de Base', 12.6.1973:
 For this purpose...it is considered suitable to use the hours between 7 and 12 p.m.
 Cf. Art. 55 of LOSJ of 1973:
 The tribunals will hold public hearings on all suitable days. All days are suitable except Sundays and other days which are declared holidays by law.
196. LOSJ of 1973, Art. 86.
197. Ministry of Justice, Resolution No. 13, 10.5.1973, La Havana. Probation was already mentioned in the CDS of 1936, Art. 51 B 4. With the campaigns for social prevention social organisations were involved in this sanction as well as state organisations.
198. The Ley de Procedimiento Penal of 1973.

THE BASE TRIBUNALS : FROM EXPERIMENT TO COMPONENT OF A NEW SYSTEM

INFORMALITY IN CRIMINAL LAW AT BASE LEVEL

There were two key elements in the plans for a new basic administration of justice in 1962: lay participation and comprehensibility. As Castro indicated, the tribunals which were to be set up must provide the people with both a unique opportunity to participate directly in the administration of justice and a simple and rapid procedure for dealing with conflicts and crime at a neighbourhood level.¹ Simplicity and comprehensibility were of course tied up with the participation of the people. In the early 1960s they were an important precondition for the genuine participation of large groups of Cubans in judicial affairs. After all, in Cuba development had to begin with the campaign against illiteracy. The attempts to put simplicity and comprehensibility into practice with the Handbook for Lay Judges have already been described. Even the customary complicated legal definitions were omitted. Similar attempts were made to keep the new procedures as short, simple and informal as possible. In 1966 Santiago Cuba named the salient characteristics of the trial procedure by the base tribunals: speed, directness and openness in the sense that attempts were made to get as many neighbours as possible to attend the hearings.² It would be strange if the base tribunals which replaced the competence of the correctional justice did not borrow a large number of 'simple', 'summary' and 'quick' judicial proceedings from their predecessors. A brief evaluation of these regulations will be presented below.

There was never a uniform legal regulation of the proceedings to be followed by the experimental base tribunals before the general revision of the judicial system in 1973. Like the regulation affecting the competence of the base tribunals, their procedural structure was laid down in a Handbook specially designed for the lay judges.³ Although they had been introduced throughout Cuba, the base tribunals were still in an experimental phase. It was only in 1969 that the first ideas were launched for a general revision and integration of the judicial system and the legislation.

During the National Forum of Domestic Order, where the increasing problems of crime and antisocial behaviour were discussed, the fragmentary, inefficient and obscure nature of the existing system of judicial administration came up for discussion. This was in spring 1969.⁴ In an opening speech to the Forum, Dr. Osvaldo Dorticós Torrado, Cuba's President, paid a great deal of attention to the problems facing the judiciary at that moment. He saw the remedy in a general renewal of the system:

All this means that we must proceed to a far-going reform of the administration of justice in our country. Of course, this will not be

an improvisation starting today. Throughout the length and breadth of the nation a whole field of experience in new institutional forms of the administration of justice has been acquired; but today the old forms continue to exist alongside the new ones and there is a certain institutional chaos in the administration of justice which we have to combat and put to an end.

It is necessary to proceed to institutional definitions in this field.

The initiative has been taken to create a study commission, with the participation of all those required to fulfil this task. And we declare that it is indispensable for this commission to begin its work immediately.⁵

The rapid setting up of such a Commission was already planned during the Forum in the first half of April 1969. This National Commission was to include representatives from the Ministries of Justice,⁶ Labour,⁷ Defence⁸ and Home Affairs,⁹ as well as delegates from the Supreme Court, the Public Prosecutor, the University of Havana,¹⁰ the Cuban Academy of Sciences and the Cuban Communist Party. Within the Commission the work was divided among a Permanent Secretariat and three subcommissions: one for the integration of the various areas of law, jurisdictions and procedures, one for criminal legislation and a third commission for civil law.¹¹ The first subcommission for integration was faced with a richly variegated assortment of existing jurisdictions.¹² Besides the Military Tribunals the special Revolutionary Tribunals were still in operation, independently of the ordinary system of judicial administration. The experiments with the base tribunals had led to the formation of a separate category of Popular or Base Tribunals which had the same area of competence as the traditional Municipal and Correctional Judges. These experimental tribunals also functioned outside the ordinary judicial administration. Although the formal legal powers of instances such as the Correctional Courts had been largely undermined by the actual functioning of the base tribunals, they had not yet been officially abolished.¹³

According to a prominent Cuba legal expert, Héctor Garcini, the subcommission worked in a very thorough way. His description is that of a style of work recalling the 1970s. The thorough 'technical', Soviet-inspired approach is the same as that which was to revive the Cuban economy after 1970.¹⁴ The objectives were a profound historical study of the development of each legal institution and a comparison of the same institutions with those of other countries, particularly the socialist countries. Statistical tables were considered vital for a correct assessment of the functioning of the various institutions, according to Garcini.¹⁵

After having studied the problems and shortcomings of the existing judicial administration, this subcommission presented a detailed proposal for a new scheme to the Permanent Secretariat of the Commission. After receiving approval this was published¹⁶ and presented to the people for discussion. In centres of work and within the mass organisations the opinion of the Cubans was asked on this proposal for a new, unified judicial system. As was to become common practice in the 1970s for all the major laws which were passed, the people were able to discuss and comment upon the proposals at the grassroots level, before they became law in 1973.¹⁷

The process of institutionalisation had begun. While in the 1960s the popular tribunals had been set up without previous legislation and in direct cooperation with the local inhabitants, now it was lawyers and high officials who drew up new laws with the help of statistical data and of study of the socialist solutions in this field.

It was not until the new plans had been formulated that the people was involved in the discussion. In this way the connection which the experimental judicial constructions of the 1960s had tried to make between everyday neighbourhood life, general policy and legal theory was situated at a new level. The distance between the inhabitants of the neighbourhoods and the judicial institutions was increased, a tendency which was to be continued and accentuated in the 1970s.

The positive results of the experiments were utilised as much as possible in the planning of the new administration of justice. After 1973 all courts of law worked with lay judges and the base tribunals continued to exist as such within the new system of judicial administration. They were still the tribunals where civil cases, misdemeanours, less serious felonies and, in certain cases, pre-criminal anti-social behaviour were tried in the first instance.¹⁸

With a few changes, the base tribunals retained their particular characteristics as courts of basic judicial administration, such as short and simple procedures and lay judges. The new procedure, which was partly borrowed from the practices of Correctional Justice and partly influenced by the experiments of the 1960s, was laid down in a special book of the 1973 Criminal Procedure Law.¹⁹ In my account of the specific procedure of the base tribunals in the 1960s I use both the reports and handbooks of 1966 and 1968 and the legal regulations of 1973. Comparison will also be made with the legislation affecting Correctional Justice.

PUBLIC AND INFORMAL JUSTICE

The account of the experiments with the base tribunals in the countryside and the reports on the same tribunals in Havana in 1968 all indicate a public and informal kind of hearing. The place where these hearings were held was not without its effect on this, as the courtroom consisted of a meeting place in the neighbourhood, often the local CDR hall.²⁰ Many neighbourhood residents were able to attend the sittings because they were held in the evenings. According to Santiago Cuba in 1966, the objective was to get most of the neighbourhood residents to attend the sittings.²¹ As a result, the small rooms used in Havana in 1968 were sometimes filled to overflowing.²²

A lay judge, Abel Miguel González, recalled that in his neighbourhood, an old popular quarter in the centre of Havana, the first base tribunals began to operate in February 1967:

At first we did not have any rooms or halls free for holding trials, so we held them on the street. Part of the street (a block of houses) was closed off for this purpose...

Sometimes there were two or three hundred people at such a sitting, outside in the open air.²³

This was not always the case, as can be seen from Booth's case study. In San Ramón the number of visitors varied between 12 and 50 each evening, which was by no means a majority of the 7,127 neighbourhood residents who fell under the jurisdiction of the tribunal.²⁴ But Berman too rated the interest and involvement highly of the public which attended the hearings.²⁵ If the case required it and it was thought instructive for the people, a case could be dealt with outside the usual courtroom.²⁶ Common petty crimes of an economic nature or which affected public hygiene were tried in this manner.²⁷ It enabled more people than usual to attend the settlement of a case. Berman mentioned an audience of 5,000 who came to the settlement of a case of mistreatment of a woman which was held outside the court-

room.²⁸ In this way the 'public' nature of the basic administration of justice was emphasised. The objective was to involve the people more than usual in the administration of justice and to educate them in accordance with the new norm which was raised for discussion by the offence. It is clear that the specific nature of the basic administration of justice added a deeper meaning to the general rule of 'publicity'. The involvement of the neighbourhood residents as expressed, for example, in the well-attended hearings, gave this publicity an extra dimension. The holding of trials outside will have tended to reinforce this aspect, but on the other hand the massive dimensions which these hearings assumed ran the risk of turning them into a sort of public execution, with all the consequences this involved for the legal rights of the accused. Incidentally, the possibility of holding sittings outside the courtroom was retained in the new legislation on the administration of justice in the 1970s and extended to the higher judicial authorities.²⁹

The salient feature of the basic administration of justice was its exceptionally public character. However, the experimental base tribunals of the 1960s had already been able to judge certain cases behind closed doors. Examples of such cases were juvenile delinquency and personal matters such as sexual offences.³⁰ In cases concerning female 'honour' and chastity or homosexuality, publicity was considered to be detrimental rather than beneficial to the general educative purpose, as defined in a guideline of 1971:

Sometimes the negative consequences of a public hearing for the defendant could outweigh the positive gains with respect to the education of the people. This was particularly so for cases involving juveniles. In addition, there were offences of a primarily sexual character whose public trial could have a demoralising effect upon public opinion.³¹

As the guidelines explicitly laid down, however, a hearing behind closed doors must not do away with popular involvement. In such closed hearings there must at any rate be representatives of the political and mass organisations present.³²

The choice of lay judges by and from the neighbourhood introduced informality and familiarity. The procedure to be followed by the base tribunals confirmed this. As the Handbook for the legal procedures to be followed by the lay judges of 1966 stated:

The procedure for the popular base tribunals is characterised by a lack of formalism, thereby ensuring that as much information as possible can be obtained concerning the facts and the personal circumstances of the accused.³³

In practice a judge had a relatively free hand and had only to observe the fundamental principles of the model rules laid down in the Handbook.³⁴

It is worth looking more closely at the various aspects of these judicial proceedings which were specifically to be followed by the base tribunals. Which elements were borrowed from their predecessors, the Correctional Judges? How was their functioning eventually laid down in the 1973 Criminal Justice Law? In conclusion, an attempt will be made to link the informality of the base tribunal procedure to the 'personal' approach which was so much a feature of the basic administration of justice in the 1960s. In the discussion of the procedure for bringing a grievance before the tribunal, it is seen that the mediation of the Public Prosecutor was not required at this fundamental level of judicial administration, nor was defence by a lawyer necessary. As far as provisional measures are concerned, for example, there was a special regulation and the rules applying to public hearings

were drastically simplified by comparison with the other tribunals. The whole proceedings were oral.³⁵ In the previous chapters examples have been presented of how everyday and intelligible the language was which was used in the summons and during the hearings. Another exception to the normal regulations was the legal means of appeal against the sentence. Before 1973 the only instrument of appeal which could be used against a sentence passed by a base tribunal was 'review'. After 1973 this became 'appeal to a higher court' (*apelación*).³⁶

DENUNCIATION AND PRELIMINARY INVESTIGATION

The informal character of the basic administration of justice was already evident in deviations from the regulations for preliminary legal investigation. As will be seen, these deviations, as they crystallised out in the experimental phase of the 1960s and were laid down in the new Criminal Procedure Law of 1973, were in many ways harking back to the legislation affecting Correctional Justice from 1900.³⁷

The preliminary proceedings by the Tribunal were short and simple. A resident of the neighbourhood could report a crime to the police, and given the informal way in which the lay judges operated, probably also directly to the tribunal. Reporting a crime was not only a right but an obligation. The Handbook for the lay judges described it as:

The right and obligation to bring before the notice of the competent authority any act or antisocial behaviour which contravenes the existing norms. [This affects] every person above the age of 18 years; legal persons (such as state enterprises); public officials acting in the name of the Cuban State; and especially the political and mass organisations.

This is to be done by means of a written or verbal denunciation to be presented before the local (sub)division of the D.O.P. and which is to be recorded in a written statement.³⁸

The criminal proceedings began officially with the cognisance of this denunciation (*denuncia*)³⁹ by the tribunal, a rule adopted from the pre-revolutionary Correctional Justice.⁴⁰ The Criminal Procedure Law of 1973 was later to establish this in a separate regulation on criminal procedure for the base tribunals:

Article 365.--The criminal proceedings before the popular base tribunal will begin immediately after the receipt of a denunciation [*denuncia*] of actions falling within its competence or after taking cognisance of the same from official reports provided by the police.⁴¹

From 1968 it was often the CDRs which submitted such a denunciation. This mass organisation was active from that period in involving the population on a massive scale in the fight against crime. Those placed under arrest had to be delivered by the CDR security officers immediately into the hands of the police, but the CDR members were able to make their grievances heard in person at the public hearings.⁴² In the course of time this judicial function of the CDRs came to occupy such an important place that the Criminal Procedure Law of 1973 gave them the title of 'Assistants to the Judicial Functions' (*Auxiliares de las Funciones Judiciales*).⁴³

A denunciation was received and discussed by the executive body of the base tribunal. As we have seen, in 1966 this was the Governing Body (*Núcleo de Cabe-cera*) in the countryside. In the towns, and later in all the base tribunals, this was

the Coordinating Body (*Organo Coordinador*).⁴⁴ These bodies could classify an act as a crime, declare it admissible or not, and refer if necessary.⁴⁵ If an act was declared a crime and admissible, the corresponding session of the body was empowered to take provisional measures. It could decide to call for a report on the personal background or economic position of the accused, or request medical or other specialists' reports. If the case was not clear at this stage, it was possible to have the police investigate the case further. If it was a felony, detention on remand could be imposed, sometimes followed by release on financial surety or bail on somebody's word. In 1966 this could be a revolutionary organisation or an individual held in high repute. It was also possible at this stage to confiscate possessions.⁴⁶

Either during the same sitting or as soon as possible afterwards the place, date and time of the public hearing were fixed. The guideline was that all delay must be avoided and that the hearing must be held as soon as possible after the denunciation had been received. If possible the hearing was held in the neighbourhood where the defendant lived or where the crime had been committed.⁴⁷ The summons for the defendant, accuser, witnesses and experts to appear before the court was the responsibility of the body of judges who were finally to try the case.⁴⁸

It is hard to get a precise idea of the length of time which actually elapsed before a case was brought before the base tribunals from the sources. Berman remarked in 1968:

An offender is supposedly 'brought to justice' within seven to ten days. What this probably means is that within seven to ten days after a complaint is made, one of the judges begins an investigation. When this investigation is completed, if a trial is merited, it is scheduled for the next night the tribunal is due to meet.⁴⁹

Neither the handbooks nor the reports from the period say anything about the length of time for which the accused could be held on remand. Preventive detention seems, however, to have hardly been used by the base tribunals in the 1960s.⁵⁰

The legislation which was finally passed on the base tribunals in the Criminal Procedure Law of 1973 did establish the length of time for which the police or the judges could detain the accused on remand explicitly. The police were required to bring the accused before the tribunal within 24 hours.⁵¹ The tribunal was required to decide without delay on whether the detention was to be continued or not.⁵² An official extension of the detention was only allowed if it was a felony under consideration and if there were sufficient grounds for suspecting that the accused would otherwise fail to appear before the court. A ministerial instruction of the same month added the restriction that it was only to be allowed for cases of serious antisocial behaviour, offences which were dangerous to society, or where the accused had a criminal or other bad record in the past.⁵³ For misdemeanours it was only permitted if the accused had no known place of residence.⁵⁴ In all cases, however, -- and this was different from other tribunals -- an offender who was held on remand could always buy his/her release on bail: 100 pesos for a felony, 50 pesos for a misdemeanour.⁵⁵ After 1973 the base tribunals no longer had the other provisional measures of house arrest or bail on somebody's word at their disposal.⁵⁶ In the new law the rule still applied that the tribunal must determine the date and time of the hearing as soon as the complaint had been admitted. The tribunal could have the police carry out preliminary investigation beforehand if necessary.⁵⁷ The police were required to carry this out in as short a time as possible.⁵⁸ In 1973 the lay judges who were finally to try the case were prohibited from carrying out any

preliminary investigation themselves, on pain of being challenged. The relevant ministerial instruction stated that this was exclusively a police matter.⁵⁹ The combination of different judicial activities which had been the practice in the 1960s,⁶⁰ was hereby brought to a halt. In cases of detention on remand the hearing had to be held within 72 hours after the first appearance in court.⁶¹ It was thus essential that the preliminary investigation was summary and quick. Understandably, the model for this was the regulations as laid down for correctional justice. As Cuban lawyers recored in 1954, the procedure of correctional justice was very summary: in fact, the accusation led directly to the hearing and there was no traditional preliminary judicial investigation (*sumario*).⁶² As a single chamber the correctional judge received the denunciations of citizens in person and questioned both the accusers and other witnesses at the same time.⁶³ If the police brought an offender before him -- and this must be done with the minimum of delay --, the accused was asked to pay a surety to guarantee appearance at the hearing: 100 pesos for a felony, 25 pesos for a misdemeanour.⁶⁴ Investigation of the case only took place during the trial, unless the defendant had already admitted guilt beforehand. In that case there was no need for further investigation of misdemeanours at any rate.⁶⁵

THE ABSENCE OF THE PUBLIC PROSECUTOR AND DEFENCE COUNSEL

The Public Prosecutor, combining this function with that of representative of the public interest, did not feature in the experimental base tribunals. The preliminary judicial investigation of the base tribunals evidenced a marked distance from such practices in the direct contact that it established between tribunals and police.⁶⁶ Another difference from the other tribunals was the lack of the requirement that the defence in a criminal trial should be conducted by a lawyer. The accounts of the functioning of base tribunals in the late 1960s make no mention of the presence of defence counsels during the sittings. These trials were called, correctly in my opinion, non-contradictory. There was no district attorney to defend the public interest and no lawyer to defend the accused. There was, however, the possibility of legal aid. The defendant in the dock was always reminded of this right.⁶⁷ If desired this legal aid could be given free of charge by a lawyers' collective.⁶⁸

A private accuser who addressed the tribunal directly could be supported by a lay defence during the public hearing, but never by a trained lawyer. The explanation of this regulation was remarkable. An accusation presented by a lawyer would have considerable influence on a tribunal that consisted of lay judges. The favourable balance this would create for the prosecution would endanger the running of an equitable administration of justice.⁶⁹

These rules were not entirely new. The pre-revolutionary correctional justice functioned without the mediation of a district attorney,⁷⁰ while the intervention of a lawyer was optional. The Decree of 1900 on Correctional Justice required the judge to instruct the accused brought before him of his or her right to receive legal aid, whereby the right of the accused to carry out his or her own defence was left intact.⁷¹ The Decree also left open the possibility of the defence being carried out by 'any person of good reputation', i.e. a lay defence, during the trial.⁷²

The Criminal Procedure Law of 1973 went further than the Decree on Correctional Justice in its regulations affecting the mediation of the Public Prosecutor. It created the possibility for the district attorney to intervene in a case which was brought before a base tribunal if this was thought to be sufficiently important or

exceptional.⁷³ Regarding the defence of the accused, the Criminal Procedure Law of 1973 took over the principle of self-defence or lay defence from Correctional Justice and applied it to the base tribunals. The law stated:

The participation of a defence counsel is not compulsory in trials held before the popular tribunals. However, the tribunal will allow the defendant to be assisted.⁷⁴

The costs of an advocate at this level of judicial administration were fixed by a ministerial instruction in 1973 at 10 pesos. Legal aid in appeal cases was 15 pesos.⁷⁵

The new law contained the possibility of lay defence, as the old legislation on correctional justice and the handbooks of the 1960s had done. There was a change with respect to previous practice, however: the untrained defence counsel was no longer just someone 'of good reputation'. This reputation had to be measured by a revolutionary yardstick in the new law. Only a fellow member of a mass, i.e. 'revolutionary', organisation, nominated for the purpose by that organisation, could act in defence of a defendant before the base tribunal.⁷⁶ In the words of the law:

Legal counsel can be provided by trained lawyers or by members of the mass organisation to which the accused belongs, nominated for that purpose by that organisation.⁷⁷

THE PUBLIC HEARING

In San Ramón the sittings of the base tribunal began around half past seven in the evening. The judges sat behind a table under the Cuban flag and a portrait of Che Guevara. They took turns at being president. The public was not always quiet at the proceedings: this depended on the personality of the person in the chair.⁷⁸

The president always began the hearing with a short speech lasting from five to ten minutes, dealing with the nature and purpose of this 'popular justice'.⁷⁹ The task of the base tribunals was the combatting and elimination of crime and all other social bad habits which had been inherited from the old society, the assembly of citizens was told. The average length of a trial was two hours and twenty minutes.⁸⁰ One of the judges acted as clerk and read the accusation and statements out loud.⁸¹ The accused and the prosecutor were then asked whether any of the judges was a personal friend or foe. If this was the case the judge in question had to retire from the proceedings. The instruction to the lay judges in 1966 in this respect was as follows:

It is also explained to the accused that any of the judges can be refused on grounds of close kinship, close friendship or manifest hostility towards either of the parties involved.⁸²

The accused was informed that he or she had the right to remain silent and to withdraw or alter confessions or statements which had been made earlier.⁸³ During the sitting the accused and the prosecution were allowed to speak. Witnesses, whether summoned or not, could make statements. Detailed cross-examination was only carried out by the bench of judges.

After the prosecutor had explained the charge(s) the defendant was invited to comment on the accusations. Even if the prosecutor withdrew the original accusation the trial still went on.⁸⁴ After this, the judges and the prosecutor could question the defendant on the facts of the case. This was followed by cross-examination of the accuser, witnesses and lawyers. If the case was still not clear after the extra information had been made available, the tribunal could initiate a free discussion

between the parties involved on the case. Finally, according to the rules in the Handbook, the opinion of certain members of the public might be asked. If there was a counsel for the prosecution or for the defence, he was also officially allowed to speak.⁸⁵ It sometimes happened that at this stage in the proceedings a Consultative Trial (*Juicio Consultivo*) was introduced. The public was invited to discuss the case while it was being dealt with at the hearing and, if necessary, to determine an appropriate punishment or sanction.⁸⁶

The proceedings were regularly interrupted to ask the parties if they understood everything. At the conclusion the three judges withdrew to consult on the verdict and possible sanctions. The Handbook recommended that, if there was not a room available for the judges to retire, they could in such extreme cases consult in the courtroom itself. The decisionmaking was carried out under the leadership of the president, while 'all the members of the tribunal were obliged to participate'. Decisions were taken by a majority of votes.⁸⁷ Sometimes the legal advisor (*asesor*) was involved in this consultation. He could be present, but in theory must not speak unless asked to do so.⁸⁸ The verdict was recorded in writing, signed and directly read out to the accused and the public immediately after the consultation. According to the Handbook, the verdict could be an acquittal, a sentence or internment under supervision of the High Council for Social Defence. Immediately after the reading of the verdict the accused was notified by the president of his or her right of appeal.⁸⁹

The final proceedings for the base tribunals in the Criminal Procedure Law of 1973 were in fact the legal crystallisation of this procedure. There were only minor differences on a few points. In the words of the 1973 law, the hearing by the base tribunal began with the announcement of the offence, the accused and the injured party by the clerk.⁹⁰ Unlike the situation described in the reports, the law made no mention of an introductory speech by the president on the purpose and utility of the basic administration of justice. After the clerk's announcement the accused had the legal right to challenge the judges.⁹¹ If members of the public had information regarding the case they could divulge it, and were then treated as witnesses during the hearing.⁹² The statements by the accused, the prosecution and the injured party and the examination of witnesses followed the general rules concerning evidence which the law specified, including the formal legal guarantees which formed a part of them. As the law laid down, the accused always had the last word.⁹³ As was the case with the experimental tribunals of the 1960s, the bench of judges then retired to arrive at a decision on the verdict. The pronouncement of this in the courtroom was at the same time its official publication.⁹⁴ If the only sanction was a reprimand, this was immediately put into effect.⁹⁵ Similarly, the parties were notified as to what means of appeal were at their disposal.⁹⁶ Since there was no written verdict the formal demands for the record of the proceedings were extended.⁹⁷ The legislation for Correctional Justice had not made any extra demands in this respect.⁹⁸

The summary, informal and rapid procedure of the hearings held by a base tribunal corresponded to the proceedings for Correctional Justice. The latter had been criticised repeatedly in the period before the revolution for its lack of formality. The complaint was that the procedure was so summary and speedy that the fundamental guarantees of the accused in a criminal trial were pushed into the background. As the Cuban criminal law experts Nuñez y Nuñez and D'Estéfano Pisani expressed it in their two-volume commentary on the Criminal Procedure Law of that time:

In this extremely summary procedure, which passes straight from the denunciation to the trial, and from the latter to a sentence against which no appeal is allowed, there is no preliminary investigation, no questions of competence are raised, the sentences do not require motivation, and there are no means of appeal against the verdicts. In this way the spirit of our criminal justice is contravened and the procedural regulations laid down in the text of the constitution are neglected.⁹⁹

The rules to be followed by the base tribunals as laid down in the Criminal Procedure Law of 1973 demonstrate how an attempt was made to retain the informal and summary nature of the basic administration of justice while improving on the Correctional Justice as far as procedural guarantees are concerned. Despite the summary character of the regulations for public trials by the base tribunals, they were still more elaborate than those of the Correctional Justice. An example of this can be seen in the changes affecting the admissibility of evidence which the base tribunals introduced by comparison with the Correctional Justice. But the most striking instance of these changes is the introduction of the possibility of taking legal action to appeal against judicial sentences at this level.

THE TREATMENT OF EVIDENCE: NEIGHBOURS AS WITNESSES AND JUDGES

A central factor in the Correctional Justice was a regulation which was introduced under North American influence which could accelerate the speed of the procedure dramatically. In the case of a misdemeanour the judge could ask the accused whether he was guilty or not of the charge. An answer in the affirmative meant that the time-consuming tasks of examining witnesses, etc. could be eliminated. In such cases an admission of guilt was sufficient for sentence to be passed.¹⁰⁰ In the case of felonies the same question could be asked, followed by a further investigation of the evidence.¹⁰¹ A general rule was that :

The accused can make statements in his own interest, if he so desires, but he will first be advised to speak the truth.¹⁰²

The resemblance to the institution of the 'guilty plea' and the informal practice of 'plea-bargaining' in the United States is striking. The latter consists of the handling of a case on the basis of a confession by the accused which has been made before the start of the actual hearing.¹⁰³ This North American influence on Cuban criminal law is hardly surprising. Military Decree Number 213, the Decree on Correctional Justice, was introduced on 25th May 1900, during the North American military government of Cuba.¹⁰⁴

These rules affecting the handling of evidence were criticised by lawyers after the revolution, because they had in fact already constituted a breach of the 1940 Cuban Constitution before 1959.¹⁰⁵ A definitive end to this practice was brought about by the Fundamental Law of 1959 and the Criminal Procedure Law of 1973. The Fundamental Law established as a general rule that the statement made by a defendant must under no circumstances be used as the entire evidence of a punishable act.¹⁰⁶ The Criminal Procedure Law of 1973 explicitly followed the Fundamental Law in this respect in dealing with felonies. Article 3 of the 1973 law, which also applied to the base tribunals,¹⁰⁷ stated:

Every accused is considered innocent so long as he has not been convicted. Every crime must be proved independently of the state-

ments of the accused, of his spouse and of kin within the fourth degree of consanguinity or the second degree of affinity.¹⁰⁸

Another general rule of the Criminal Procedure Law which also applied to the base tribunals was relevant here:

No accused will be obliged to make a statement in his own case.¹⁰⁹

While the Decree on Correctional Justice was explicitly in breach of the Constitution regarding misdemeanours, the Criminal Procedure Law of 1973 was silent on this score.

The new rules should be seen as an improvement in the position of the accused. They offered extra protection regarding the onus of proof compared with their predecessors. It should not be forgotten, however, that formal rules on the handling of evidence cannot have played a very important role in the basic administration of justice as this was developed in the 1960s in Cuba. The Cuban system of criminal justice in general was based on the principle of free admissibility of evidence, i.e. the judge had a free hand in weighing up the proof available as he or she thought fit.¹¹⁰ Within such a system, the basic administration of justice was characterised in particular by its very informal neighbourhood aspect. The following example from 1968 illustrates how this informality could have consequences for the treatment of evidence. In a neighbourhood where everybody not only knew everybody but also often knew everybody's business, a neighbour who was acting as judge could in many cases also be an important witness, just as a neighbour who attended the hearing could be empowered to bear witness on the spur of the moment.¹¹¹ Official documents, such as the receipt for a pair of trousers which the defendant had bought and not stolen, could easily be overlooked in such a setting. This is what happened to a woman in Havana in the course of a hearing which Berman attended:

Woman A and her daughter accused woman B of stealing woman A's pants. B's defence was that she bought the pants in a government clothing outlet in the neighbourhood. She offered, as evidence, her ration booklet, showing that she had purchased a pair of pants of the type in question in May, 1968. One of the three judges (*jueces*) of the Tribunal interrupted to say that his daytime work was in the distribution of clothing, and that he personally knew that the particular type of pants in question was not available in that neighbourhood in Havana in May of 1968 and that, therefore, B must be lying and the ration booklet entry must have been falsified. This sudden revelation determined the outcome of the case, and the audience was clearly impressed with the Solomon-like wisdom of this *coup de théâtre*. B never admitted her guilt, but at this point she ceased her protestations of innocence. B was given a public admonition (*amonestación pública*) and was sentenced to 60 days confinement (*confinamiento*) to her house and her work in agriculture. The head judge (*presidente*) then lectured *both parties* on the necessity for friendship between workers. The Tribunal also noted that the *daughter* of the complainant (*acusadora*) had lied about her educational level (inquiries around the neighbourhood by the judges had revealed this), and she was ordered to go to school at night until attainment of the minimum, sixth-grade literacy level (*superación educacional*). The pants were then publicly returned to A.¹¹²

A second example, taken from another tribunal attended by Berman in Havana in 1968, illustrates not only the informal neighbourhood character of the investigation and presentation of evidence in the base tribunals, but also the very active involvement of the Committees for the Defence of the Revolution. The CDRs were utilised *en masse* in 1968 and 1969 for the execution of certain tasks which fell within the sphere of criminal justice, of which the most far-reaching was the protection of the neighbourhood against criminal and other antisocial elements.¹¹³ In the case of voyeurism presented below, the members of the CDR shadowed a suspect from the neighbourhood for two weeks in order to catch him red-handed. In the courtroom it was the members of the CDR in particular who made damaging statements for the accused, both spontaneously and with previous warning:

A man, aged twenty-four, was accused of peeping through a window at the wife of his good friend while she was undressing. The *acusadora* was a middle-aged, severe, prudish, Madame Defarge type and chairman [sic] of the women's division¹¹⁴ of the local Committee for the Defence of the Revolution. (The victim of the alleged peeping did not appear at the trial.) The *acusado* admitted having seen her undressing, twice, from an alley. He claimed, however, in requesting a lighter sanction, that he was drunk at the time, was returning from work, went into the alley to urinate, and accidentally happened to see her undressing. He also argued that when the C.D.R. woman (the *acusadora*) caught him, he went along peacefully and did not resist. The *acusadora*, however, claimed that the *acusado* had not been drunk and had been standing on a chair while peeping, implying that the act was premeditated. The *Presidente* of the Tribunal mockingly asked the *acusado* why he had to stand on a chair to urinate and why had this so-called coincidence happened twice. The *acusado* could provide no answers; he only bowed his head remorsefully and wiggled his legs continuously. A second C.D.R. witness, this one a good looking young girl, added that the C.D.R. had followed the *acusado* for fifteen days in order to catch him in the act. A third C.D.R. member, who rose from the audience as a 'spontaneous' witness, testified that he had been on *miliciano* duty that night, that the incident occurred at 1:40 a.m., and that even before the *acusado* was caught, all the neighbourhood knew of his peeping activities. A final witness, another girl, testified that she had awakened at 4 a.m. on the morning in question (to go to her job in a hospital), that she heard noises, and that she saw the *acusado* peeping.

The *acusado* was found guilty on the basis of his confession taken together with the testimony of the four witnesses. The *Presidente* of the Tribunal noted that a confession alone could not sustain a guilty verdict in this type of case. The *acusado* was sentenced to one hundred eighty days deprivation of liberty (*privación de libertad*), the most severe sanction possible, and to a public admonition. For the one hundred eighty days he would have to work on a farm (and would be paid for this work at the same rate as all agricultural labourers). In the admonition, the *acusado* was told that his crime was all the more severe because the woman he peeped at was the wife of his friend and neighbour.¹¹⁵

In the above cases the confession of the accused was not in fact very significant. In the first case, on the basis of his knowledge of daily life in the neighbourhood the judge was able to find fault with the account provided by the accused. In the second case the whole neighbourhood already knew that the accused was peeping at his neighbour's wife before he was caught in the act. As a result he was shadowed, caught and accused by the neighbourhood CDR. The immediate neighbours and other members of the accused's neighbourhood thus became judge, prosecution and witnesses for the prosecution. The rule that a crime must be proved independently of the accused is much less effective in such a setting than in a more formal structure of judicial administration. The examples show how closely the eyes of justice followed the accused in the practice of the experimental base tribunals, sometimes into the accused's own street or even into the staircase of an overpopulated *solar* or other community. Formal legal guarantees could certainly offer the accused some protection in such a situation against unfounded accusations or intimidation by judges and other government officials -- the latter was heavily criticised after the revolution as a pre-revolutionary practice -- but investigation shows that they still offered few escape routes when the naked truth was being brought to light as the rest of the neighbourhood saw it. The mutual social control, closely bound up with the apparatus of justice and the general political ideology, was strong and covered many aspects of daily life.

In the 1960s attempts were made to involve the whole population in the administration of justice at the lowest level. This required that formalities were kept to a minimum and as simple as possible. Those formalities which were retained had lost much of their force from the fact that the whole neighbourhood was involved through the informal character of neighbourhood justice, which was a nationwide phenomenon after 1968. The previous examples show how this was especially the case regarding the rules for evidence adopted by the base tribunals. The existence of rules for the admission of evidence proved less effective and far-reaching than would have been the case in a formal setting along traditional lines.

IMPROVEMENT: THE RIGHT OF APPEAL

Another difference between the Correctional Judges and the base tribunals was that the sentences of the latter were subject to appeal. While the Decree on Correctional Justice had explicitly ruled out the possibility of appeal,¹¹⁶ the experimental basic administration of justice in the 1960s introduced the legal instrument of 'review' (*revisión*).¹¹⁷ In the words of a later Cuban commentary this instrument was:

One of the most important procedural guarantees introduced by the procedure of the Popular Tribunals and the clearest indication of the difference between these Tribunals and the correctional courts.¹¹⁸

In 1966 Santiago Cuba wrote of this instrument that it was sufficient for the punished person or the convicted party to express disagreement with the verdict. Formalities were reduced to a minimum. There were no maximum terms. Simply to express the desire to have the sentence changed was interpreted as the starting signal for the legal instrument of 'review'. Its acceptance meant a retrial, at which the facts of the case and the objections to the verdict were reviewed.¹¹⁹

There were two kinds of review. If the appeal only concerned the degree or nature of the sanction imposed, the case was dealt with by the same tribunal that

had delivered the verdict. This tribunal took cognisance of the grounds for review and decided whether to adjust the penalty or not. The decision taken was recorded in an 'act' and made public at the following public hearing. If the appeal concerned the declaration of the guilt of the accused, however, or the procedure followed by the public court, it followed a longer and more official trajectory. The *asesor legal* of the municipality was asked to instigate the appeal. He set up a commission with two new judges and two of the three judges who had passed the original sentence. This commission opened a new investigation of the facts of the case, on the basis of which the *asesor* decided whether or not to accept the appeal. If it was declared admissible, it was handled in a new public hearing by two judges who had not taken part in the original trial, with the *asesor* as president.¹²⁰

Besides the convicted party, the *asesor* himself or a third party who disagreed with the verdict could set this legal instrument in action.¹²¹ The instrument was, however, little used, both by the sentenced parties and by the *asesor* himself: in 1966 Santiago Cuba estimated that only 1% of the sentences passed were brought up for review. According to Berman the instrument was used occasionally in 1968 to appeal against the degree of the punishment. However, he never attended a case at which the *asesor* proceeded to instigate review proceedings, although he did attend one where this almost happened. It concerned a woman who had lodged a complaint against her husband, although, Berman claims, she was clearly mentally deranged:

During the trial I mentioned this fact to the *Asesor*, who replied that she had already passed a message to the judges to stop the trial and to order a psychiatric examination for the *Acusadora*. It was perhaps another ten minutes before the judges stopped the trial and during this interval the *Asesora* had assured me that if the tribunal were to ignore her message and were to find the husband guilty, she would bring an appeal 'in his name'.¹²²

The 1973 legislation dropped 'review' as an instrument of appeal against the decisions of the base tribunals. In its place it introduced another instrument, *apelación*. This instrument could only be used in a restricted number of cases within the new system of judicial administration that started in 1973. The customary means of appeal was cassation (*casación*).¹²³ Unlike *apelación*, cassation did not involve a review of the evidence; it only involved a limited judicial review to see whether the law and the required formalities had been observed.¹²⁴ There were two grounds on which *apelación* could be set in motion against a verdict. In general it could be resorted to in cases where capital punishment was involved. In cases where the convicted person was sentenced to execution, *apelación* was officially begun. If the judge had failed to pass a sentence involving the death penalty in a case where this was requested by the Public Prosecutor, the latter could appeal against the sentence by means of an *apelación*.¹²⁵ *Apelación* was also possible against a sentence passed by a base tribunal by which somebody was sentenced for a felony or received the penalty of detention for a misdemeanour.¹²⁶ In the case of appeal against the decision of a base tribunal, the formal requirements were again very slight. The convicted person or the Public Prosecutor could make known his or her decision to appeal immediately after the sentence had been passed by the base tribunal. It was also possible to lodge an appeal later in writing or orally before the clerk of the court which had passed the sentence, as long as the limit of three days was observed. A brief summary of the complaints against the disputed sentence was sufficient for the lodging of an appeal.¹²⁷ An appeal lodged in this way was always passed on by the base tribunal to the tribunal next in line, the Regional Tribunal,

without the parties having to be summoned again.¹²⁸ This too implied a considerable simplification of the customary procedure.¹²⁹ The case came before the Regional Tribunal within fourteen days. The Regional Tribunal decided what evidence was relevant for the case in hand.¹³⁰ The procedure for passing sentence in appeal cases by a higher court was similar to that followed in the first resort by the base tribunal. The bench of judges retired and returned to pronounce its verdict in the course of the hearing.¹³¹ Here too there were extra requirements concerning the record of the hearing.¹³² The usual way of pronouncing a sentence by the Regional Tribunal in the first instance was different: like that of the higher courts, it was written and was passed within three days after the hearing.¹³³ There was no further cassation possible against a decision of the court of the second resort.¹³⁴ The correction of base tribunals and Regional Tribunals by the Supreme Court took place within the new system of judicial administration by means of 'binding instructions' to the lower courts.¹³⁵

INFORMALITY AND LEGALITY

The eye-witness accounts and the legislation discussed above illustrate the informality of the criminal procedure of the base tribunals. The preliminary investigation was shorter than usual and less strictly regulated. By comparison with the ordinary criminal procedure, the most striking difference in the informal hearings was the absence of the Public Prosecutor and of a legally trained counsel for the defence. As a general rule neither the district attorney as official representative of the public interest nor the lawyer as an academically trained representative of the individual interests of the accused were present. A further aspect of the informality of the proceedings was the simplification of the rules affecting the orally pronounced verdict. Compared with the Correctional Justice, the new regulations on the admissibility of evidence in particular and the introduction of the possibility of instituting appeal proceedings both meant an improvement in the formal legal position of the defendant. It should not be forgotten, however, that the specific setting of popular participation in which the basic administration of justice was conducted made the actual results of the improved position regarding the admissibility of proof less effective in practice than might be expected at first sight.

Before trying to assess what effects the informal nature of the criminal procedure had on the base tribunals, it is first necessary to look more closely at the rules of criminal process. What function can we assign to such rules within a specific type of society with a specific type of judicial system, namely, the Cuban village and neighbourhood communities of the 1960s where trials were conducted at the level of the neighbourhood by the residents themselves?

It can be posited that the law of criminal procedure both legitimises and normalises the action of the state as representative of the collectivity against somebody who has broken the law or contravened the regulations. Both functions imply that the law of criminal procedure protects an accused against arbitrary, or at least illegal, actions on the part of the state. They concern the notion that the state must also act constitutionally in accordance with the law. For criminal justice this is expressed in the principle of legality which is binding on criminal procedure: 'criminal proceedings take place according to the law'.¹³⁶ Socialist legality, as it operates in Cuba and in other socialist countries, does not diverge in this respect from the principle of legality as we know it. To quote Zellweger:

The principle of socialist legality insists in the first place on administration and adjudication according to law. In this respect it is identical to the principle observed in western constitutional states.¹³⁷

In combination with adequate regulations for the conduct of criminal justice, the principle of legality can form an important source of protection for the accused in a criminal trial. It is not for nothing that the Cuban expert on criminal law, Morales, is proud to announce the improvements that were carried out in 1973 in the right to appeal for cases that came before the base tribunals. In his manual dealing with the Criminal Procedure Law of 1973, he names the protection of the accused as the juridical basis for the recognition of the legal instrument of *apelación*. For those cases involving the possibility of capital punishment or a sentence delivered by a base tribunal, this right to a review of the facts by a higher legal authority was, as Morales put it:

A maximal guarantee in cases where a man threatened to lose his most precious possession [his life] and a genuine protection for citizens in cases of less serious felonies and misdemeanours, if we bear in mind the summary procedure by which the popular base tribunals can impose penalties of detention and the fact that the regional popular tribunals are presided over by a professional judge.

Morales relates this extra guarantee to the principle of socialist legality:

It is an extremely praiseworthy principle that the revolutionary legislator followed in both cases in his desire to make socialist legality a pragmatic reality and to ensure that the conduct of our tribunals should correspond to a proven truth and an impeccable justice.¹³⁸

The aspect of the rules of criminal procedure under review here is their function as a source of protection. In fact this is a form of 'secondary' control of the social control¹³⁹ which is exercised upon civilians via criminal law and sanctions. In the light of the fundamental opposition of interests between the offender and the collective that defends the norm, this secondary control can be seen in a positive way. In the North American literature, this positive evaluation has been advocated by, for example, the lawyer Packer.¹⁴⁰ He supposes that criminal process involves an irreconcilable conflict of interests between the State, as represented by the Public Prosecutor, and the individual interests of the accused. A criminal trial tends towards the Crime Control Model when the public interest and the maintenance of the public order are emphasised to the detriment of the individual rights of the accused to a trial that gives the defence an equal chance. All efforts are concentrated on an efficient combat of crime. If, on the other hand, the individual rights of the defendant are defended above all else by means of guarantees provided by the criminal proceedings, the trial tends more towards the Due Process Model. 'Equality of Arms' and a fair trial have absolute priority in this case, and emphasis is laid on the requirement for official (state) power to conform to the rules.¹⁴¹ The legally defined juridical status of the defendant in the criminal process means for the state a 'course' littered with 'obstacles' that must be overcome if a verdict is to be reached.¹⁴² Restrictions concerning criminal procedure have here an important function in the protection of the individual interests of the accused against the public interest, represented in the person of the Public Prosecutor. From within such a perspective, 'informality' can only be detrimental for those who are faced with the superior power of the state apparatus.

Such an analysis certainly has a general range of application to a certain degree. It requires certain modifications, however, when applied to the Cuban tradition of criminal justice, the political climate of the 1960s and the practice of the Cuban base tribunals. For example, Packer's theory was criticised with respect to the supposition which underpinned it: the fundamental conflict of interests in a criminal process between the interests of the individual and those of the collectivity. John Griffiths, another North American legal authority, remarked:

Packer's article nicely presents the fundamental underlying ideology of (North) American thought.¹⁴³

In fact Packer's theory represents a 'Battle Model of Criminal Procedure'. An alternative supposition would be the possibility of harmony, i.e. the possibility that collective and individual interests in a particular case might coincide. Translated into criminal procedural terms, such a supposition implies the notion that the penalty or sanction imposed on the guilty party could be in the interests of both society and the offender. The ideal type of trial in which this could happen is labelled by Griffiths the 'Family Model'. Judicial proceedings according to this model require a fundamentally different view of the offence and the offender on the part of the participants in the trial:

Seeing 'criminal' conduct in its essential variousness and its inseparability from other social events, they [the participants in the trial] would reflect this perception through their attitudes and behaviour in the criminal process. They would be unlikely, that is, to think about or try to deal with 'crime' or 'criminals' in the isolated way which is characteristic of our criminal process because they would regard these categories as of very limited and specialized usefulness.¹⁴⁴

Unlike the 'Battle Model', the objective of the state in this model would not be just 'to put a suspected criminal in jail'.¹⁴⁵ In the ideal 'Family Model' there is the possibility that:

Together with the representative of the state, defence counsel would direct his energies toward assisting the tribunal to come to that decision which best incorporates and reconciles the interests of all concerned.¹⁴⁶

With the disappearance of the fundamental contradiction between the interests of the state and those of the individual, the basic suspicion of government officials in the trial is eliminated.¹⁴⁷ Formalities, in the sense of rules for the protection of the legal position of the defendant, thereby come to occupy a less important and essential role as a precondition for a 'fair' trial. Other factors, such as 'acting for the good of the accused' and 'emphasising the accused's role as a member of the community' now play a part in the definition of a good, honest and humanitarian trial. (Re)education comes to occupy a central place.

This analysis provides a useful insight into the function of regulations for criminal proceedings. 'Informality' in the criminal procedure does not necessarily entail a weakening of the legal position of the accused. Under certain circumstances, 'informality' can contribute to a more humanitarian and democratic way of dealing with deviant, antisocial and criminal behaviour.

It is noteworthy that the idea of harmony which underpins this model is deeply rooted in the Cuban tradition of criminal law. The movement known as 'La Défense Sociale', which propagated the notion of social harmony, found a congenial climate for its theories of criminal justice in Cuba in the 1930s. The ideological

foundation of 'social harmony' that is a principle of the Marxist theory of law meant a reinforcing of this tradition. The same applies to the ideal of the 1960s in Cuba: mutual solidarity and equality in the education of everybody to become the 'new altruistic citizen' fitted in perfectly with this tradition. Of course, it would be naive to suppose that the Cuban revolution heralded the arrival of the ideal society and the relegation of social contradictions to history.¹⁴⁸ What we have seen so far presents a different picture. It can, however, be said that the political and ideological climate of Cuba in this period was an excellent breeding ground for the ideals which lay behind the harmonious model of criminal process outlined above, a model that allowed a high degree of 'informality'.

The nature of the Cuban base tribunals was informal and sometimes independent of the law. In evaluating it, we should not forget to take into account the revolutionary transitional period in which Cuba found itself in the 1960s. In the eyes of many, the contrast with the past was great. The great discrepancy that existed before 1959 between formal laws and everyday reality has already been discussed. Laws imported from Europe formulated protective rights (affecting criminal proceedings) which, if they had any effect at all in the situation of drastic social inequality, only concerned a very select group. It is thus not so surprising that the first priorities in Cuba after the revolution were in the sphere of substantive rights, which sometimes by-passed the existing legislation, rather than a new formal legislation. For the distinction between formal and informal law, Weber offered the following definition:

'Equality before the law' and the demand for legal guarantees against arbitrariness demand a formal and rational 'objectivity' of administration, as opposed to the personally free discretion flowing from the 'grace' of the old patrimonial domination. If, however, an 'ethos' -- not to speak of instincts -- takes hold of the masses on some individual question, it postulates *substantive* justice oriented toward some concrete instance and person; and such an 'ethos' will unavoidably collide with the formalism and the rule-bound and cool 'matter-of-factness' of bureaucratic administration. For this reason, the ethos must emotionally reject what reason demands. The propertyless masses especially are not served by a formal 'equality before the law' and a 'calculable' adjudication and administration, as demanded by 'bourgeois' interests. Naturally in their eyes justice and administration should serve to compensate for their economic and social life-opportunities in the face of the propertied classes. Justice and administration can fulfil this function only if they assume an informal character to a far-reaching extent. It must be informal because it is substantively 'ethical'.¹⁴⁹

A third aspect that should be taken into account in the evaluation of the informal character of the base tribunals is the special setting within which they functioned in the 1960s. Trials were held in small local communities where everybody knew everybody: public, judge and defendant. In a comparative study of the People's Republic of China and the United States of America, Pepinsky arrives at an interesting conclusion in this respect. On the basis of his comparison, he concludes that in small communities where everybody knows everybody and where there is very little inward or outward mobility, there is less necessity for formal, binding regulations than in a form of society in which people are mobile and anonymous in respect of one another.¹⁵⁰ Black speaks in this connection of the exchangeability of

different forms of social control. He claims that 'Law varies inversely with other social control'.¹⁵¹ Where other strong forms of social control are available, such as psychiatric control or mutual control by neighbours, law as a means of control can recede to the background or disappear altogether.¹⁵²

Not only were the specific circumstances under which small-scale criminal and other conflicts were resolved at neighbourhood level in the 1960s in Cuba not conducive to a high degree of formality. The neighbourhood and village communities where the base tribunals were in operation can be characterised in general as having little use for abstract, generally binding regulations, as the studies by Pepinsky and Black indicate. Social control to maintain the generally accepted norms, whether they were dictated by the state or not, was exercised informally by the residents themselves. It is difficult to ascertain how far it was possible to exercise secondary control of this informal way of norm maintenance. The openness of the hearings of the neighbourhood tribunals and the effective say which the neighbours had in them must have served as guarantees to a certain extent. As a second guarantee we can point to the seriousness and integrity with which many lay judges attempted to carry out their duties in this period. In looking back over his work as National Advisor between 1968 and 1973, Ismaël Séfer Zárate had this to say:

I was impressed and moved by the carefulness and fairness with which simple people dealt with 'law' in their capacity as lay judges.¹⁵³

As has already been indicated, the close intertwining of judicial actions and everyday neighbourhood activities as a result of the great social control also brought with it risks for privacy and the individual legal position of civilians. Informal law can only be understood when it is set within its specific historical setting.¹⁵⁴ As has been pointed out, the function of formal legal regulations varies depending on the form of society, type of community and ideology where justice is administered. The architecture of the Cuban basic administration of justice displays manifest features of the harmony model of criminal proceedings. The small communities where trials were held and the revolutionary transition period of Cuba in the 1960s give the informality under discussion a special character. In addition, the basic administration of justice of the 1960s was embedded within a more general political campaign for mass mobilisation.

INFORMALITY AND MASS MOBILISATION

In the previous chapters it has been seen how 'informality' has been a key feature of the Cuban basic administration of justice throughout revolutions and social transformations. The Correctional Justice, the experimental base tribunals of the 1960s and the popular base tribunals of the 1973 legislation display many similarities in respect of procedural law. However, these chapters have also shown the important and fundamental differences between the pre-revolutionary Correctional Justice and the functioning of the base tribunals as this crystallised out after 1959. Unlike the pre-1959 Correctional Justice, the experiments with new forms of basic judicial administration in the 1960s were embedded in a general national political movement of mass mobilisation, moral stimulus and education of the population to become 'new communist people'. The experiments with the base tribunals were a part of a specifically 'Cuban' socialist road to communism, a road which had to be followed within the sharp restrictions imposed by international policy.¹⁵⁵ The emphasis on mass mobilisation and moral incentives during the first decennium of the

revolution was considerably influenced by the specific place, features and ideals of the Cuban revolutionary process. In this connection an attempt has been made above, for example, to link domestic political developments with the 'independent' course which Cuba followed in its foreign policy in the same period.

Mass mobilisation as a central, or at least essential, ingredient in the early phase of a successful revolution is not confined to Cuban history. In her *On Revolution*, Hannah Arendt saw change as essential for revolution: 'violence is no more adequate to describe the phenomenon of revolution than *change*'.¹⁵⁶ And the North American political scientist, Huntington, concluded on the basis of his analysis of revolutions that have taken place:

The political essence of revolution is the rapid expansion of political consciousness and the rapid mobilization of new groups into politics at a speed which makes it impossible for existing political institutions to assimilate them. Revolution is the extreme case of the explosion of political participation. Without this explosion there is no revolution.¹⁵⁷

It has already been pointed out that the experimental base tribunals of the 1960s were not only embedded in a quite specific general policy of mass mobilisation, but that they were also a part of this policy at the same time, and even made a constructive contribution to it. Two aspects of mass mobilisation are here important: 'education' and 'active participation of the people'. Mass mobilisation, moral incentives and education have been lumped together so far in the discussion, for in practice they did go together in the 1960s in Cuba. In economic policy, for example, a choice was made for moral rather than material incentives. Far-reaching socio-economic changes called in general for a fundamental process of transformation within the existing patterns of values and behaviour, which might in some cases be achieved by (re)education. Deutsch refers to this process as 'social mobilisation':

...the process in which major clusters of old social, economic and psychological commitments are eroded or broken and people become available for new patterns of socialization and behavior.¹⁵⁸

As Fagen indicates from an extensive study of the transformation of political culture in Cuba, this process of transformation was mainly encouraged in Cuba by the active involvement of the people in new revolutionary developments:

...the regime seeks to forge the new political culture in the crucible of *action*.¹⁵⁹

Both the Committees for the Defence of the Revolution and the base tribunals were major social and political instruments for achieving this aim.

The experiments with the base tribunals in the 1960s display the aspects of both 'education' and 'active involvement and participation of the people'. The fact that the first base tribunals were introduced in the extremely isolated Cuban interior is striking in this respect. The setting up of local base tribunals was an attempt to involve traditionally isolated areas in the new developments in a manner that they could understand. The arrival of the tribunals often provided these regions with their first direct and systematic confrontation with the national legal system, the national legislation and, as a result, what it meant to be a citizen member of a national community. As Karst and Rosenn point out, general laws and rights are not only indicators of what is and is not allowed, but they also contribute to give people the feeling that they belong as members of a particular community, in this case, the national community.¹⁶⁰ In this respect it has been explained earlier why the priority assigned to the Cuban interior in the early phase of the revolution

cannot be divorced from the important international political and economic objective of doing away as soon as possible with the traditional exploitation of these regions.

When the increased radicalisation of the revolution at the end of the 1960s demanded an increased politicisation and active involvement of the people, the base tribunals were extended to cover the whole of Cuba, including the big cities. As has been seen, the increasing economic and social pressure at the end of the 1960s led to an increased need for a campaign against criminality. The people was involved *en masse* in this campaign completely in accordance with the general policy of mass mobilisation.¹⁶¹ The base tribunals served both as a cheap way of handling the increased petty crime rate by letting the neighbourhoods take care of their own trials, and as a good way of involving the population actively in revolutionary institutions more effectively than in the past.

With respect to this aspect of 'involvement', it must be remembered that the base tribunals also involved the population actively in a practical way. The lay judges were members of the neighbourhood, chosen by neighbourhood assemblies and under the supervision of their neighbours. The protection of the neighbourhood against criminal elements, the integration of ex-convicts into normal life and the preventive detection and re-education of antisocial elements were treated as far as possible as neighbourhood responsibilities.¹⁶² The attempt to do away with the traditional division between the juridical apparatus and everyday, politicised neighbourhood life must be seen as a unique moment in Cuban history. This attempt was reflected in the 'new' academic training given to revolutionary lawyers, described by Berman in 1968.

The 'educative' aspect was also a central tenet of the policy of the base tribunals. In 1968 virtually no sitting began without an introductory speech by the president of the court on the purpose and function of the basic administration of justice. The penalty of a 'public reprimand', which was aimed directly at convincing the wrongdoer of the moral reprehensibility of what he or she had done, was introduced into Cuban criminal law procedure by the experimental base tribunals. If we follow the accounts of base tribunals at the end of the 1960s, every verdict which was delivered in the period included the 'public reprimand'. As the examples presented in this chapter have shown, even the most ordinary squabble between neighbours in this period could be used as a lesson in solidarity, socialist behaviour, and, ideally, communist behaviour.

This special function of the base tribunals as an essential part of a broad political movement of mass mobilisation can help us to formulate a tentative conclusion. The insight that informality within criminal law procedure does not necessarily entail a weakening of the legal position of the accused is valuable, particularly when we are dealing with a basic administration of justice which is directly integrated into the broad political movement of mass mobilisation which was so prominent a feature of the early period of the Cuban revolution. The principle of legality must not only be evaluated in this context in terms of what we know as the Rule of Law, designed to protect the sphere of individual rights against the state, but also in terms of the surplus value of socialist legality, as formulated, for example, by Zellweger:

The principle of socialist legality is therefore an important instrument in the educational and cultural role of the Socialist State, a vital tool in the gigantic task of reshaping man into a pattern that satisfies the demands of the stateless and classless Communist society.¹⁶³

Through the principle of socialist legality the administration of (criminal) justice in socialist countries like Cuba can be a part of the 'total shaping of the individual'.¹⁶⁴

The question of whether we can assume that individual and collective interests are reconcilable in Cuban society in the 1960s, as demanded by the harmony model of criminal process described earlier in the chapter, must be left on one side. It would at any rate be naive to suppose this to be the case. However, we can go so far as to say that the specific Cuban context described here does display a number of the hallmarks of Griffiths' harmony model. The close intertwining of judicial administration and neighbourhood life offered good opportunities for a trial which was to take into account the unity of offender, offence, past record and background. The fact that everybody knew everybody, including the judges, accusers and accused, must have helped to create a fertile ground for feelings of mutual involvement, all the more so considering the priorities assigned to mutual solidarity and equality in the general political and ideological atmosphere of the period. From such a perspective and analysis, 'informality' in criminal law procedure becomes multi-dimensional, at any rate by comparison with the bare (liberal) juridical analysis presented by authorities like Packer. By improving the intelligibility of the administration of justice and thereby increasing popular involvement in it, this 'informality' was an important factor in the popularisation and politicisation of the Cuban basic administration of justice during the first decennium of the revolution.

The Cuban development shows that 'informality' cannot be interpreted in just one way within a specific system of criminal law. It does not only concern the absence of formal rules, such as those protecting the individual within the criminal process against arbitrary action on the part of the state, i.e. the absence of what we know as the Rule of Law. In certain circumstances, informality can be a means of arriving at a way of dealing with social conflicts and antisocial behaviour that is more humane, more democratic and more in accordance with social justice.

Notes to Chapter Seven

1. Aldo Prieto Morales, **Derecho Procesal Penal**, Editorial Orbe, Havana, 1977, II, p. 159. In early 1973 the National Juridical Study Commission wrote:
In the socialist society that is being constructed there are still classes in existence with interests which are foreign to those of the proletariat. New justice is therefore necessary which is firmly on the side of the people. This circumstance in no way limits the equity which guides the functions of popular justice among the people. The popular judges defend the interests of the working people and by their decisions pursue the administration of a genuine form of justice which really matches the offence or mistake committed, without this purpose being limited by the mechanical application of legal texts or by the class allegiances of the courts of justice of the past. They deal with affairs in accordance with the principles of socialist equity.
Informe sobre la Jurisdicción de Tribunales Populares, Working Group no. 4, Commission 1 of the National Commission for the Unification and Renewal of the Legal System, Havana, 1973, p. 27.
2. Santiago Cuba, Attorney-General of the Supreme Court at the opening of the courts, **Los Tribunales Populares**, September 1966, p. 15.
3. Ministry of Justice, **Cursillo Pre-selectivo**, published in 1966 by the National Management of the Popular Tribunals. This short course included regulations affecting both competence (as laid down in the 1966 Handbook for the Popular Tribunals mentioned earlier) and procedural rules. Cf. Ministry of Justice, **Manual de los Tribunales Populares**, Havana, 1966, Section VI, Judicial Models. Jesse Berman, 'The Cuban Popular Tribunals', **Columbia Law Review**, Vol. 69, December 1969, p. 1336, erroneously claims that no other handbooks were introduced for the lay judges of the base tribunals apart from the **Manual**.
4. Cf. Chapter Five.
5. Dr. Osvaldo Dorticós Torrado, cited by Héctor Garcini Guerra. 'Las Comisiones de Estudios Jurídicos', **Revista Cubana de Derecho**, year 1, no. 1, January 1972, p. 24.
6. From the Management of Popular Tribunals and Lawyers' Collectives (**Dirección Tribunales Populares y Bufetes Colectivos**).
7. From the Management of Labour Law (**Dirección de Justicia Laboral**).
8. From the Public Prosecutor of the Ministry of the Revolutionary Armed Forces (**Fiscalía del Ministerio de las Fuerza Armadas Revolucionarias**).

9. From the sections Public Prosecutor (**Fiscalía**), Revolutionary Tribunals (**Tribunales Revolucionarios**) and the State Secretaries for Public Order and State Security, Social Prevention and Penitentiaries.
10. The Faculty of Social Sciences, particularly the Faculty of Law.
11. Garcini Guerra, *op. cit.*, p. 25.
12. The Working Group of Commission 1 produced, among other works, the Report on the Popular Tribunals to which repeated reference has already been made: see note 1 above.
13. The commission itself outlined the situation as follows:
It is beyond doubt that in the present provisional period of our society the legal regulations in force are riddled with contradictions. Alongside the revolutionary legislation legal bodies continue to exist which were formed in the past and which have not yet been dismantled. It would be a serious mistake to ask the new organs of jurisdiction created by our revolution to apply rules which are substantially out of key with the aims for which these new organs were created.
Therefore the Ministry of Justice will instruct these Tribunals as to the regulations which they are to apply, based on the principles which lie behind our revolution, which are in fact the general principles of justice for us, and which occupy pride of place among its sources.
Consequently, if the Popular Tribunals act in accordance with the guidelines laid down by their superiors, there can be no doubt that they will be acting in line with socialist legality, since they will be matching their actions to principles which have the force of law and our citizens will be guaranteed the right to be tried according to these same principles.
Informe, op. cit., p. 31.
14. Cf. Chapter Four and Chapter Eight.
15. Garcini Guerra, *op. cit.*, pp. 26-27.
16. Under the title 'Foundations of the Unification of the Jurisdictions, Principles and Structure of the New Judicial System' (**Bases sobre Unificación de las Jurisdicciones, Principios y Estructura del Nuevo Sistema Judicial**). Cf. Garcini Guerra, *op. cit.*, pp. 35-40.
17. The **LOSJ** of 1973 and the **LPP** of 1973.
18. Prieto Morales, *op. cit.*, II, pp. 163-166.
19. **LPP** of 1973, Book 5, articles 365-391.

20. Berman, *op. cit.*, p. 1343; David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation of Cuba', Ph.D. thesis, University of Surrey, 1973, p. 184; *Informe, op. cit.*, p. 13.
21. Santiago Cuba, *op. cit.*, 1966, p. 15. Cf. also Chapter Three, n. 147.
22. Berman, *op. cit.*, p. 1350.
23. Interview with Abel Miguel González, 26.3.1983. Cf. Chapter Three n. 147.
24. Booth, *op. cit.*, p. 184.
25. Berman, *op. cit.*, p. 1343.
26. *Informe, op. cit.*, p. 13:
The Popular Tribunals hold their trials in halls made available for this purpose by the political and mass organisations, or else in open places such as streets, parks, etc., provided they have been made suitable for this purpose.
27. *Ibid.*, p. 39.
28. Berman, *op. cit.*, p. 1343.
29. Article 17 of the Law on Judicial Organisation of 1973 put it as follows:
For educational reasons and by means of a motivated decision, in certain cases the tribunals can exercise their functions in those places within their territorial jurisdiction where the actions under consideration took place or where the offenders or those who are familiar with the facts of the case live.
Cf. articles 56 and 17 of *LOSJ* (1973) and articles 15 and 51 of *LOSJ* (1977). In an interview with judges and the Public Prosecutor of the Provincial Tribunal of Santa Clara held on April 28th 1980, the 20 members of a group of Dutch lawyers were told that the criminal chamber of the tribunal would be holding a sitting shortly in the countryside, within the boundaries of the district, to try a case of patricide. We were told that the tribunal considered it better to go to the place of the crime rather than to have to bring the accused, all the witnesses and the public to the city.
30. In Berman's experience (*op. cit.*, p. 1344) these criteria were applied with a considerable degree of flexibility. They are not even mentioned in the Procedural Handbook of 1966: 'Short Pre-Selective Course. Cf. also *LPP* of 1973, Art. 305. Art. 310 of the *LPP* of 1973 included comparable exceptions to the rule of publicity.
31. *Informe, op. cit.*, p. 32.
32. *Ibid.*

33. 'Short Pre-selection Course', *op. cit.*, p. 10, ad IV, 1; *Informe, op. cit.*, pp. 28 and 30.
34. The very novelty of our popular justice and the necessity to transform it constantly in accordance with the changing necessities of a Revolution in development, have prevented the concepts and forms of the trials from being static.
Informe, op. cit., p. 36; cf. also p. 24.
35. The exceptions were the accusation, the record of the proceedings and the verdict. Cf. *Informe, op. cit.*, p. 31.
36. *LPP*, 1973, Articles 386 ff., Title II, Fifth Book.
37. Cf. Articles 365-3, Book 5 of *LPP*, 1973, with the legislation on Correctional Justice, Military Decree No. 213, 25.5.1900, included, e.g., in Eduardo Rafael Nuñez y Nuñez, *Ley de Enjuiciamiento Criminal*, II, Jesus Montero, Havana, 1954, pp. 304-319.
38. *Cursillo Pre-Selectivo, op. cit.*, p. 10, sub IV 2.
39. Berman, *op. cit.*, p. 1344; Santiago Cuba, *op. cit.*, p. 14:
The criminal proceedings begin with a **denuncia**, i.e. the denuncia-tion drawn up by private persons or by the organs of Public Order.
40. Military Decree No. 213, 25.5.1900, Art. III.
41. *LPP* 1973, Art. 365.
42. Compare below.
43. *LPP* 1973, Art. 111, sub 3.
44. Cf. Ministry of Justice, National Front for Instruction and Propaganda, Popular Tribunals, 1966, Havana: 'Guía para ofrecer conversatorios sobre los Tribunales Populares', pp. 10-14; pamphlet entitled 'Estructura de los Tribunales Populares', 1966; 'Short Pre-Selection Course, *op. cit.*, pp. 10-11, sub IV ad 2; *Informe, op. cit.*, p. 21.
45. *Cursillo Pre-Selectivo, op. cit.*, p. 10, sub IV, 2b; *Informe, op. cit.*, p. 21.
46. *Cursillo Pre-Selectivo, op. cit.*, p. 10-11, sub IV, 2c.
47. *Ibid.*, p. 11, sub IV, 2d¹.
48. *Informe, op. cit.*, p. 22.
49. Berman, *op. cit.*, p. 1344, is silent on the number of days for which the offender could be held in preventive detention.

50. Interview with Ismaël Séfer Zárate, 22.3.1983.
51. **LPP**, 1973, Art. 368.
52. **Ibid.**, Art. 369.
53. Ministry of Justice, Instruction no. 8, 11.5.1973, Havana.
54. **LPP**, 1973, Art. 371, subsection 2.
55. **Ibid.**, Articles 369, 371, 372.
56. **Ibid.**, Art. 253; Prieto Morales, **op. cit.**, p. 177.
57. **LPP**, 1973, Art. 366; Prieto Morales, **op. cit.**, p. 174.
58. Prieto Morales, **op. cit.**, p. 175.
59. Ministry of Justice, Instruction No. 15, 12.6.1973, Havana.
60. Interview with a lay judge from the period, Abel Miguel González, 26.3.1983. Cf. also **Informe**, **op. cit.**
61. **LPP**, 1973, Art. 379.
62. Nuñez y Nuñez, **op. cit.**, p. 303.
63. Military Decree No. 213, Art. IV.
64. **Ibid.**, Art. XVIII.
65. **Ibid.**, Art. XXII.
66. Prieto Morales, **op. cit.**, p. 175; **Cursillo Pre-Selectivo**, **op. cit.**, pp. 10-11, sub IV,2.
67. Immediately afterwards, the President reminds the accused of his or her right to nominate a speaker for the defence (this can be any person and need not be a lawyer).
From: **Cursillo Pre-Selectivo**, **op. cit.**, p. 13, sub IV 3e (6). By comparison with the regulations for correctional justice and the legislation of 1973 on the base tribunals, it is striking that no criteria are provided for the choice of the lay defence.
68. Berman, **op. cit.**, p. 1345.
69. **Informe**, **op. cit.**, p. 35.
70. Military Decree No. 213, Articles XVII-XX, etc.
71. **Ibid.**, Art. XXI.

72. *Ibid.*, Articles XXI and XXIV.
73. **LPP**, 1973, Art. 375.
74. *Ibid.*, Art. 374, subsection 1 and 2.
75. Ministry of Justice, Instruction no. 4, 10.5.1973, Havana. Legal assistance with an appeal on grounds of unconstitutionality presented before the Supreme Court cost 40 pesos.
76. Compare Chapter Five.
77. **LPP**, 1973, Art. 374, subsection 3; see too Ministry of Justice, Instruction No. 18 ('On representation in court before the Base Popular Tribunals by members of the mass organisations nominated for that purpose'), 12.6.1973, Havana, which also stated:
 Fifth: This Instruction is to be communicated to the following in order for them to be acquainted with it and to carry it out: the Federation of the Workers of Cuba, the National Association of Small Farmers, the Federation of Cuban Women and the Committees for the Defence of the Revolution.
78. Berman, *op. cit.*, p. 1343; Booth, *op. cit.*, p. 184.
79. Although Booth recorded this for San Ramón in 1968 (*op. cit.*, pp. 184-185), it is not mentioned in the handbook **Cursillo Pre-selectivo** of 1966. Nor is it mentioned in Ministry of Justice's publication, **Guía para ofrecer conversatorios sobre los Tribunales Populares** dating from the same period containing instructions for the lay judges of the Popular Base Tribunal, 'Dragones' District, in the use of all kinds of formulae during the public trials.
80. Interview with Abel Miguel González, 26.3.1983.
81. Booth, *op. cit.*, pp. 184-185.
82. Short Pre-Selection Course, *op. cit.*, p. 13, sub IV 3e (6).
83. Berman, *op. cit.*, p. 1345; compare also note 67.
84. Unless the 'accusation' concerned a delict that could only be tried at the instigation of the injured party.
85. Short Pre-Selection Course, *op. cit.*, pp. 13-14, sub IV 3e (9-17).
86. **Informe**, *op. cit.*, p. 37.
87. Short Pre-Selection Course, *op. cit.*, p. 14, sub IV 3e (18).

88. Berman, *op. cit.*, p. 1338. According to a brochure of the Ministry of Justice, '¿Qué son los Tribunales Populares?', Havana, 1966 [?], p. 11:
 On the other hand, the trials in the Popular Tribunals are oral and public and are held before three Judges, who arrive at their decision by majority vote.
 Procedural guarantees in the trial are offered by the right of every defendant to nominate a defence counsel, to make statements or not, to question the accuser and witnesses, and to be held innocent unless proved guilty.
89. Short Pre-Selection Course, *op. cit.*, p. 15, sub IV 3e (18, 19 and 20).
90. LPP, 1973, Art. 380-1.
91. *Ibid.*, Article 380-3. A ministerial instruction of 12.6.1973 detailed the original grounds for challenge at the base tribunals. From this date they were:
- 1 Kinship within the fourth degree of consanguinity or the second degree of affinity with any of the accused, the victims, those parties injured by the punishable offence, or those civilly responsible...
 - 2 The relation of adoption, custody or legal guardianship over any of the persons previously mentioned.
 - 3 To be, or to have been, the accuser of any of the accused.
 - 4 To be involved in proceedings for having been accused by any of the persons named in paragraph one.
 - 5 Close friendship or manifest hostility towards any of the persons mentioned in paragraph one.
 - 6 To have been the defender or accuser of any of the parties, to have passed judgement in the trial or any of its parts as lawyer or to have intervened in the trial or any of its parts as public prosecutor, prosecutor, investigator, expert or witness.
 - 7 To have a lawsuit pending involving any of the accused.
 - 8 To have direct or indirect interest in the trial.
- Ministry of Justice, Instruction No. 12, 12.6.1973, Havana.
92. *Ibid.*, Art 380-4.
93. *Ibid.*, Art. 380-7.
94. *Ibid.*, Art. 380-8.
95. *Ibid.*, Art. 380-9.
96. *Ibid.*, Art. 380-8.
97. *Ibid.*, Art. 381, compared with Art. 364 and Art. 45.
98. Military Decree No. 213, e.g. Art. XLIX.

99. Nuñez y Nuñez, *op. cit.*, II, p. 303.
100. Military Decree No. 213, Art. XXII.
101. *Ibid.*, Art. XXV.
102. *Ibid.*, Art. XLV.
103. Cf., e.g., Henry W. Ehrmann, **Comparative Legal Cultures**, Prentice Hall, New Jersey, 1976, p. 95; M. Cherif Bassiouni, **Criminal Law and its Processes. The Law of Public Order**, Charles C. Thomas, Illinois, 1969, pp. 456-466.
104. Compare Chapter Three.
105. The Article of the Constitution concerned is 26. Cf. Nuñez y Nuñez, *op. cit.*, II, pp. 311-312, where he comments on Art. XXII of Military Decree No. 213. In 1942 the Supreme Court had judged a similar rule, Art. 665 of the LEC of 1899, whereby a confession by the accused was sufficient proof of a punishable act, to be unconstitutional; for this Sentencia del Pleno del Tribunal Supremo, no. 41, 2.6.1943, compare Nuñez y Nuñez, *ibid.*, I, pp. 601-603.
106. Ley Fundamental de la República, 7.2.1959, Art. 26; cf. also Prieto Morales, *op. cit.*, II, p. 187.
107. LPP, 1973, 383 jo. Art. 3.
108. *Ibid.*
109. *Ibid.*, Art. 317.
110. *Ibid.*, Articles 380, 5 and 6, 316 and 362. In 1973 the following remarks were made on the functioning of the basic administration of justice in the 1960s:
All kinds of evidence mentioned in the existing legislation are known and admitted, confession, written proof, testimonial proof, proof by experts and judicial examination, as well as any other methods proposed by the parties or available to the Tribunal.
Source: *Informe*, *op. cit.*, p. 35. Cf. Eloy G. Berino Brito, 'El proyecto de Ley de Procedimiento Penal', *Revista Cubana de Derecho*, Year 2, No. 4, 1973, p. 40.
111. LPP, 1973, Art. 380-4.
112. Berman, *op. cit.*, pp. 1319-1320. The sitting of the Popular Tribunal of San Miguel del Padrón, Havana, at which Berman was present, was held on August 20th 1968,
113. Compare Chapter Five.
114. *Sic* Berman, p. 1328. To my knowledge there neither is nor has been a special women's division of the CDR.

115. Berman, *op. cit.*, p. 1328. The hearing attended by Berman was held in the Popular Tribunal of Luyanó, Havana, on 26th August 1968.
116. Military Decree No. 213, Art. XLIX.
117. It is not clear from the various accounts under what conditions this instrument could be used. It is at any rate clear that it was not subject to the same conditions as the ordinary legal instrument of 'review'. Ordinary review could only be used in cases where
 - there was a question of disproportionate sentences in the conviction of a number of persons for a crime that had been committed by one person;
 - a person was convicted of murder or manslaughter while the victim turned out to be still alive;
 - a criminal conviction turned out afterwards to have been based on a false document.Cf. LEC of 1888, Art. 954, *La Orden*, No. 92, 26.6.1899 [in Nuñez y Nuñez, *op. cit.*, II, pp. 298-300].
118. *Informe, op. cit.*, p. 18.
119. Santiago Cuba, *op. cit.*, p. 17; *Informe, op. cit.*, pp. 18-19.
120. *Informe, op. cit.*, pp. 19-20; Santiago Cuba, *op. cit.*, p. 17; Berman, *op. cit.*, p. 1338, in an interview with Rogelio Buznego, Director of the Havana Province district of the Popular Tribunals.
121. *Informe, op. cit.*, p. 18.
122. Berman, *op. cit.*, p. 1338, from an interview with Mercedes Bosch, *Asesora* at the Tribunal of Luyanó in Havana on August 26th 1968.
123. LPP, 1973, Art. 68.
124. *Ibid.*, Articles 69, 70, 71.
125. *Ibid.*, Art. 61.
126. *Ibid.*, Articles 59 (1) and 386.
127. *Ibid.*, Art. 387.
128. *Ibid.*
129. At least according to Prieto Morales, *op. cit.*, p. 189.
130. LPP, 1973, Art. 388.
131. *Ibid.*, Art. 389.

132. *Ibid.*, Art. 391.
133. *Ibid.*, Art. 46; Prieto Morales, *op. cit.*, p. 256.
134. *Ibid.*, Art. 68-a, which limited cassation to the final verdicts of courts of the first instance, against which *apelación* could not be used.
135. *LOSJ*, 1973, Art. 32 sub d.
136. For the Dutch law of criminal procedure see Art. 1, *Wetboek van Strafvordering*.
137. Edouard Zellweger, 'The principle of Socialist Legality', *Journal of the International Commission of Jurists*, Winter 1964, ed. Seán Macbride, Vol. V, no. 2, Geneva, p. 199.
138. Prieto Morales, *op. cit.*, II, p. 174.
139. The term 'social control' is used here in the sense in which Black uses it:
The normative aspect of social life, or the definition of deviant behaviour and the response to it, such as prohibitions, accusations, punishment and compensation.
Donald Black, *The Behaviour of Law*, Academic Press, New York & London, 1976, pp. 1-2.
140. Herbert Packer, *The Limits of the Criminal Sanction*, Part II, Stanford University Press, 1969, pp. 149-173. Packer counterposes two models for the actual shape which criminal proceedings can take in a specific case: the Crime Control Model and the Due Process Model. As he states on p. 153:
Rather, they represent an attempt to abstract two separate value systems that compete for priority in the operation of the criminal process.
141. *Ibid.*, pp. 165-166.
142. *Ibid.*, p. 163.
143. John Griffiths, 'Ideology in Criminal Procedure, or a Third "Model" of the Criminal Process', *The Yale Law Journal*, Vol 79, no. 3, January 1970, pp. 359-417 [citation from p. 360].
144. *Ibid.*, p. 373.
145. *Ibid.*, p. 383; Packer, *op. cit.*, p. 151.
146. Griffiths, *loc. cit.*
147. *Ibid.*, p. 380.
148. The defence of models, including the 'Family Model', becomes problematical as soon as one is confronted with social reality. The question then arises of the

kind of society in which the model would be applicable. A type of trial based on the supposition of reconcilable interests and feelings of collectivity, affection and solidarity will only serve to obscure the realities of a society in which fundamental conflict between social classes and interests exists, at least in so far as this conflict, which clashes with the ideal, is not brought up as an essential part of the discussion. In such a society the 'Family Model' in fact reveals less than the 'Due Process Model'. The latter may well ignore the socially unequal distribution of the possibilities of ensuring the recognition of officially guaranteed formal rights; but it does at least recognise in the judicial proceedings a fundamental conflict of interests between the state and the offender. I am thus in agreement with the critical remarks addressed to the Griffiths model by Barkai in a discussion of the basic (i.e. municipal) administration of justice in the United States, for example:

It is not acts of faith or a renewed spirit of public confidence, but rather a genuine sharing of social wealth and political power, which can alone secure the kind of democratization of governmental authority that would permit experiments in non-adversary judicial process without risking the transformation of the courts into naked organs of narrow political interests.

John L. Barkai, 'Lower Criminal Courts: The Perils of Procedure', *The Journal of Criminal Law & Criminology*, Vol. 69. no. 3, 1978, p. 288. Barkai's expectations regarding the applicability of both the 'Due Process Model' and the 'Family Model' in a society like that of North America are thus flatly negative. He formulates this on pp. 288-289 as follows:

Therefore, given the present configuration of American social conflicts and interests, the reform disposition [regarding the Lower Criminal Courts] finds itself trapped between Scylla and Charybdis: faced on the one hand by a judicial system where the impartial administration of law may only mask the inequity of the laws, where constitutional protections are most available to those who can afford them and are, as Griffiths convincingly argues, generally irrelevant 'to the actual experiences of the sorts of people on whom the system ordinarily operates', yet confronted on the other hand with the historically transparent dangers involved in any attempt to graft a non-adversary model of criminal procedure into a society of inequality and division...

Structural social contradictions will only run the risk of being mystified in trials which tend towards either the 'Due Process Model' or the 'Family Model'.

In this connection, Barkai's expectations of the experiments carried out in Cuba with the base tribunals in the 1960s are positive. Relying on Berman's research, he states, for example, (pp. 286-288):

There certainly seems to be evident, in the Cuban lower courts, a fundamental harmony of interests, which provides the basis for Griffiths' alternative to the Battle Model of criminal procedure.

149. M. Weber, *From Max Weber, Essays in Sociology*, eds. H.H.Gerth & C.W.Mills, Oxford University Press, New York, 1946, pp. 220-221.

150. H.E.Pepinsky, 'Reliance on formal written law and Freedom and Social Control in the United States and the People's Republic of China', **British Journal of Sociology**, 1975.
151. Black, *op. cit.*, p. 6.
152. *Ibid.*, pp. 1-2. Black also claims that a specific style of judicial administration can vary depending on the dominant style of social control in a community. In this respect law can occupy various positions on a spectrum stretching from punitive to therapeutic. It can be more or less oriented toward conciliation or compensation for the damage caused. The therapeutic and conciliatory models in particular are based on the ideal of social harmony. The offender is re-educated and adapted or a compromise is reached between the opposed parties via mediation (pp. 4-6).
153. Interview, 22.3.1983. with Ismaël Séfer Zárate.
154. Cf. Richard L. Abel, 'Introduction', **The Politics of Informal Justice**, ed. Richard L. Abel, Vol. 2, Comparative Studies, Academic Press, New York, 1982, p. 2.
155. See Chapter Four.
156. Hannah Arendt, **On Revolution**, Harmondsworth, Middlesex, 1979 [1963], p. 35.
157. Samuel P. Huntington, **Political Order in Changing Societies**, Yale University Press, 1978, p. 266. Huntington is here referring to the first phase of a revolution. The second phase, which will be discussed in relation to Cuba farther on, is summed up as follows:
A complete revolution, however, also involves a second phase: the creation and institutionalization of a new political order.
158. Karl W. Deutsch, 'Social Mobilization and Political Development', **The American Political Science Review**, Vol. LV, September 1961, p. 494.
159. Richard R. Fagen, **The Transformation of Political Culture in Cuba**, Stanford University Press, California, 1969, p. 7.
160. Kenneth L. Karst & Keith S. Rosenn, **Law and Development in Latin America**, University of California Press, Berkeley, 1975, pp. 647 and 666. For example, on p. 674 they claim:
National laws that have not 'penetrated' into a rural area, surely persuade no one in that area that he or she is a member of a national community.
161. See Chapter Five.
162. *Ibid.*
163. Zellweger, *op. cit.*, p. 190.

164. **Ibid.**, p. 202.

THE 1970s: SECOND THOUGHTS AND INSTITUTIONALISATION

The base tribunals were introduced at a special period in Cuban history -- the delicate early years of the revolution that started in 1959. These tribunals reached their peak at the end of the 1960s, when mass mobilisation, the 'new man' and international solidarity were the highest priorities. In the 1970s the base tribunals were given a legal status through their incorporation in the new Law on Judicial Organisation of 1973. In 1976 they were replaced as such by the Municipal Tribunals. In the following discussion it is this final transformation of the Cuban basic administration of justice and the period in which it took place which are central.

1968 was the year of an important change in Cuban foreign policy. 1970 marked the introduction of all kinds of far-reaching changes in Cuban domestic policy. We have already seen how the relationship with the USSR played an important part in this process of transformation.¹ In this chapter the general political developments and the institutional changes are dealt with. To what extent did the USSR continue to play a central role in the 1970s? What were the major developments in foreign and domestic policy during this decennium? What institutional changes accompanied these developments and what effect did they have on the organisation and functioning of the Cuban base tribunals? As we shall see, the ties with the Eastern bloc countries grew tighter and more resilient, especially in the sphere of economic relations. At the same time both general foreign policy and the restructuring of the national economy displayed a certain pragmatism. The phase of mass mobilisation seemed to have come to an end and the time was ripe for a thorough and comprehensive process of institutionalisation. The more or less provisional structure which State power had had up to 1976 acquired a definitive form by the new constitution in the popularly elected organs of *Poder Popular*. We shall also examine the way in which the people participated in these new institutions and the role it had in the intensive process of legislation that is a characteristic of the 1970s.

CLOSER TIES WITH THE SOVIET UNION

The links with the socialist partners in Eastern Europe grew tighter and more harmonious from 1968. The closer diplomatic relations went hand in hand with an increasingly closer intertwining of economic interests, which at first sight seem to have been in Cuba's interests. The ideological shift in Cuban foreign policy marked by an open statement of approval of the Soviet invasion of Czechoslovakia in 1968 was the start of improved relations between Cuba and the Soviet Union. In 1969 new trade agreements between the two countries were signed which, unlike those of the preceding years, were clearly to the satisfaction of the Cubans.² The diplomatic

relations grew steadily warmer. In January 1969 the Soviet Vice-President, Vladimir Novikov, visited Cuba. Six months later a good deal of publicity was given to an official visit by the Soviet fleet in Havana and to the gesture of international solidarity made by the Soviet ambassador in Cuba when he joined 650 Soviet technicians to work for a day in the sugar harvest in November of the same year. In Spring 1970 Raúl Castro, Minister of Defence, visited the Soviet Union for new discussions on armaments.³ At the end of 1971 the Soviet Premier, Alexei Kosygin, was given an extremely warm welcome in Cuba, which was totally different from the very cool reception that he had received during a similar visit in 1967.⁴ In 1972 Fidel Castro visited Moscow twice, accompanied on both occasions by Carlos Rafaël Rodríguez, the man behind the economic reorganisation.⁵ And finally in 1974 the Cuban people was honoured with a return visit by the Soviet leader, Leonid Brezhnev.⁶

The economic consequences soon followed. The talks with a Cuban delegation led by Carlos Rafaël Rodríguez in Moscow at the end of 1970 resulted in the establishment of the Soviet-Cuban Commission of Economic, Scientific and Technical Cooperation.⁷ This commission was to play an important part in further developments. Its responsibilities included the coordination of planning activities in both countries, the drawing up of guidelines for economic cooperation and trade relations, and the encouragement of technical-scientific exchange. The first of the annual meetings of the commission was held in September 1971.⁸

A further important step in the improvement of the relations between the two countries was Fidel Castro's visit to the Soviet Union in the middle of 1972. It was his first visit in eight years.⁹ It led to Cuba's entry into COMECON, the East European Council for Mutual Economic Cooperation.¹⁰ Castro's second visit to Moscow in the same year and his meeting there with Party leader Brezhnev resulted in important agreements between the two countries, such as higher prices for Cuba's main export products, sugar and nickel. Furthermore, the interest-free repayment of Cuba's debt to the Soviet Union was rescheduled for 1986 and new credits and technical aid were promised for the coming years.¹¹

These developments had unmistakably favourable results for Cuba. At the same time they implied a far-reaching long-term adjustment of Cuban economic policy to that of the countries of the Eastern bloc. The establishment of the Commission of Economic, Scientific and Technical Cooperation certainly increased the influence of the Soviet Union over the Cuban economy.¹² The primary effect of Cuba's admission to COMECON was a further structural entanglement of the Cuban economy with those of the other eight Council members. Thus the drawing up of Cuba's first five-year-plan for the period 1976-1980 took place in strict coordination with the plans of the other COMECON members. At the same time this incorporation of the Cuban economy within the world system of the socialist division of labour meant not just an increased interdependence. Like countries such as Mongolia, Cuba's position within such a non-capitalist world system of the division of labour is that of an underdeveloped country.¹³

While three-quarters of the economic and technical assistance given to Cuba by the Soviet Union in the period 1960-1973 concerned the industrial sector, the Cuban economy is still centred mainly on agriculture and the extraction of raw materials, as it was before 1959.¹⁴ Cuba is still heavily dependent on a single export product: sugar. Trade is an essential element of the Cuban economy and sugar plays a major role in it.¹⁵ In 1958 it accounted for 81% of Cuban exports, and in 1976 this had risen to 88%.¹⁶ Minerals like nickel accounted for a further 6% of exports and

tobacco 3%. Within the COMECON world system of the socialist division of labour, Cuba is still the exporter of agricultural products and minerals and the importer of industrial products, oil, etc.¹⁷ The Soviet Union has replaced the United States as the main customer for Cuban exports. In 1959 almost 69% of Cuba's trade was with the United States; in the period 1961-1974 73% of Cuba's trade was with the socialist countries: the USSR (48%), the People's Republic of China (9%) and the other Eastern bloc countries (approx. 14%).¹⁸ In 1977 Cuba depended for 80% of its foreign trade on the COMECON countries; 60% of its foreign trade was with the USSR.¹⁹

In a careful comparison of Cuba's economic relations with the United States before 1959 and the economic relations with the socialist partners after 1959, Leo-Grande concludes that there has been a general reduction of economic dependence on foreign partners, but that Cuba is nevertheless stuck with a structurally dependent economy. On the other hand, within the post-revolutionary period itself there is a detectable increase in economic dependence on others, namely the COMECON partners, if the 1960s are compared with the 1970s.²⁰

Besides the economic entanglement through trade contacts, the relation between Cuba and the COMECON partners is also characterised by considerable financial, technical-scientific and other kinds of aid. Soviet aid to Cuba in the 1970s has been estimated at two million dollars a day, which would represent a doubling of the estimated aid that was given in the 1960s.²¹ However unreliable these estimates may be, there can be no denying the fact that the Cuban revolution could not have survived without Soviet aid.²² As Fidel Castro expressed it in 1975 in a speech to the First Congress of the Cuban Communist Party:

Without the steadfast, firm and generous help of the Soviet people, our country could not have come out of the conflict with imperialism alive. They bought our sugar when our market was brutally closed down by the United States; they gave us the raw materials and fuel which we could not have got anywhere else in the world; they delivered the weapons free of charge which we used to repulse the mercenaries at Girón and to arm our Revolutionary Armed Forces so that we could be sure that any direct aggression by the United States would cost them dearly; they gave incredible support to our economy in the critical years of the economic blockade. Thousands and thousands of Soviet military and technical experts helped to train our Armed Forces and lent their practical assistance to all the areas of our economy. The efforts of the Soviet people were followed to the best of their ability by other socialist countries.²³

The assistance given to Cuba by the Soviet Union and other East European countries included the conclusion of trade agreements on favourable terms for Cuba, currency loans and technical-scientific exchange. (I leave military aid aside here.) It was mainly Soviet credit which was used to cover the enormous balance of trade deficit: for the period 1959-1975 Mesa-Lago gives a figure of 4.3 milliard pesos.²⁴ Other North American sources estimate Cuba's total foreign debt in 1976 resulting from a balance of trade deficit at 5.9 milliard dollars, of which 4.6 milliard dollars are owing to the USSR.²⁵ The repayment of this debt to the USSR has been re-scheduled to begin in 1986. The technical and scientific exchange is on a large scale and is comprehensive. For the period 1967-1971 there were 7,500 COMECON experts

in Cuba; since 1971 their numbers have quadrupled. The same is true of Cubans who study in the Soviet Union and in other East European socialist countries.²⁶

We can conclude that the link between Cuba and the East European socialist partners grew closer, tighter and more stable in the course of the 1970s. In the face of the critical economic pressure on Cuba, the Soviet Union was able to impose certain conditions for future credit supply, new trade agreements and other forms of cooperation. This meant the setting up of a Commission for Cooperation, Cuba's admission to the COMECON and a fundamental reorganisation of Cuba's domestic economic policy. The immediate economic results were favourable to Cuba. Partly thanks to the sudden rise in sugar prices in the first half of the 1970s, the Cuban economy experienced a record growth in this period.²⁷

On the other hand, these same economic developments appear to have caught Cuba in a new form of economic dependence. The fundamental reason for this, the dependence of the economy on an agricultural monoculture, is a problem that still has to be resolved. The division of labour within the world system of the socialist countries has not found a way to eradicate this problem of the monoculture, which is itself the heritage of Cuba's relations with the colonial world.²⁸ Cuba's long-term obligations toward the COMECON countries concern the delivery of agricultural products and minerals. The repayment of Cuba's debt will also probably have to be done in this way. This implies that Cuba's economic priority regarding investments and so forth is fixed for the time being, and that Cuban economic dependence on a foreign partner that is industrialised and technically advanced is here to stay for the time being too.

Since 1968 the Cuban leaders have had an openly cooperative and appreciative attitude towards the USSR. The far-reaching economic and political assistance and the intensive technical-scientific and cultural exchange have left their mark on Cuba. Relatively isolated as it is, the island cannot help revealing traces of the Soviet influence. This is reflected in Cuban foreign policy in the 1970s and in the new economic policy which was introduced at the same time. It is also reflected in the innovations and reorganisations which were implemented in this period affecting the State and the judicial apparatus.

A NEW ORIENTATION IN FOREIGN POLICY

The new phase in the relations with the Soviet Union opened a period in Cuban foreign policy of change of a more general nature. There was a revision of Cuba's attitude towards the neighbouring countries in the Caribbean and in Latin America as well as towards the North American neighbours. At the same time, Cuba became involved in African affairs.

The Cuban ideological line on foreign policy was much less intransigent in the 1970s than in the previous period. Less emphasis was laid on the road of armed struggle and more stress was put on the existence of a plurality of roads to socialism.²⁹ The new pragmatism and increased flexibility were reflected in the cautious advances made to regimes which were not explicitly revolutionary, such as that of Eduardo Frei in Chile in 1969, Peru in 1970, Venezuela in 1972 and Argentina in 1973.³⁰ New relations involving varying degrees of cooperation were established with various governments in the Caribbean, such as Panama, Guyana and Jamaica.³¹ The hope of seeing two, three or more Vietnams in Latin America³² had made way for the desire for good diplomatic relations with the other countries of the continent.³³ By the mid-1970s Castro had adopted the following line:

No country in Latin America, regardless of its social system, has to fear from Cuba's Armed Forces...The Cuban government has never thought of carrying the revolution with the weapons of Cuba's military units, to any nation in this hemisphere. This would be an absurd and ridiculous idea.³⁴

We sympathise with revolutionary movements. However, if a revolutionary movement emerges in a nation that has relations with Cuba and respects our sovereignty, in spite of our sympathy for that revolutionary movement, we will abstain from supporting it.³⁵

At the end of the decennium of the 1960s, Mexico was the only American country to have diplomatic and trade relations with Cuba. By 1977 eleven Latin American and Caribbean countries had resumed relations with Cuba.³⁶ The Organisation of American States (OAS), of which the United States was also a member, had given its member states the freedom to determine their own policies on Cuba in 1975 and to renew the relations that had been broken for almost ten years.³⁷ The more pragmatic and moderate position adopted by Cuba opened new possibilities for participation in Latin American associations for regional cooperation. Cuba was admitted to SELA, the Latin American Economic System that was set up in October 1975.³⁸ Cuba's growing prestige in the Caribbean was reflected in its active role in the Caribbean Committee of Development and Cooperation of the ECLA that was established in May 1975.³⁹ Cuba was admitted to other similar organisations in these years, such as the Latin American Energy Organisation (OLADE), the Latin American and Caribbean Sugar Exporting Group (GEPLACEA), and the Caribbean Multinational Shipping Company (NAMACUR).⁴⁰ The advances made by Cuba towards its South American neighbours demonstrated the recognition and importance attached to common interests and common problems of underdevelopment. The same is true of Cuba's active participation in the Movement of Non-Aligned Countries in the 1960s and the 1970s.⁴¹

These contacts were at any rate important in helping Cuba to avoid the danger of a one-sided dependence on the countries of the Eastern European socialist bloc. The decennium of the 1970s was one in which Cuba was able both to give form to its identification with other Third World countries and to maintain its economically and politically necessary links with the Soviet Union. Inevitably, this meant contradictions with various liberation movements and non-aligned countries and compromises with non-revolutionary regimes.⁴² Even Cuba's relations with the United States went through a period of relative ease in the 1970s, influenced by the generally relaxed atmosphere of East-West relations at the time. While Cuba never abandoned the stance that the United States is the 'great imperialist enemy',⁴³ concrete steps towards a normalisation of relations were first taken in 1973, the year when both countries concluded an agreement on the hijacking of aircraft.⁴⁴ Secret talks between Washington and Havana started in November 1974, but they were soon called to a temporary halt as a result of Cuba's intervention in Angola.⁴⁵ Positive steps were resumed in 1977, when a fishing agreement was concluded, the possibility for North American citizens to visit Cuba was opened, and offices to represent their respective interests were established in both capitals in September.⁴⁶ The revival of the Cold War that broke out with the election of the Reagan administration has set the clock back as far as this thaw is concerned.⁴⁷

NEW ECONOMIC PRAGMATISM

The failure to harvest ten million tons of sugar in 1970 was a moral, financial and economic blow. It also marked a definitive turning point in Cuban domestic economic policy. From then on a more efficient and technical approach to the economy was introduced and more attention was paid to market mechanisms and material incentives to increase labour productivity. The one-sided emphasis on moral consciousness and mass mobilisation that was typical of the late 1960s had become a thing of the past. Years later, Fidel Castro was to look back on the late 1960s as a utopian period in which idealistic errors were committed. During the First Congress of the Cuban Communist Party in December 1975, he said:

Our economic policy has not been as efficient as it could have been. We have not applied the best methods of running an economy...

In the management of our economy we have without doubt committed errors of idealism and at times we have failed to recognise the reality of economic laws which must be observed.⁴⁸

The prominence of Carlos Rafaël Rodríguez after 1970 was typical of the new line. With the organisation of a small specialist team of statisticians and economists and the design of the first computerised input/output scheme of the Cuban industrial sector, it looked as though Rodríguez had been planning the politico-economic shift well in advance. The fact that one of the reasons for the failure of the economy was a lack of economic planning, the pressure from the USSR to organise the economy in a more rational and efficient manner, and Moscow's confidence in Rodríguez as a member of the early Cuban Communist Party, the PSP -- these were all factors which soon combined to make Rodríguez the most important negotiator with the partners from the Soviet Union and the other Eastern European socialist countries.⁴⁹ In a brief space of time Rodríguez was able to take over the actual supervision of domestic economic planning through his numerous functions. He was founder and chairperson of the Commission of Economic, Scientific and Technical Cooperation, negotiator for new international trade agreements, Vice-Minister of Foreign Affairs and delegate at socialist discussions on planning, trade and computation.

At the end of 1970 there was a Centre for National Computation and Applied Mathematics (CEMACC) in operation. A year later the Cuban Central Direction of Planning (*Junta Central de Planificación*, JUCEPLAN) started the publication of a bi-annual Statistical Bulletin. Preparations for the economic plans for the periods 1973-1975 and 1976-1980 began in 1972. The plan for the second period was officially approved in December 1975 by the First Congress of the Cuban Communist Party.⁵⁰ The new system of economic organisation empowered JUCEPLAN to draw up the national economic plans.⁵¹ Once the JUCEPLAN plans had been discussed at national and local level and had been approved, they became law.⁵² It was clear that the time had come to revise both the systematic underestimation of technical and administrative abilities and the overestimation of a purely revolutionary dedication. At the inauguration of a National School of Management in 1976, Raúl Castro had this to say:

[In the 1960s] we deprived our cadres of handling the budget, the overall financial plan, charges and payments [among enterprises], profits and taxes, all of which are essential for controlling and directing the economy and encouraging greater efficiency...Moreover

we taught [cadres] to look down on [these key economic tools] as running counter to communist morale and awareness, because in our ignorance of economic matters we viewed them as overtly capitalist.⁵³

By introducing market mechanisms on a limited scale it was hoped that the result would be a firmer hold over the functioning of enterprises and institutions. The system of central budgeting applied in the 1960s, for example, was largely replaced by a system of self-finance, whereby enterprises could obtain loans with interest from the National Bank. One of the new assumptions behind this was that enterprises must make a profit.⁵⁴ Another change with previous practice was that it was not so easy for enterprises to make use of voluntary labour. The costs and wages of volunteers had to be paid to the mass organisations or schools which mobilised volunteers. This money eventually flowed into the state budget.⁵⁵ Presumably this regulation has reduced the willingness and frequency with which enterprises employ voluntary labour.

Rationalisation and further mechanisation of sugar cultivation and the sugar industry had similar consequences. The mechanisation of the sugar harvest from 7% in 1972 to 42% in 1977 also meant a drop in voluntary work in this sector. In the early 1970s the number of volunteers required dropped by some 30,000 per annum. A new Soviet-produced type of harvester had taken the work over. Instead of the average 1.72 tons per day harvested by volunteers and the 55 tons harvested by experienced cane-cutters, these machines harvested 125 tons of sugar cane per day.⁵⁶ After a temporary decline after 1970, the annual production of sugar in Cuba grew steadily year by year.⁵⁷

Conclusions were also drawn from the rising rate of absenteeism at the end of the 1960s. The system of moral incentives had turned out to be inadequate. In 1970 absenteeism from work had reached the 20% level, and in agriculture it was as high as 52%.⁵⁸ The blame for this could be laid at the door of the enormous demands which had been made on the population, the growing dissatisfaction, and the enormous socialist inflation facing the Cuban economy. This socialist inflation meant that the average Cuban earned more than he or she could spend. An inquiry conducted in 1972 showed that 10% of the average family income in Havana was spent on rent and 25% on food and other basic necessities. Because education, health care, recreation and other items, such as a telephone, gas, water and electricity were often free of charge and luxury goods were simply not available, the rest of the income was left over.⁵⁹ In 1970 the situation had got so out of hand that the Cuban population as a whole had so much money that it could live for a year without working. It was a time of prosperity for the black market, where goods circulated for prices which were sometimes five or ten times the official rate. An attempt was made to counter this socialist inflation by cuts in a number of services which existed or had been promised. The proposal to abolish rents and the raising of the minimum wage were not put into effect and from 1976 telephone calls and other services had to be paid for. There were more investments in the production and purchase of consumer goods and the prices of certain luxury items on the free market were raised.⁶⁰ These measures took effect and money began to acquire value again, according to Fidel Castro.⁶¹

These were developments which, for the time being at any rate, broke with the idealistic goals of the 1960s to drive the idea of money out of the mind of the 'new man'. The new rules on wages and other work incentives carried a similar

message. The first step was taken by Fidel Castro during his speech on May 1st 1971:

We have stated our general policy about improving the income level of low-paid workers and retired persons...But this can not in any way imply that all wages be equalised...We just simply can not forget that some jobs are much more difficult than others; that some jobs require many more qualifications and carry more responsibility than others...What else can we do except offer some extra remuneration to those workers? We must establish some kind of differential remuneration; there is no other method.⁶²

By November 1973, when the Thirteenth Congress of the Cuban Trade Union Congress, (CTC), was held, there was theoretical discussion of the new line. The main topic of the Congress was the reintroduction of the socialist system of 'to each according to his labour' instead of the communist system of 'to each according to his needs'.⁶³ In practical terms this meant the reintroduction of work standardisation, some wage differentials and the extension of other individual forms of remuneration. A study carried out in 1968 had indicated that in the 200 enterprises investigated, between a quarter and a half of the working day was wasted. This low level of productivity was to be countered with the reintroduction of work quotas, i.e. standards laying down how much work a worker was expected to do in a specified time,⁶⁴ and with a new law on loafing discussed below. A new system of socialist emulation now combined material and moral incentives. Luxury items such as radios, refrigerators and televisions were sold at reduced prices by work centres to the hardest working employees.⁶⁵ The difference between the maximum and minimum incomes in the 1970s seems to have grown by comparison with the situation at the end of the 1960s.⁶⁶

NEW FORMS OF STATE POWER: PODER POPULAR

Besides the changes in Cuban foreign policy and domestic economic organisation, the 1970s also saw far-reaching innovations in the spheres of State power and law. In this respect the revolutionary process seemed to have reached a new stage. New insights and influences, a new approach to economic organisation, as well as a certain level of development of the revolution, led to a comprehensive process of institutionalisation⁶⁷ in Cuba in this period. In short, 1970 was the turning point in Cuba between a period of one-sided emphasis on ideological development such as the creation of the new man, mass mobilisation and anti-market mechanisms, and a period in which economic development, market mechanisms and processes of institutionalisation were top priorities.⁶⁸

The Cuban leaders were later to describe these new developments as a step forwards in the Cuban revolutionary process. At the First Congress of the Cuban Communist Party in 1975, Fidel Castro said:

Our revolutionary State has had a provisional structure for many years...

Among the tasks which today require the most attention by the Party, there is perhaps none of a political nature so important as the task of ensuring that the force and unity which we have achieved through our [revolutionary] process are given permanence in solid and adequate institutions.⁶⁹

In this period a popularly elected system of Popular Power was installed and the system of judicial organisation and (criminal) justice was entirely revised. In 1973 new laws on judicial organisation and criminal procedure were promulgated. These laws were adapted in 1977 to meet the demands of the new system of administration which had been set up by the 1976 Constitution. A new Family Code was passed in 1975 and a new Penal Code was introduced in 1979.⁷⁰

The North American political scientist, Samuel Huntington, sees this development within the Cuban revolution as characteristic of the course of revolutions in general. After a first phase of the revolutionary process, in which the stress is laid on a rapid development of political consciousness and the mobilisation of new groups to participate in the revolutionary process, a second phase tends to follow:

A complete revolution, however, also involves a second phase: the creation and institutionalisation of a new political order. The successful revolution combines rapid political mobilisation and rapid political institutionalisation. Not all revolutions produce a new political order. The measure of how revolutionary a revolution is, is the rapidity and the scope of the expansion of political participation. The measure of how successful a revolution is is the authority and stability of the institutions to which it gives birth.⁷¹

In the specific case of Cuba, the process of institutionalisation that took place there in the 1970s can be characterised as:

The transference of power from a charismatic authority (with its specific organisations) to a legal-bureaucratic authority (encompassing a new organisational system, new procedures and functions).⁷²

The first ten years of the Cuban revolution were marked by profound socio-economic and political transformations. As Raúl Castro later expressed it, there were more pressing problems to be solved at that time than the problem of institutionalisation. The development of new economic relations, arming against foreign aggression, and the creation of a politically conscious people -- in short, guaranteeing the security of the revolution -- was the top priority.⁷³ In a retrospective on the 1960s, Fidel Castro said that the revolution was not in a hurry to create definitive State forms.⁷⁴ The explanation of the same phenomenon which had already been given by Che Guevara in 1965, however, referred not only to the practical question of priorities, involving time and patience, but especially to the idealistic factors:

Looking at things from a superficial standpoint, it might seem that those who speak of the submission of the individual to the state are right; with comparable enthusiasm and discipline, the mass carries out the tasks set by the government whatever their nature: economic, cultural, defence, sports, etc. The initiative generally comes from Fidel or the high command of the Revolution: It is explained to the people, who make it their own. At times local experiences are taken by the party and the government and are thereby generalised, following the same procedure.

However, the state at times makes mistakes. When this occurs, the collective enthusiasm diminishes palpably as a result of a quantitative diminishing that takes place in each of the elements that make up the collective, and work becomes paralysed until it finally shrinks to insignificant proportions; this is the time to rectify...

This mechanism is obviously not sufficient to ensure a sequence of sensible measures; what is missing is a more structured relationship with the mass. We must improve this connection in the years to come, but for now, in the case of the initiatives arising on the top levels of government, we are using the almost intuitive method of keeping our ears open to the general reactions in the face of the problems that are posed...

The institutionality of the Revolution has still not been achieved. We are seeking something new that will allow a perfect identification between the government and the community as a whole, adapted to the special conditions of the building of socialism and avoiding to the utmost the commonplaces of bourgeois democracy transplanted to the society in formation (such as legislative houses, for example). Some experiments have been carried out with the aim of gradually creating the institutionalisation of the Revolution, but without too much hurry. We have been greatly restrained by the fear that any formal aspect might make us lose sight of the ultimate and most important revolutionary aspiration: to see man freed from alienation.⁷⁵

By the start of the 1970s Cuba had come far enough to tackle the question of institutionalisation which had been postponed until then. The self-criticism of the Cuban leadership in 1970 regarding the weak and undemocratic position of the mass organisations, the far-reaching centralisation and bureaucratisation of the administration and the excessive interference by the Party in this, was linked to promises and an attempt to improve matters.⁷⁶ The mass organisations were to be given a much more important role as the basis for participation by the people in all kinds of forms of decisionmaking, both in enterprises and in administrative organs. At the end of 1970 elections were held throughout the country for new local union committees of the national Confederation of Cuban Workers (CTC). In the same year a discussion was opened on the role of the unions. The duty of a union to defend the rights of workers, for example, was to be given greater prominence.⁷⁷ The experiments with the organs of local government elected by the people at a local level, which had been broken off in 1968, were temporarily renewed in a more or less revised version in 1971. Once again local government elections were held, but this time they were elected by local Party delegates and delegates from the mass organisations.⁷⁸

Measures were also rapidly taken at national level to counter the centralisation and bureaucratisation of the administration. The Council of Ministers, which had been the main organ of State power since 1959 -- it had the authority to pass (constitutional) laws as well as executive powers⁷⁹ -- was extended in November 1972 by the addition of an Executive Committee. This Committee had already been announced by Castro in 1970. It ranked above the Council of Ministers and consisted of nine Vice-Premiers, including the influential figure at the time, Carlos Rafaël Rodríguez. It had direct control of important sectors of the economy and the administrative apparatus and was chaired by Fidel Castro. The responsibility for central government was thus shared by a larger number of people than previously. For the Cubans this was the first step towards an institutionalisation and depersonalisation of coordination and government,⁸⁰ a process that was not completed until 1976.

The reorganisation of the State power finally crystallised in a new form of popular power: the popularly elected *Poder Popular*. After an experiment lasting two and a half years with this kind of State organisation in one of the Cuban provinces, Matanzas, it was introduced throughout the whole country on 10th October 1976.⁸¹

By Article 4 of the Constitution that came into force in 1976, all power in Cuba is in the hands of *Poder Popular* as the representative of the working people.⁸² *Poder Popular* consists of a National Popular Assembly, 14 Provincial and 169 Municipal Popular Assemblies.⁸³ The *Asambleas Municipales del Poder Popular* consist of between 31 and 200 delegates, each of whom represents a district and is chosen by general election by all the residents of the relevant district. The voting is secret and is not compulsory.⁸⁴ Candidates are proposed by the various neighbourhood meetings which are held in each CDR block in the district.⁸⁵ These neighbourhood meetings can nominate a minimum of two candidates per meeting in an open discussion. Neither the Party nor the election commission have any part in this first round. The next stage is the compilation of the biography of the candidates by the election commission, which is displayed throughout the electoral district for a month. If the election commission finds evidence that is detrimental to the candidate, the latter must retire from the procedure. Finally, delegates to the Municipal Popular Assemblies are elected by secret vote from the candidates.⁸⁶ The delegates are elected for two and a half years. Every four months they must report back to their electorate on their activities in the so-called *rendición de cuenta*. In cases of serious shortcomings they can be dismissed by the voters.⁸⁷ The delegates to the Provincial Assembly and those to the National Assembly are chosen by and partly from the Municipal Assemblies.⁸⁸

The tasks of the Municipal Assemblies include supervision of all social, economic, educational and recreational activities in the area that falls within their jurisdiction. They exercise their power of local government within this area, both supplementing and interpreting the more general policy guidelines which come from the national and provincial levels. They are in charge of economic units which fall directly within their control. This refers exclusively to external administrative intervention, such as the appointment of the directors and managers of the enterprises which are directly under the management of the Municipal Popular Assemblies. The assembly inspects the running of the enterprises which are under their control and can act if the enterprise is not being run properly. In this connection the assembly can punish functionaries who are not doing their job properly. The practical, day to day running of the enterprise is not the concern of the assembly, but of the managers of the enterprise concerned.⁸⁹ The Municipal Assemblies can also issue bye-laws and decrees.⁹⁰

The Provincial Popular Assemblies have similar responsibilities and powers at the provincial level.⁹¹ The respective popular assemblies choose an executive committee and various working groups to carry out these tasks.⁹²

The National Popular Assembly is the highest organ of State power.⁹³ It is the only organ empowered to make laws, including constitutional laws.⁹⁴ It appoints the President and the members of the Council of State and of the Council of Ministers.⁹⁵ The National Assembly meets twice a year as a general rule. Its first meeting was held on December 2nd 1976. Its members are chosen for a period of five years.⁹⁶ The Council of State is the executive organ of the National Assembly and represents it between meetings.⁹⁷ The Council of Ministers constitutes the Government and is thus the embodiment of the highest administrative and executive organ of the State.⁹⁸ The President of the Council of State, Fidel Castro since 1976, is

also chairperson of the Council of Ministers, that is, Head of Government.⁹⁹ As far as the national organs of State are concerned, there are striking points of resemblance between the Cuban Constitution of 1976 and the 1936 Constitution of the USSR, which was translated into Spanish in Cuba in 1974.¹⁰⁰

FROM NEIGHBOURHOOD MEETING TO NATIONAL ASSEMBLY: THE ROLE OF THE PARTY

The promises to increase democracy and to reduce centralisation that were made in 1970 eventually led to a profound reorganisation of Cuban State power in the mid-1970s. How far is the new system of popular power a genuine fulfilment of those promises?

At the local level, at any rate, *Poder Popular* means a new, active, institutionalised involvement on the part of the people in the management of their own neighbourhood. This involvement concerns very practical, day to day problems affecting the residents of a neighbourhood and the way they live. This is evident from the meetings where delegates give an account of their activities, which are held in an informal atmosphere on the street or in a local hall, and where practical problems which the neighbourhood faces are discussed.

I attended such a meeting in Miramar, Havana in February 1981. The grocer in the shopping street 'La Copa' had hung a large sheet of paper in his shop-window with a list of the various *rendiciones de cuenta* which had been announced in the area. At 9 p.m. on Thursday evening the *Poder Popular* delegate in 'La Copa' was to render an account of her activities. A number of people collected in front of the CDR office in the street around nine o' clock. A row of benches and a table had been put on the pavement. Two loudspeakers were playing music. Most of those present at first were elderly persons and the benches were almost empty. Groups of people stood around on the pavement engaged in conversation. Gradually more people, including younger ones, came along. Greetings were exchanged, the benches began to fill up and a crowd started to gather around them. One of those who took a place behind the table was a woman who was later to speak about her activities as delegate in the Municipal Assembly of *Poder Popular*. The Cuban national anthem was played. Everybody stood up and sang along or stood still. The *Poder Popular* delegate spoke about her activities. This was followed by members of the public who had something to say. Three women spoke that evening. They walked up to the table, picked up the microphone and said what they had to say.

A number of the complaints concerned the housing problem. One block of flats in the area had a continual problem with overflowing water. The last of the complaints was of a very different kind. The butcher in the street usually got his fresh meat around noon and started to sell it immediately. This meant that the best meat was sold out by the evening. Working women who could not do their shopping before 7 p.m. were thus at a disadvantage. The public, which had given approving nods to the previous complaints, now burst out in applause. The woman who made the complaint said that this situation was typically unfavourable to working women and that something must be done. She proposed that the fresh meat should not be sold until the evening or that it should be rationed.

The delegate then replied to the complaints. As far as the housing problem was concerned, she said that the problem had come up at repeated meetings of *Poder Popular*. But there were so many housing problems that there was a waiting list for repairs. She would do her best. As for the meat problem, the suggestion was taken

seriously and she promised to do something about it quickly. At the end of the meeting the crowd was told that the café in the street, where there was standing room for consumption between 6 a.m. and 10 p.m., would be selling coffee again. Coffee is only available for Cubans on ration, and the news was greeted with a round of applause.¹⁰¹

Another discussion recorded between a member of the electorate and a delegate to the Municipal Assembly of *Poder Popular* in Santiago de Cuba took place on November 2nd 1979:

My name is Luis Enrique Salieri. You remember me. Some time back I came to your consultation to see if something could be done before too long about the roof of my house. It was leaking like a sieve and every time it rained and I got back from work it took hours to clean up the mess. It affected my work too, because every time I saw that it was raining I became nervous about what was going to happen this time.

A few weeks after I had talked to you people came from the council to repair it. They said that they could only do a temporary job and that my house would be properly renovated at a later date. What I'd like to know is, why are so many new houses being built when so little is done to repair the old ones in town? I know that just about everyone in my neighbourhood has the same problem. I think that priority should be given to repairing the old houses.

The *Poder Popular* delegate replied:

As you know, housing has always been one of the priorities of the revolution. First to provide everyone who was living in slums with a decent place to live. Later to help people who had to travel large distances from their home to their work by giving them a place to live that was closer to their work place. In the course of carrying out this enormous task, the repairing of the old houses in town was rather neglected. The result is that their condition grew worse. Besides this mistake, there's also the problem of supplying wood and the other materials necessary for renovation. Building new houses doesn't require these materials as much as repairing the old ones does. Add to this the transport problem, and you'll understand why we are behind in carrying out the renovation plans for the old parts of the city. Still, in 1978 we repaired almost 2,000 houses. As you know, renovation work is carried out per neighbourhood. According to the plans it should be the turn of our neighbourhood in 1980, but with the delays this might be 1981. Ways must be found of speeding up the plans, but we're stuck with the problems of supplies and transport, thanks to the blockade. Building new houses runs into the same problems, but they are perhaps less acute because we are able to construct more of those materials ourselves.

I'll argue in the council that building new houses shouldn't be at the expense of renovating old ones and that the plans for our neighbourhood are ready as soon as possible, and at any rate before the next *rendición de cuentas*, so that you can discuss them. Until then anyone with urgent problems will have to come to the consultation for a temporary solution.¹⁰²

Particularly in the early years the people participated enthusiastically in the election of delegates from the neighbourhood to the Municipal Assemblies of *Poder Popular*. In cases where the delegates did not take their responsibilities seriously, either by losing contact with their electoral base and giving themselves airs or, what was worse, engaging in favouritism at the expense of the neighbourhood residents, the people soon grew disillusioned and withdrew its participation. This was especially a problem in the second phase of *Poder Popular* starting in 1981, according to a Cuban journalist.¹⁰³ Nevertheless, *Poder Popular* was seen to be the appropriate means of exposing favouritism and corruption -- no novelties in Cuban tradition -- on a number of occasions. This use of the new institution of popular power was explicitly encouraged in the Cuban media by giving extensive coverage to successful actions of this kind.¹⁰⁴ Moreover, the introduction of *Poder Popular* is estimated to have reduced the number of civil service jobs on a national scale by 30%.¹⁰⁵

In an extensive interview given in 1979, Humberto Pérez, member of the Central Committee of the Cuban Communist Party, had the following to say about the problem of bureaucratisation and corruption:

The people can understand and accept the objective problems, which can be explained [the economic blockade, ecological limitations, etc.]. But the people cannot understand, accept or explain the subjective problems, especially the problems of negligence, shoddy performance, favouritism, irresponsibility, insensitivity, bureaucracy.

In the same interview Pérez denied the allegation, which was widespread in Cuba at the time, that the process of institutionalisation had meant an increase rather than a reduction in bureaucracy. Many decisions which were previously taken at the national level were now dealt with at the level of the Municipal Popular Assemblies. This meant an enormous reduction in bureaucracy. The same was true of the economic sphere, in the sense that many of the decisionmaking powers which had previously been the prerogative of the top officials of the ministries had now been transferred to the management of the factories and enterprises themselves.

We can assert that bureaucracy cannot be greater now than it was before, but it must have been reduced. And as for the bureaucratic obstacles which still exist, they cannot be attributed to the process of institutionalisation. On the contrary, it is this very process which creates the conditions for the elimination of these obstacles.¹⁰⁶

The discussions within the Municipal Assemblies of *Poder Popular* are limited by the general policy which is formulated at provincial and national level. The local level discussions are limited to practical problems of the neighbourhood, and the solutions have to fit within the limits set by general policy and the material circumstances. The higher organs of *Poder Popular* where the general lines of policy are discussed are further removed from the people than are the local assemblies. In the first place, not all delegates are directly elected by the people: in 1979 only 55% of the members of the National Assembly of *Poder Popular* also sat in a Municipal Assembly.¹⁰⁷ The election of the delegates to the National and Provincial Assemblies is conducted via the Municipal Assemblies, but it is not direct election: a nomination commission intervenes, consisting of members of the Party and the mass organisations.¹⁰⁸ Those who can be proposed as candidates may include persons who do not sit in a Municipal Assembly. The recall of a delegate to the National As-

sembly by a Municipal Assembly can only take place after the National Assembly has been consulted.¹⁰⁹

There are other grounds for entertaining doubts about the direct involvement of the people in the top organs of State power. The Communist Party of Cuba operates both within and parallel to the State apparatus, and its influence cannot be denied. It is not easy to situate and define this influence precisely. The structure and function of the Cuban Communist Party have undergone significant changes since 1970 as a result of the criticisms made at that time of the virtually total control of the State apparatus by a relatively small party.¹¹⁰ The Party still has a vanguard role. As the Marxist-Leninist Party of the working class it leads the revolution and directs the State apparatus, as laid down in the 1976 Constitution.¹¹¹ However, as Fidel Castro indicated:

What is the function of the Party? Not government, but orientation, orientation at all levels. It creates the revolutionary consciousness of the masses, it is the motor of the masses, it educates the masses in the ideals of socialism and communism, it exhorts the masses to work, to act in dedication, to defend the revolution.¹¹²

The difference with the late 1960s, when the Party seemed to be identical with the economic, administrative and political apparatus, is that since 1976, at least formally, the functions of the Party are clearly separated from the elected organs of *Poder Popular*. The latter have the authority to govern and to issue regulations at their respective levels of municipal, provincial and national administration. Raúl Castro said in 1974:

To strengthen the role of the Party so that it can carry out its genuine function fully, it is necessary to rid it of all the state and administrative duties which it has been forced to assume up to now through the lack of adequate institutions and mechanisms.¹¹³

As far as the Party's hold over the organs of State and the organs of *Poder Popular* is concerned, it should not be forgotten that the Party can only impose its political discipline on non-Party members by 'the correctness of its arguments, the strength of its example and the confidence that it inspires'.¹¹⁴

Party membership grew enormously in the 1970s. In 1965 the Party had less than 50,000 members and candidate members. By 1970 membership had risen to 100,000, in 1974 it was 186,995,¹¹⁵ and in 1980 it was 434,143.¹¹⁶ In the period after 1975 an attempt was made to apply the orthodox Marxist theory of the Party¹¹⁷ and to restore a due proportion within the composition of the Party: in 1975 40% of the membership of the Party consisted of persons holding high-ranking executive positions. As a result the number of members who were directly involved in productive work, education or in providing services increased from 36.3% in 1975 to 47.3 % in 1980.¹¹⁸ This was an extra guarantee of a closer bond and good working relationship with the base. However, the formal separation of Party and *Poder Popular* functions did not eliminate the Party's influence on the State apparatus, nor did its growth alter its nature as an elite Party.

The increase in the number of Party members will undoubtedly have given the Party a stronger basis among the people. Nonetheless, Party members, unlike delegates to the organs of *Poder Popular*, are not elected by the people: the Party reserves the right to choose its own membership.¹¹⁹ Workers who are selected by their colleagues at work and those who seek admission to the Party independently of such a procedure can be selected as candidates by a specific section of the Party. Such a decision must be ratified by the next section in order of

superiority.¹²⁰ The final admission to the Party takes place after a candidate has been under the supervision of a Party section for a year. Only young people who have been members of the Communist Youth Organisation (UJC) for at least three years can be admitted immediately as full Party members.¹²¹ Although, in the words of Fidel Castro,¹²² all the workers at the same centre of work as the candidates for membership are consulted on the admission as a part of the democratic selection procedure, the final decision remains with the Party.

Moreover, there is an overlap in the occupation of important high-ranking positions in the State apparatus and in that of the Party. While considerable numbers of the delegates to the Municipal Assemblies of *Poder Popular* may be non-Party members -- data from 1979 refer to 24% -- the percentage of non-Party members steadily drops as one proceeds to the Provincial and National Assemblies, and at the top, the Council of State, all delegates are Party members.¹²³ For example, in 1976 three persons, Fidel Castro, Raúl Castro and Carlos Rafaël Rodríguez, were members of four major State and Party organs: the Council of State, the Executive Committee of the Council of Ministers, the Political Bureau and the Secretariat of the Party. Blas Roca occupied more or less the same positions, except that he was President of the National Assembly of *Poder Popular* and was not a member of the Council of Ministers.¹²⁴ As uncontested leader of the revolution, Fidel Castro held the highest State and Party functions, while his brother Raúl occupied second place.

The role of Castro within *Poder Popular* and the Cuban Communist Party has been described as follows by the Dutch expert on Cuba, Harold Suivas:

If you vote against a proposal you are in fact voting against Fidel.

The same holds for the attitude of ordinary people towards the Party. The Communist Party of Cuba is on a level above the people and above the State: that is laid down in the Constitution. So if you criticise the Party, whom are you criticising? The country's leading figures, and above all -- Fidel.¹²⁵

Fidel Castro's central position within the Cuban State and Party apparatus corresponds to his enormous popularity among the Cuban people to this day and the unquestioned authority which he enjoys. When a British journalist asked a number of agricultural volunteers chosen at random what they thought of Fidel, the answers he got are probably representative. In all openness, and with a glass of beer in his hand, his informant said: 'He's our commander-in-chief, our leader. We trust him completely. What he says, we'll do.' Shortly afterwards the local Party secretary who objected to the interview was laughed down by the volunteers.¹²⁶ There is great confidence in Fidel Castro's leadership and integrity. When Cubans criticise something in the ordinary course of things, they often add: 'If Fidel Castro heard about this situation matters would soon be put right'.¹²⁷

While the Party is in certain respects detached from the people, as Suivas indicated, it is still tied to the people because of the membership of many ordinary Cuban citizens. There is no discernible big gap between the Party and the ordinary Cuban people. Party membership is enviable and prestigious in the eyes of the average Cuban. Many of the young people I met in Cuba hoped to become members. Besides the political interest and conviction which was the motivation for many of them, the status that membership conveys will also have played a role. Leaving aside the extra time and energy that it costs in addition to your normal daily activities, membership is a way of raising your esteem in the eyes of Cuban society. It may be seen as a rung higher on the Cuban social ladder, which can be important

for your further career and can also be a means of gaining a certain immunity. Party 'militants', as active Party members are called, are expected to have a positive attitude toward the revolution and a blameless moral record. In fact, these are the criteria for selection as a member. This assumption of good and revolutionary behaviour can be a source of protection against the normal channels of social control for someone who has slipped up or committed a minor offence. Party militants are not commonly seen before the Municipal Tribunals, a Cuban journalist told me. This is not only because they are a relatively select group, but also because it is common for a criminal offence committed by a Party member to be dealt with by the Party itself outside the normal channels of criminal justice. While this offers some measure of security, particularly for members with a flawless past, 'trial' by the Party can be severe. A member who is not found to satisfy the strict Party criteria for correct moral and political behaviour may be expelled from the Party. Such an expulsion can have far-reaching consequences, as the same journalist told me. The charge of having been politically and ideologically at fault can play a role in job interviews and other social activities.¹²⁸

POPULAR POWER AND MASS ORGANISATIONS: THE CDRs

The comprehensive process of reorganisation which Cuba went through in the 1970s had its consequences for the Committees for the Defence of the Revolution too. After all, these committees had been one of the major linkage mechanisms between the revolutionary government and the people. Although the government planned in 1970 to make the mass organisations the basis for popular participation in decisionmaking more than they had been in the past, the role of the CDRs in this respect witnessed a decline in the 1970s. Since 1976 it is the new system of popular power, *Poder Popular*, which has assumed this role and the role of the committees is simply a supportive one. One of the most fundamental tasks of the committees, mass mobilisation, has had a less pronounced political profile since 1970.

Despite these changes, the organisation of the CDRs, with its variety of responsibilities shaped by the passage of time, has nevertheless survived. With the exception of a few shifts of emphasis within its portfolio, the organisation is still full of life. It is a feature of daily neighbourhood life for every Cuban. Its main tasks are still the campaign against crime and the ideological education and training of the population. The first of these tasks is dealt with in the following chapter. Here we shall concentrate on the work of involving the people in the formulation of all kinds of new legislation.

The extent and organisation of the CDRs stabilised in the 1970s. Since 1973 around 80% of the Cuban population above the age of 14 is a member of a CDR.¹²⁹ CDR membership is simply a part of the everyday life of all Cubans, whether they are especially sympathetic towards the revolution or not.¹³⁰ Every Cuban can become a member, a member of the National Secretariat of the CDRs said, 'if he or she is "revolutionary" and prepared to defend the revolution ideologically at any rate'.¹³¹ Clearly, the criteria for admission are far less stringent than those for admission to the Communist Party.

The First CDR Congress held in 1977 approved new statutes for the organisation. The new structure of the CDRs, their powers and responsibilities are officially laid down in them. The territorial structure has remained the same. The present levels are: the neighbourhood level of one CDR; the zone level corresponding to around 30 CDRs; the municipal level; the provincial level; and the national level.

One committee consists of an average of 100 to 120 members, usually one block of flats.¹³² The executive organs of the CDRs are elected indirectly. These organs are doubly accountable: to their direct electorate and to the higher organs of the organs.¹³³ At the neighbourhood and zone level the executive members, who totalled around 1 million in 1983, carry out their work on a voluntary basis. At the municipal, provincial and national levels the executive members, who number around 1,500, have a full-time job in their organisational work and are remunerated accordingly.¹³⁴

The duties laid down in the statutes include politico-ideological education and training for the people, mobilisation for voluntary work and campaigning against crime and antisocial behaviour.¹³⁵ At first sight there is thus no difference in these duties from those of the 1960s. The various tasks are still spread over a number of 'fronts': at each level there is someone responsible for the 'vigilance front', the 'social prevention front', and so on.¹³⁶

The new phase of institutionalisation which the Cuban revolution entered after 1970 had its effects on the role and place of the CDRs. For instance, in 1976 the CDRs had to transfer the majority of their administrative duties to the organs of *Poder Popular*. Raúl Castro, Second Secretary of the Central Committee of the Cuban Communist Party, said in 1974:

The functions and responsibilities of the organs of *Poder Popular* must remain clear and well defined in their relation to the mass organisations and in particular to the CDRs. The latter is the mass organisation whose sphere of activities comes closest in certain respects to that which falls under the responsibility of *Poder Popular*. The same is true of the sectors of the population with which both organisations are concerned. Up to now the CDRs have carried out this work because the State institutions had not yet been created to do the job. However, this kind of work, such as that carried out by the popular Trade and Transport inspectors, is really the preserve of *Poder Popular* and it will naturally come to be carried out by *Poder Popular*.¹³⁷

The attitude of the CDRs towards *Poder Popular* at the moment is mainly a supportive one. For example, the elections of the members of the Municipal Popular Assemblies of *Poder Popular* and the meetings where delegates render an account to their electorate are organised by the CDRs. The CDRs also mobilise and encourage their members to carry out voluntary work in support of projects initiated by the organs of *Poder Popular*.¹³⁸

Integration, organisation and the politico-ideological education of the Cuban people remained a fundamental task of the committees, although this work received a changed emphasis through the more general political shift from mobilisation to institutionalisation and legislation. A new task which the CDRs were given in the 1970s was that of involving the people in discussion of the new laws which were to be introduced.

During the First Congress of the CDRs in 1977 a special thesis was devoted to the politico-ideological work of the committees. Education was an important job of the committees, the thesis claimed:

The work of the Committees for the Defence of the Revolution, under the guidance of the Party, is directed towards the education of our people in the high principles of socialism. The main sources of this education are the achievements of the Revolution, the study

of the classics of Marxism-Leninism, the speeches of Comrade Fidel and other leaders, political and ideological texts, and the life and work of the martyrs of our struggles and of the proletariat of the world.¹³⁹

This had been formulated in more general terms at the *Plataforma Programática* of the Cuban Communist Party in 1975:

The Committees for the Defence of the Revolution integrate and organise our adult population. Their activity is aimed at the defence of the Revolution, raising the ideological level of the largest sectors of the people, and both performing and stimulating others to carry out all kinds of duties in the community.¹⁴⁰

In 1977 there were still study groups for CDR members in the neighbourhoods (*Círculos de Educación Política*) as well as training centres for responsible members of the CDRs (*Centros de Superación Político-Metodológica*). The special agitprop commissions (*Comisiones de Agitación y Propaganda*) were an innovation. Their function was to explain daily policy to the people and to mobilise them to take an active part in various activities. The commissions used a variety of instruments of propaganda for this purpose, such as posters and banners.¹⁴¹ The committees also continued their work with the parents of children attending school. Besides the 'Movement of Model Parents', the CDRs cooperated with the Ministry of Education in October 1976 to set up Schools for Parents (*Escuelas Populares de Padres*). These schools offered two-month courses each year on methods of child rearing, etc. The objective was the same as that of the Movement of Model Parents:

The *Escuelas Populares de Padres* have been established to raise the level of knowledge of the family, and especially of the parents, concerning the correct communist education for future generations. The *Movimiento de Padres Ejemplares* is an important source of support for the work of the school; it improves the coordination of parent-teacher-pupil relations...¹⁴²

THE VAGRANCY LAW: CONVINCING OR CONVICTION?

The CDRs were responsible for explaining the new laws to the people, whereby they made an important contribution in their own way to the process of institution-alisation that took place in the 1970s. This was done through discussion meetings where the various proposals for new laws were discussed and commented on: an excellent way of creating familiarity with them. All the major laws enacted in Cuba in the 1970s were first discussed at the local level. There were a number of organisations involved. Besides the mass organisations, including the CDRs, the Communist Party, the Communist Youth Organisation and the Cuban Trade Union Congress also took part in the preparations for the 1976 Constitution.¹⁴³

The Vagrancy Law of April 1st 1971 was the first law in revolutionary Cuba which was subjected to extensive discussion by the people before it was enacted as law.¹⁴⁴ It is interesting to see the important role played by mass organisations like the National Trade Union Congress and the CDRs in the preparations and promulgation of this particular law.

It was in 1970 that the government had criticised the lack of democracy in the mass organisations. The failure to achieve the target of 10 million tons in the sugar harvest of 1970 had disillusioned many. Socialist inflation had led to the circulation of more money than could be spent on consumer goods, leading to a lack of finan-

cial incentives to work. The new legal compulsion to work and extensive discussions on it among the people were an attempt to revive a work morale.

Vagrancy is an established part of the penal code in Cuba. It first appears in the 1848 Spanish Vagrancy Law which came into force while Cuba was still a colony of Spain.¹⁴⁵ In the Cuban Social Defence Code of 1936, vagrancy was an accessory circumstance which could lead to a heavier penalty being imposed for a particular offence.¹⁴⁶ The same law also made it possible to adopt security measures in the case of vagrants.¹⁴⁷

After 1959 Cuban lawyers condemned this legislation as typically capitalist. In pre-1959 Cuban society its purpose was to convict the poor who *could not find* any work and to pay no heed to the rich who *had no desire* to work.¹⁴⁸ An unemployed cane cutter had no recognised means of livelihood, an absentee landlord had. In a speech delivered in 1961, at the first anniversary of the CDRs, Castro indicated how the success of the revolution had meant a turning of the tables in Cuba. The parasites of the past were not the vagrants and tramps, despite what the legislation said, but the corrupt politicians, gangsters, landowners and the 'imperialist shareholding gentlemen':

In the old society there were those who worked, and there were those who did not work but who nevertheless dressed, ate, wore shoes, slept, and lived. They did not produce one single useful thing. They did not play in a band, work in a theatre, build a building, teach a child, cure a patient, grow a plant, or fish. They did absolutely nothing useful, and nevertheless they ate, drank, slept, wore shoes, dressed, drove -- drove cars -- and lived in elegant houses.

Of course there were various kinds of parasites. There was the large parasite and there was the small parasite. That policeman who walked with a nightstick, wearing a hat with the brim turned up, he was a small parasite. The general, any one of those generals, was a large parasite. There were national parasites, and there were foreign parasites, like the great imperialist 'mister' who owned shares in the electricity company, the telephone company, the sugar refinery, or the huge plantation. What kind of people were they? How can we describe that plague of parasites who did not teach children, raise buildings, cure patients, or sow the earth? What kind of people were those double-dealers who bought from the peasant at half price and sold to the people at triple price? What were those gentlemen who paid the farmer a third part of his own produce? What was that gentleman who charged a poor family sixty, seventy, and eighty pesos for a two-room apartment? What were those speculators? What were those smugglers, those exploiters of vice, those loan sharks, those thieving and corrupt politicians, those crooks -- what were they? How did they live? Who worked for them? At whose cost did they eat, dress, wear shoes, and live? At whose cost? At the cost of the workers, at the cost of the peasants, at the cost of the humble, at the cost of the men and women of the masses, and, at times, even at the cost of the children.

And together with the exploitation of a people by a caste of parasites, there were all the other vices as well: chronic unemployment,

men standing idle while the land went uncultivated, factories not producing at maximum capacity, tens of hundreds of thousands of families living in ignorance in slum neighbourhoods, more than a million adults not knowing how to read or write.¹⁴⁹

The political revolution of 1959 and the accompanying departure of many of the old privileged classes from Cuba did not put an end to the problem of absenteeism and vagrancy, however. During the first decennium of the Cuban revolution the organisation of the economy was marked by a one-sided emphasis on moral remuneration. Moral incentives alone turned out not to be enough. The problem of absenteeism was given official attention already in 1962¹⁵⁰ and various attempts were made to combat absenteeism.¹⁵¹ Through resolutions the possibilities were created of punishing latecomers and absentees with public reprimands and financial sanctions, such as a cut in wages.¹⁵² There was an extremely harsh campaign against 'lazy elements' for two years. Starting in 1965, they shared the same fate as other 'anti-social' elements like homosexuals, juvenile delinquents and Jehova's Witnesses: they were sent to the *Unidades Militares de Ayuda a la Producción*, special military work camps. Many writers and artists found themselves labelled 'antisocial' elements too. Under a storm of protest, joined by the Cuban Writers and Artists Union (UNEAC), these camps were closed down in 1967.¹⁵³

As a direct response to the results of the emergency measures adopted for the 1970 sugar harvest: disillusionment among the people and a rapidly rising rate of absenteeism, the Cuban government came up with a new bill to deal with vagrancy. The procedure which was adopted before this became law was as follows. The opinion of the workers was sounded in 1970 in meetings which were generally organised by the union. A large number of complaints about bad working conditions and inefficient management were ventilated at these meetings and time and again the call was made to take stronger action against absenteeism. The plenary Provincial Assembly of the CTC, held in Havana on September 3rd and 4th 1970, gives a good idea of the extent of the discussions on absenteeism and voluntary work. Those present included the Prime Minister, Fidel Castro, and the Minister of Labour, Jorge Risquet. Dockers complained there about the poor conditions in which they had to work: there was no water for washing, for instance, and the canteen was poor. They wondered why so much attention was paid to absenteeism instead of to bad management. A lot of the goods which they unloaded from ships in the harbour were often not even collected as a result of the bad organisation and planning.¹⁵⁴ A worker from the meat industry added that absentees encouraged others to do the same:

Whenever some workers know that others won't be turning up at the abattoir, they decide to stay away themselves to avoid having to do extra work. It's typical of how absenteeism breeds absenteeism.¹⁵⁵

Another of those present, a factory worker from the dairy industry, gave an example of the attention which the union devoted to absenteeism in his factory:

There was a case of a worker who had been spoken to more than 10 times. He was then sent to the Council of Work, where he asked for another chance and was given it. A fortnight later he was back to his old tricks. A meeting was held with workers from the dairy, the CDR of the neighbourhood where he lived and his family, including children, to discuss the problem of his bad work performance. At this meeting he again asked for another chance and

promised to work without taking leave in the future. But we're still waiting, and this all started nine months ago.¹⁵⁶

On 10th January 1971 the draft law was published which made it compulsory for all Cuban men and women to work and which created the possibility of bringing men between the ages of 17 and 65 up for trial who did not comply with this regulation.¹⁵⁷ A man in good health failed in his duty to work if he was absent from work for more than two weeks without cause or was punished more than once by the Labour Council for absenteeism.¹⁵⁸ This offence could be punished with a so-called pre-criminal security measure. A convicted person could be set under the supervision of a workers collective or sent to a re-education centre for a maximum period of twelve months. House arrest could also be imposed for a maximum term of one year. In this case the convicted person must carry out work under the direct supervision of his or her colleagues and the mass organisations of his or her place of residence.¹⁵⁹ Not to be attached to a work centre or work collective, unless one was following a daytime training, was an offence: *vagancia*.¹⁶⁰ The penalty for this was to be sent to a re-education centre to perform productive labour for a maximum of two years and a minimum of six months.¹⁶¹ Charges of absenteeism and vagrancy could be made by mass organisations and by individuals.¹⁶² The administration of a work place was obliged to report any departures.¹⁶³ Trial was put in the hands of special labour courts.¹⁶⁴

After its publication in *Granma*, this draft law was discussed throughout the whole country until the end of February in all centres of work, all the branches of the union and by the CDRs and other mass organisations. The contribution of the CDRs was enormous. More than 1,300,000 CDR members appear to have taken part in the discussions of this draft law. It was discussed and approved in 155,000 meetings by more than 3,000,000 people.¹⁶⁵

The meetings were educational. At their place of work and of residence, Cubans were confronted with the future criminal regulations on the punishment of absenteeism. Neighbours and colleagues pointed the irresponsibility of their actions out to idlers. The CDRs were encouraged by the national direction to hold work inspections in their neighbourhoods, under the slogan that every CDR must fight for the absence of unemployed in its area. 'Revolutionary' arguments, posters, pamphlets, banners and so on were used to get unemployed residents to apply for work.¹⁶⁶ On the day that the law was promulgated, 16th March 1971, large demonstrations were held in support of the new legal provisions and there were symbolic burials of the offence of *vagancia*.¹⁶⁷ The result was the extra registration of 90,000 Cubans at the Ministry of Labour for work before the law came into force on April 1st 1971.¹⁶⁸ The objective of the new law was already in sight, or as Fidel Castro put it: '90% of the battle must be won in the discussion and in the simple approval of the law'.¹⁶⁹

The publicity repeatedly made mention of the suggestions made by the people on the new law.¹⁷⁰ For instance, *Granma* mentioned workers' meetings, held two weeks after the publication of the draft law, which found the legal measures proposed too lenient.¹⁷¹ It published the following statistics on the province of Havana: in 76% of the CTC and CDR meetings on the new law, the draft was accepted without reservations, while 24% of the meetings had suggested amendments. The suggestions were mainly in the direction of heavier punishments for *vagancia*.¹⁷²

It is hard to know just how influential the people really was on the final version of the law. The most important difference between the draft law and the final law concerns the penal classification and the penalties attached to the various

offences. The new law provided for the imposing of the pre-criminal security measures which have already been described, for both absenteeism and unemployment in the first instance. It was only in cases of breach of these measures that the offence became a crime: *vagancia*. In this case, the punishment was a minimum of one year and a maximum of two years in a re-educational centre.¹⁷³ In the draft law, this sentence could be imposed immediately on anyone who was unemployed, that is, was not attached to any work collective or work centre. In the draft law, however, the minimum was six months, not one year.¹⁷⁴ The change in the final law thus includes a first warning to the idler involved: first a pre-criminal security measure, and if that fails a heavier punishment. The raising of the minimum from six to twelve months seems to be a response to the call from the people to impose a heavier punishment on the stubborn shirkers who had been given a warning.¹⁷⁵ At the same time it both reinforces the educational aspect of the law and complies with the desire to correct those who did not work through convincing argument and education.¹⁷⁶ As the national trade union congress concluded in the final report on the discussion meetings:

The genuine success of the law will consist in the fact that the measures it provides are applied to only a small number of anti-social and stubborn elements who are not close to our revolutionary process...¹⁷⁷

THE PEOPLE AS LEGISLATOR?

The *ad hoc* legislation on absenteeism in 1971 was only the first of a series of laws which were submitted to discussion at the local level before their enactment. All the most important laws of the 1970s, such as the Law on Criminal Procedure, the Law on the Judicial Organisation, the Family Code, the Constitution and the new Penal Code, were all formulated according to a similar procedure. The draft laws were prepared by the Secretariat of a special Commission, which was generally composed of members of the Law Commission (established in 1969) and members of the Central Committee of the Communist Party, as well as government representatives and delegates from the mass organisations.¹⁷⁸ The chairperson of this commission was Blas Roça Calderio, formerly President of the pre-1959 Cuban Communist Party, the PSP.¹⁷⁹ The draft laws were presented for approval to the Party Executive: the Political Bureau and the Secretariat of the Central Committee of the PCC.¹⁸⁰ During this phase the draft laws were also made available for commentary to ministries, other State agencies and a select group of legal experts.¹⁸¹ Finally, the draft laws were presented for the people's opinion via the various social and mass organisations. By means of a strict organisation the suggestions and comments which arose during these discussions were brought together and incorporated in the final version of the law as far as this was possible.¹⁸² However, as *Granma* put it before the promulgation of the new Family Code:

[The Law Commission] accepted and included in the draft text all suggestions it considered rational and useful, independent of the number who voted for them.¹⁸³

Before 1976 new laws which were to be promulgated required the prior approval of the Council of Ministers.¹⁸⁴ After 1976 it was the National Assembly of *Poder Popular* which had the authority as a legislative power to approve new legislation before it could be introduced.¹⁸⁵ A referendum was held on the 1976 Constitution.¹⁸⁶

In 1974 political and mass organisations discussed the new Family Code. Given the activities of the CDRs involving work with families at neighbourhood level, it was this organisation which offered the most lively and emotional discussions of the new Code.¹⁸⁷ New norms introduced by the law, such as the obligation of both partners to contribute equally to housekeeping, were a frontal attack on the values of machismo which were so deeply entrenched in Cuban tradition. The fact that the new law questioned these values was the cause of excited reactions everywhere.¹⁸⁸ As was the case with the Vagrancy Law, it is difficult in this case too to gauge the extent of the influence which the people had on the final version of the law. The chairperson of the Law Commission supposed that the steady raising of the minimum age for marriage for girls from 12 to 14 in the course of the discussion was in response to suggestions by the people.¹⁸⁹ Yet only 2% of the 2,195,537 CDR members and 1,003,282 union members who had taken part in the discussions voted for this amendment.¹⁹⁰ This example shows how a suggestion made by a small group of participants in the discussions among the people could lead to essential changes in legislation. It is unclear, however, which suggestions were accepted and which were not.

The same can be said of the genesis of the new Constitution, whose provisions included the introduction of a totally new system of elected organs of popular power. At the end of 1974 a special commission was officially appointed by the Political Bureau of the PCC and the Executive Council of the Council of Ministers for the preparation of the new Constitution.¹⁹¹ On February 24th 1975 the draft Constitution was presented to the highest organs of the PCC, the Political Bureau and the Secretariat. It appears that the most and the most significant changes were made here, a third of them on Fidel Castro's initiative.¹⁹² In April of the same year the amended text was published and the official paper of the PCC called upon the mass organisations and others to discuss the draft.¹⁹³ Three months later the following were reported to have participated in the discussion of the draft Constitution: 159,853 Party members within the various branches of the PCC; 1,619,657 union members of the CTC; 210,499 small farmers in the ANAP; 2,064,755 CDR members via their committees; 1,568,036 women who attended FMC meetings; and 316,314 students and schoolchildren within their respective mass organisations, the FEU and the FEEM. The draft was also discussed in almost all centres of work, factories and schools and in the various divisions of the army (Revolutionary Armed Forces).¹⁹⁴ The Cuban people discussed the draft article by article: the ban on discrimination, the right of everybody to work, education, medical care, holiday, etc., the role of the Party, the structure of the new organisation of *Poder Popular*, the election of delegates to the assemblies of *Poder Popular*, the ability of the electorate to recall delegates. It was practically impossible for anyone not to know what was in the new Constitution. At any rate, no one needed to remain in ignorance of the principles of the new Cuban state organisations and the fundamental rights of the Cuban citizen.

Rights on paper are not always the same as rights in practice. Certain conditions have to be fulfilled before formal rights become genuine rights in practice. One of these conditions, at any rate, -- knowledge of one's rights and how to use them -- was taken seriously in Cuba. The discussions of the new legislation made an important contribution to this process. The history of the creation of the Vagrancy Law of 1971 also shows to what extent popular discussions on new legislation can encourage law-abiding behaviour. It remains unclear, however, whether the discussions enabled the people to exert a real influence on the content of the new legal

provisions. As we have seen, whatever influence it may have had was certainly not great.

NOTES TO CHAPTER EIGHT

1. See Chapter Four.
2. Edward González, 'Relationships with the Soviet Union', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, Pittsburgh, 1974, p. 95.
3. *Ibid.*, pp. 96 and 103.
4. Carmelo Mesa-Lago, **Cuba in the 1970s. Pragmatism and Institutionalization**, 1978, University of New Mexico Press, Albuquerque, p. 12.
5. See below.
6. Mesa-Lago, *op. cit.*, p. 24.
7. *Ibid.*, pp. 10-11; Cole Blasier, 'Comecon in Cuban Development', **Cuba in the World**, Cole Blasier and Carmelo Mesa-Lago (eds.), University of Pittsburgh Press, Pittsburgh, 1979, p. 234.
8. Blasier, *op. cit.*, pp. 234-235.
9. Sergio Roca, 'Cuban Economic Policy in the 1970s: The Trodden Paths', **Cuban Communism**, ed. Irving Louis Horowitz, Transaction Books, New Brunswick & London, 1981.
10. Carlos Rafaél Rodríguez, who accompanied Fidel Castro on this visit, presented an official request for admission on July 11th 1972. It was unanimously accepted by the eight members of COMECON: Mesa-Lago, *op. cit.*, p. 17. Cuba had already been present at the COMECON meetings as an observer since November 1962: Blasier, *op. cit.*, p. 244.
11. The final repayment of debts was to be spread over 25 years starting in 1986: Mesa-Lago, *op. cit.*, p. 21; **Granma Weekly Review**, 14.1.1973, pp. 2-3; **Bohemia**, 12.1.1973, pp. 34-44; Roca, *op. cit.*, p. 118; William M. LeoGrande, 'Cuban Dependency, a Comparison of Pre-revolutionary and Post-revolutionary International Economic Relations', **Cuban Studies**, Vol. 9, No. 2, July 1979, p. 20.
12. So Mesa-Lago, *op. cit.*, p. 10 and W. Raymond Duncan, 'Problems of Cuban Foreign Policy', **Cuban Communism**, ed. Irving Louis Horowitz, Transaction Books, New Brunswick & London, 1981, p. 446.
13. Blasier, *op. cit.*, p. 245.

14.

Table

| | |
|---------------------------------------|-------|
| Industry | 76.1% |
| Agriculture (irrigation and drainage) | 5.2% |
| Geological surveys | 8.3% |
| Transportation and communication | 8.2% |
| Education and health | 1.9% |
| Other sectors | 0.3% |

Source: Cole Blasier, *op. cit.*, p. 230.

Blasier comments on this table that the percentages are probably unreliable. He suggests that the percentages for the industrial sector may have been inflated to bolster the official Soviet criticisms of capitalist countries which are alleged to maintain developing countries such as Cuba deliberately in a sort of agricultural backwater. According to Blasier, the entry under agriculture supports this view. This is listed as irrigation and drainage; other investments affecting sugar production are thus probably included in the figures for industry.

15. Cf. Carmelo Mesa-Lago, 'The Economy and International Economic Relations', **Cuba in the World**, Cole Blasier and Carmelo Mesa-Lago (eds.), University of Pittsburgh Press, Pittsburgh, 1979, pp. 181 and 191. In 1962 trade formed 34.6% of the GNP; in 1974 this percentage had risen to 60. LeoGrande, *op. cit.*, p. 7, gives the following figures: 40.9% in 1963, 60% in 1974, 68% in 1975.
16. Statistics from LeoGrande, *op. cit.*, pp. 9 and 10; cf. Mesa-Lago, *ibid.*, p. 191. Jaap van Ginneken, 'Cuba en de suiker, De oude en de nieuwe afhankelijkheid', *Intermediair*, 14.12.1979, p. 27, gives the figure of 86% for 1976.
17. Mesa-Lago, *ibid.*, pp. 191 and 192; Blasier, *op. cit.*, pp. 234, 249 and 250.
18. Mesa-Lago, *ibid.*, pp. 184-186 (Table 9.6). Cf. also LeoGrande, *op. cit.*, pp. 14, 15 and 17.
19. Source: Van Ginneken, *op. cit.*, p. 27. In the same period (1961-1974) 27% of Cuban trade was with non-socialist countries. Cuba increased its trade with these countries too after 1969; its main trading partner from this group of countries was Japan. The trade with the United States in the same period was zero. Cf. Mesa-Lago, *ibid.*, pp. 184-186.
20. LeoGrande, *op. cit.*, pp. 22-24.
21. Duncan, *op. cit.*, p. 446.
22. Blasier, *op. cit.*, pp. 229 and 251.
23. Fidel Castro Ruz, Dec. 1975, Central Report, First Congress of the Communist Party of Cuba, Editorial de Ciencias Sociales, Havana, 1978, p. 47; cf. *Granma Weekly Review*, 4.1.1976.
24. Mesa-Lago, *ibid.*, p. 183. The official exchange rate is 1 peso = US\$ 1.25.

25. LeoGrande, *op. cit.*, p. 19, who uses statistics provided by the United States Department of Commerce Staff Paper, Washington D.C.
26. Blasier, *op. cit.*, p. 234.
27. Carmelo Mesa-Lago, 'Economics: Realism and Rationality', **Cuban Communism**, ed. Irving Louis Horowitz, Transaction Books, New Brunswick and London, 1981, p. 37.
28. Cf. LeoGrande, *op. cit.*, pp. 24 and 27.
29. Cf. 'Press Conference with Newsmen from Different Countries', *Granma Weekly Review*, 19.12.1971, p. 9; Mesa-Lago, *op. cit.*, 1978, p. 125.
30. Cf. Mesa-Lago, *ibid.*, pp. 116-125. There had previously been a sharp polemic with the Frei government in Chile.
31. Edward González, 'Institutionalization, Political Elites and Foreign Policy', **Cuba in the World**, Cole Blasier & Carmelo Mesa-Lago (eds.), University of Pittsburgh Press, Pittsburgh, 1979, p. 20.
32. Cf. Commander Ernesto Che Guevara's message to the OSPAL Conference in Havana in January 1966.
33. Cf. e.g. González, *ibid.*, p. 3.
34. Fidel Castro Ruz, 'Speech at the Celebration of the XVth Anniversary of the Victory of Girón Beach', *Granma Weekly Review*, 2.5.1976, p. 3, cited in Mesa-Lago, *op. cit.*, 1978, p. 131.
35. Fidel Castro Ruz in an interview with Fernando Morais, 13.7.1977, cited by Mesa-Lago, *ibid.*
36. Steven L. Reed, 'Participation in Multinational Organizations and Programs in Hemisphere', **Cuba in the World**, Cole Blasier & Carmelo Mesa-Lago (eds.), University of Pittsburgh Press, Pittsburgh, 1979, p. 297.
37. In 1964 the OAS had demanded that its members should not have any diplomatic, economic or transportation links with Cuba. Mexico was the only country which paid no attention to the demand: Mesa-Lago, *op. cit.*, 1978, pp. 117 and 134. Cf. *New York Times*, 30.7.1975.
38. Reed, *op. cit.*, p. 300.
39. *Ibid.*, p. 303.
40. *Ibid.*, pp. 304-308.

41. Rozita Levi, 'Cuba and the Nonaligned Movement', *Cuba in the World*, Cole Blasier & Carmelo Mesa-Lago (eds.), University of Pittsburgh Press, Pittsburgh, 1979, pp. 150-151.
42. Cf. Mesa-Lago, *op. cit.*, 1978, pp. 116-131.
43. In a speech delivered in Algiers in 1973 during the Fourth Conference of the Movement of Non-Aligned Countries, Fidel Castro said:
 The theory of "two imperialisms", one headed by the United States and the other allegedly by the Soviet Union, encouraged by the theoreticians of capitalism, has been echoed at times deliberately and at others through the ignorance of history and the realities of the present-day world, by leaders and spokesmen of nonaligned countries... In certain political and economic documents drafted for this Conference we've seen that current come to the fore in one way or another, with different shadings. The Government of Cuba will always oppose that current in all circumstances...How can the Soviet Union be labelled imperialistic? Where are its monopoly corporations? Where is its participation in the multinational companies? What factories, what mines, what oilfields does it own in the underdeveloped world? What worker is exploited in any country of Asia, Africa, and Latin America by Soviet capital?...Any attempt to pit the nonaligned countries against the socialist camp is profoundly counterrevolutionary and benefits only imperialist interests. Inventing a false enemy can have only one aim, to evade the real enemy.
 Source: Levi, *op. cit.*, p. 149-150.
44. Mesa-Lago, *op. cit.*, 1978, pp. 136-137.
45. *Ibid.*, pp. 141-142.
46. *Ibid.*, p. 144; González, *op. cit.*, pp. 26-29. This was announced by both governments on June 3rd 1977.
47. Jaap van Ginneken, 'Wat doet Reagan met Onze Jantjes? Vlootoefeningen in de Cariben', *De Groene Amsterdammer*, 10.3.1982, p. 5, picks out a number of events which are responsible for the reversal of US policy towards Middle America and Cuba, such as the victory of the Sandinistas over the Somoza dictatorship in Nicaragua in 1979 and the revolution on the island of Grenada. The new political line can be found in, for example, the document 'US Latin American policy in the '80s' that was compiled by the Santa Fé Commission, Council for Inter-American Security, Inc., Washington, 1980.
48. Fidel Castro, Central Report, *op. cit.*, p. 104.
49. So Mesa-Lago, 'Economics: Realism and Rationality', *op. cit.*, pp. 12-13.
50. *Ibid.*, pp. 13-14.

51. Nelson P. Valdés, 'The Cuban Revolution: Economic Organization and Bureaucracy', *Latin American Perspectives*, Issue 20, Winter 1979, Vol. VI, No. 1, p. 29. The role of JUCEPLAN from 1965 to 1975 had been a minor one: *ibid.*, p. 17.
52. *Ibid.*, pp. 28-29; cf. Mesa-Lago, 'Economics: Realism and Rationality', *op. cit.*, pp. 13-14.
53. Raúl Castro, *Granma Weekly Review*, 14.3.1976, cited by Mesa-Lago, *ibid.*, p. 17.
54. *Ibid.*, p. 18; Valdés, *op. cit.*, pp. 14ff. and 30-31; Roca, *op. cit.*, p. 86.
55. Valdés, *ibid.*, pp. 33-34; Mesa-Lago, *ibid.*, p. 31.
56. Mesa-Lago, *ibid.*, pp. 30 and 32. A factory was opened in Holguín in Cuba in 1977 to produce spare parts for these machines: Van Ginneken, *op. cit.*, 1979, pp. 31-32, citing *Granma Weekly Review*, 14.8.1977.
57. *Ibid.*, p. 31 and G.B. Hagelberg, 'Cuba's Sugar Policy', *Cuban Communism*, ed. Irving Louis Horowitz, Transaction Books, New Brunswick & London, 1981, pp. 141-142.
58. Jorge J. Domínguez, *Cuba, Order and Revolution*, The Belknap Press of Harvard University, Cambridge Mass., 1978, pp. 275-276; *Granma Weekly Review*, 8.9.1970, p. 5; *Bohemia* 65, No. 26, 29.6.1973, pp. 91-92.
59. Valdés, *op. cit.*, p. 25; *Bohemia*, 23.5.1975, p. 63.
60. Mesa-Lago, *op. cit.*, 1981, pp. 22-24; Roca, *op. cit.*, pp. 101-103; Valdés, *ibid.*, pp. 25-26.
61. Cf. Mesa-Lago, *ibid.*, p. 24 and Fidel Castro, 'Speech at the Conclusion of the XIIIth Congress of the CTC', *Juventud Rebelde*, 16.11.1973 [also in *Granma Weekly Review*, 25.11.1973, p. 9].
62. Fidel Castro Ruz, Speech at the First of May Celebration in 1971, *Granma Weekly Review*, May 1971 [cited by Roca, *op. cit.*, p. 104].
63. *Granma Weekly Review*, 2.9.1973, pp. 8-9; *ibid.*, 18.11.1973, p. 4.
64. Mesa-Lago, *op. cit.*, 1981, p. 19.
65. Roca, *op. cit.*, p. 106.
66. Susan Eckstein, 'Income Distribution and Consumption in Post-revolutionary Cuba: An Addendum to Brundenius', *Cuban Studies/Estudios Cubanos*, Vol. 10, No. 1, Jan. 1980, p. 92. She refers to a difference in income between the highest and the lowest wage levels of 14.8:1 in 1965, 9.4:1 in 1968, and 11.8:1 in 1970. The minima (in pesos per month) for 1965, 1968 and 1970 are respectively 63, 96 and 85; the maxima (in pesos per month) for the same years are

respectively 930, 900 and 700-1000.

Interviews held in 1981 (e.g. interviews with a technology student and a lathe operator on 18.4.1981 by a group of Dutch lawyers) revealed a minimum income of 85 pesos per month and a maximum of 500-550 pesos per month. If higher incomes like those given by Eckstein actually exist, they are probably so exceptional that the average Cuban does not know about them.

A Cuban engineer told the same group of lawyers on 20.4.1980 that his income was 300 pesos per month. 100 to 150 pesos were enough to support himself, his wife and his children. He spent the rest in cabarets, restaurants and so on because it was extra.

A company lawyer at the start of his career said that he earned 190 pesos per month in 1983. His promotion prospects were a salary of 250 pesos within two years. At that time a lawyer starting up in practice earned around 150 pesos per month with a bonus of 1% per case (interview with Julio González, 24.2.1983).

The official exchange rate is 1 peso to 1.25 dollar. Basic necessities such as housing, education, medicine, bread and public transport are usually free or extremely cheap in Cuba.

67. The term 'institutionalisation' is used in the sense that the North American political scientist, Samuel P. Huntington, uses it in his **Political Order in Changing Societies**, Yale University Press, 1978, p. 12: 'The process by which organisations and procedures acquire value and stability.' The decennium of the 1970s is also called a time of institutionalisation by Mesa-Lago, **Cuba in the 1970s. Pragmatism and Institutionalization**, *op. cit.* and by Nelson P. Valdés, 'Revolution and institutionalization in Cuba', **Cuban Studies/Estudios Cubanos**, Vol. 6, No. 1, Jan. 1976. The Cubans themselves called 1977 **El Año de la Institucionalización**.
68. In this connection, Mesa-Lago has tried to classify socialist systems in terms of different sociological, political and economic features. He set up a continuum between the two poles, X and Y, within which a given socialist system could be placed, depending on a specific combination of sociological, political and economic variables. Pole X represents a system with, among other features, a strong emphasis on anti-market mechanisms, ideological development and mass mobilisation, while Pole Y represents a system whose features include an emphasis on market mechanisms, economic development and institutionalisation. According to this system of classification, Cuba in the 1960s conformed closely to Pole X, as did the People's Republic of China during the Great Leap Forwards (1958-1960) and the Great Proletarian Cultural Revolution (1966-1968). From 1970 onwards the Cuban position shifts along the continuum closer to Pole Y, a position shared by the Soviet Union, according to Mesa-Lago. The new period is characterised by pragmatism and institutionalisation. Carmelo Mesa-Lago, 'A Continuum Model for Global Comparison', **Comparative Socialist Systems: Essays on Politics and Economics**, eds. Carmelo Mesa-Lago & Carl Beck, University of Pittsburgh Center for International Studies, Pittsburgh, 1975.
69. Fidel Castro, Central Report to the First Congress of the Communist Party of Cuba, *op. cit.*, p. 153.

70. Constitución de la República de Cuba, 24.2.1976; Ley de Organización del Sistema Judicial (LOSJ), Law No. 1250, *Gaceta Oficial*, No. 13, 23.6.1973 and Law No. 4, *Gaceta Oficial* No. 36, 25.8.1977; Ley de Procedimiento Penal (LPP), Law No. 1251, *Gaceta Oficial*, No. 14, 26.6.1973 and Law No. 5, *Gaceta Oficial*, No. 32, 15.8.1977; Código Penal (CP), Law No. 21, 15.2.1979, *Gaceta Oficial*, 1.3.1979; Código de Familia, Law No. 1289, 14.2.1975, *Gaceta Oficial*, 15.2.1975.
71. Huntington, *op. cit.*, p. 266.
72. Valdés, *op. cit.*, 1976, p. 13.
73. Raúl Castro in speeches on 2nd January and 23rd August 1974. Cf. Valdés, *ibid.*, pp. 20-21; John Griffiths and Peter Griffiths, eds., *Cuba: the second decade*, Writers and Readers Books, London, 1979, p. 12.
74. Fidel Castro, Central Report, *op. cit.*, p. 153. Cf. Cynthia Cockburn, "People's Power" in *Cuba: the second decade*, John Griffiths and Peter Griffiths, eds., *Cuba: the second decade*, Writers and Readers Books, London, 1979, p. 19.
75. Che Guevara, 'Man and Socialism in Cuba', letter to Carlos Quijana in 1965, published in Cuba as 'El socialismo y el hombre en Cuba'. Cited from *Venceremos. The speeches and writings of Che Guevara*, ed. John Gerassi, Panther, London, 1972, pp. 538-539 and 544.
76. Cf. Chapter Four; Mesa-Lago, *op. cit.*, 1978, pp. 65-66 and 83; speeches by Fidel Castro in *Granma Weekly Review*, 30.8.1970, pp. 4-5; 20.9.1970, pp. 4-5; and 4.10.1970, pp. 4-5.
77. Minister of Labour, Jorge Risquet, *Granma Weekly Review*, 1.8.1970, pp. 5-6. Mesa-Lago, *ibid.*, pp. 82-97, finally concluded on the basis of his research that the role of the unions in 1970 was not fundamentally different from what it had been in the 1960s. Domínguez, *op. cit.*, p. 278, refers to a change which turned out to be marginal.
78. *Con la Guardia en Alto*, Feb. 1971, p. 6; Domínguez, *ibid.*, p. 282.
79. According to the Fundamental Law of 7.2.1959:
 Legislative Power is exercised by the Council of Ministers (Art. 119);
 In the exercise of his executive powers the President of the Republic will be assisted by a Council of Ministers, consisting of the number of members fixed by the law (Art. 135);
 This Fundamental Law can be revised by the vote of the Council of Ministers, provided that a majority of two-thirds is in agreement, ratified by a vote in three successive sittings, and approved by the President of the Republic (Art. 232).
 Cf. Leonel-Antonio de la Cuesta, 'The Cuban Socialist Constitution: Its Originality and Role in Institutionalization', *Cuban Studies/Estudios Cubanos*, 6(2), July 1976, p. 20; Valdés, *op. cit.*, 1976, p. 11.

80. Cf. Mesa-Lago, *op. cit.*, 1978, pp. 19-20 and 69; 'Executive Committee of Council of Ministers Established', *Granma Weekly Review*, 3.12.1972, p. 2.
81. Cf. e.g., Marta Harnecker, *Cuba, los protagonistas de un nuevo poder*, Editorial de Ciencias Sociales, Havana, 1979, p. 141; *Poder Popular, Matanzas*, Department of Revolutionary Orientation of the Central Committee of the Communist Party of Cuba, Havana, 1975.
82. Constitución de la República de Cuba, 24.2.1976.
83. Since the new administrative division of Cuba in 1976 it has 14 provinces: Pinar del Rio, Havana, Havana-City, Matanzas, Villa Clara, Cienfuegos, Sancti-Spiritus, Ciego de Avila, Camagüey, Las Tunas, Holguín, Granma, Santiago de Cuba and Guantánamo. There are 169 municipalities. On the new division see, e.g., Fidel Castro Ruz, Report of the Central Committee of the Communist Party of Cuba to the First Congress of the PCC on 17.12.1975, *Memorias, Primer Congreso del PCC*, Department of Revolutionary Orientation of the Central Committee of the PCC, Havana, 1976, pp. 103-105.
84. Constitution of 1976, Articles 66a, 134 and 135.
85. 'Sobre Los Organos del Poder Popular', Resolution, Department of Revolutionary Orientation of the Central Committee of the PCC, Havana, 1976, p. 14.
86. See, for example, *Poder Popular, de macht aan het Volk*, issued by Venceremos, the Cuba-Netherlands Friendship Association, and its Belgian sister organisation, VZW, Utrecht, 1980, pp. 8-10.
87. Constitution, Art. 66 c and Art. 112; Normas Reglamentarias de las Asambleas Municipales del Poder Popular, 22.7.1977, *Gaceta Oficial*, 23.7.1977, Articles 66-67 and 93-99 [published in *Reglamento de las Asambleas Nacional, Provincial y Municipal del Poder Popular*, Official Publication of the Ministry of Justice, Editorial Orbe, Havana, 1979].
88. Constitution, Articles 69 and 139.
89. *Ibid.*, Articles 102 and 105; Harnecker, *op. cit.*, pp. 304-308; interview given Martha Harnecker by Humberto Pérez, 'Problemas Objetivos de nuestra Revolución. Lo Que El Pueblo Debe Saber', *Bohemia*, Feb. 1979, p. 62; *Poder Popular, de macht aan het Volk, op. cit.*, p. 13.
90. Constitution, Art. 105 b.
91. *Ibid.*, Articles 102 and 105; *Poder Popular, de macht aan het Volk, op. cit.*, p. 17.
92. Constitution, Articles 106, 110, 114 and 116.
93. *Ibid.*, Art. 67.
94. *Ibid.*, Articles 68 and 73 ad a and b.

95. *Ibid.*, Art. 73 ad I and II.
96. *Ibid.*, Articles 70 and 76; Harnecker, *op. cit.*, p. 397; **Poder Popular, de macht aan het Volk**, *op. cit.*, p. 17.
97. Constitution, Articles 87 and 88.
98. *Ibid.*, Art. 93.
99. Art. 91 of the Constitution unites both functions in one person; cf. Harnecker, *op. cit.*, p. 407.
100. So De la Cuesta, *op. cit.*, pp. 15-30. This is not the place to go into this comparison in more detail, but see Articles 30-56, 64-78 and 94-101 of the Spanish translation of the Soviet constitution, **Constitución de la Unión de Repúblicas Socialistas Soviéticas**, Ministry of Justice, Havana, November 1974. The Soviet Constitution of 5.12.1936 was in fact replaced on October 7th 1977 by a new Constitution. On the structure of this Constitution see, e.g., H.Th.J.F. van Maarseveen, 'Een nieuwe grondwet voor de USSR', **NJB**, 1.10.1977, Vol. 33, pp. 837-842; **The Soviet Codes of Law**, ed. William B. Simons, Sijthoff, Alphen aan den Rijn, 1980, p. XLVII.
101. Cf. 'De Cubaanse Revolutie in 93 dagen', **Cuba Libre, Venceremos**, Year 8, No. 5, Nov. 1981, pp. 13-14.
102. **Poder Popular, de macht aan het Volk**, *op. cit.*, p. 32. See the other examples *ibid.* pp. 29-35, and Harnecker, *op. cit.*, pp. 255-271.
103. Interview March 1983 with **Juventud Rebelde**.
104. Cf. **Poder Popular, de macht aan het Volk**, *op. cit.*, pp. 21-46, where a number of reports on the functioning of Poder Popular between 1977 and 1979 in the Cuban magazine **Bohemia** are discussed.
105. *Ibid.*, p. 23.
106. Harnecker, *op. cit.*, pp. 62-64.
107. *Ibid.*, p. 403.
108. Electoral Law, Law No. 1305, 7.7.1976, **Gaceta Oficial**, 7.7.1976, Articles 66 and 70; **Poder Popular, de macht aan het Volk**, *op. cit.*, p. 15.
109. Harnecker, *op. cit.*, p. 405.
110. See Chapter Four.
111. Constitution, Art. 5.

112. Fidel Castro, cited in Fernando Diego Cañizares, *Teoría del Derecho*, Editorial Pueblo y Educación, Havana, 1979, p. 432.
113. Raúl Castro Ruz, 'Speech at the conclusion of the seminar for the delegates of Popular Power', Matanzas, 22.8.1974, *Poder Popular. Matanzas, op. cit.*, p. 30.
114. *Ibid.*, p. 27.
115. Fidel Castro, Central Report, *op. cit.*, p. 205.
116. **Second Congress of the Communist Party of Cuba, "Main Report", presented by Comrade Fidel Castro Ruz, First Secretary of the Central Committee of the Communist Party of Cuba**, Political Publishers, Havana, 1980, p. 71.
117. Cf. e.g. Ronald J. Hill & Peter Frank, *The Soviet Communist Party*, George Allen & Unwin, London, 1981, pp. 35ff. on the Communist Party of the Soviet Union.
118. **Second Congress, "Main Report"**, *op. cit.*, p. 72.
119. Cf. Fidel Castro, Central Report to the First Congress of the PCC, *op. cit.*; Domínguez, *op. cit.*, pp. 307-308; Art. 4, 'The Statutes of the Communist Party of Cuba', adopted by the First Congress, with the modifications agreed by the Second Congress (December 1980), Political Publishing House, Havana, 1981.
120. Statutes, *ibid.*, Articles 4^c and 7.
121. *Ibid.*, Art. 2.
122. Fidel Castro, Central Report to the First Congress, *op. cit.*, p. 204; Statutes, *op. cit.*, Art. 3.
123. **Poder Popular, de macht aan het Volk**, *op. cit.*, pp. 39-40. In 1976 the percentage of non-Party members at the municipal level was 24.8, according to Harnecker, *op. cit.*, p. 161.
124. González, *op. cit.*, pp. 8-9 and 14-15.
125. Interview by Hans van de Veen, 'Ook Cubaanse leider werd pragmatisch; Castro, nog altijd op handen gedragen', *Onze Wereld*, No. 1, Jan. 1984, p. 35.
126. John Rettie, 'Castro still the spirit of Cuba', *The Guardian*, 10.11.1983.
127. This was my own experience during my stay in Cuba in 1981 and 1983.
128. Interview in February 1983 with Cuban journalist from **Juventud Rebelde**.
129. Cf. e.g. Aafke Steenhuis, 'Het maatschappelijk werk van het Cubaanse socialisme. De betekenis van de Komité's ter Verdediging van de Revolutie', *De Groene Amsterdammer*, 30.8.1978, pp. 13 and 16. In the province of Villa Clara

- 78.1% of the population above the age of 14 are CDR members: **Provincia Villa Clara**, Editorial Oriente, Santiago de Cuba, 1979, p. 139; Domínguez, *op. cit.*, p. 262; Jorge Lezcano Pérez, National Coordinator of the CDR, in his 'Central Report' to the First CDR Congress, **Con la Guardia en Alto**, Dec. 1977, p. 16; interview 27.4.1981 with Rolando Gola Colás, National Secretary of the CDR organisation; Fidel Castro Ruz, **Second Congress of the Communist Party of Cuba, "Main Report"**, presented by Comrade Fidel Castro Ruz, First Secretary of the Central Committee of the Communist Party of Cuba, Political Publishers, Havana, 1980, p. 63, where he speaks of a membership of 5,321,000.
130. Interview in March 1981 with a homosexual doctor and his friend in Havana. Like most Cubans, they were members of their neighbourhood CDR, despite the problems they had had in revolutionary Cuba because of their sexual preference.
131. Interview 27.4.1981 with Gola Colás.
132. Cf. 'Los Estatutos', **Con la Guardia en Alto**, Dec. 1977, pp. 20ff.; Art. 9, *ibid.*, p. 22.
133. *Ibid.*, Art. 7.
134. Interview 25.3.1983 with Rafaël Garrido Menéndez, Member of the National Direction of the CDRs in charge of History and Propaganda.
135. Statutes Art. 38.
136. Harnecker, *op. cit.*, p. 116.
137. Raúl Castro Ruz, **Poder Popular, Matanzas**, *op. cit.*, p. 31.
138. Cf. 'Los CDR y los Organos Locales del Poder Popular', **Con la Guardia en Alto**, Dec. 1977, pp. 48-49. After 1976 a significant part of voluntary work was for projects that had been initiated by Poder Popular. For instance, in October 1978 the National Vice-Coordinator of the CDR stated that in the previous year more than 700,000 CDR members had participated in a total of 328 such projects, involving the building of schools, hospitals, etc.: **Con la Guardia en Alto**, Oct. 1978, pp. 5-6.
139. Thesis 'El trabajo político e ideológico, esencia de la acción diaria y sistemática de los CDR', **Con la Guardia en Alto**, Dec. 1977, p. 26.
140. Thesis of the Comisión de la Plataforma Programática, **Memorias, Primer Congreso del Partido Comunista de Cuba**, Central Committee of the Communist Party of Cuba, Havana, 1976, p. 80.
141. **Con la Guardia en Alto**, Dec. 1977, p. 31.
142. *Ibid.*, p. 45.
143. Cf. e.g. Harnecker, *op. cit.*, p. 95.

144. Ley Contra La Vagancia, Law No. 1231 of 16.3.1971 which came into force on 1.4.1971: **Granma Weekly Review**, 28.3.1971, p. 2; **Con la Guardia en Alto**, April 1971, pp. 22-23.
145. This was a Spanish 'Ley de Vagos' of 1845, which was enforced in Cuba by the 'Royal Order' of 24.9.1848 and later amended by the 'Ley Contra el Bardolerismo' of 8.1.1877. See Josefa González Carvajal et al., 'La Vagancia, Conducta Antisocial: Su Evolución Histórica', **Revista Cubana de Derecho**, Year 2, April-June 1973, No. 5, p. 137.
146. Articles 40 B and 74 A, CDS of 1936.
147. Vagrants (**vagos**) were defined as 'those who habitually did not carry out paid work, although they were mentally and physically capable of doing so; they lived from the work of others, from public assistance or without any recognised means of livelihood': **ibid.**, Art. 48 B sub 6.
148. Cf. e.g. Carvajal, **op. cit.**, p. 129.
149. Fidel Castro, on the first anniversary of the CDR, 28.9.1961, cited from the translation in Richard R. Fagen, **The Transformation of Political Culture in Cuba**, Stanford University Press, California, 1969, pp. 199-200.
150. Cf. eg. Luis Salas, **Social Control and Deviance in Cuba**, Praeger, New York, 1979, p. 335, who cites the following sources: Ernesto Guevara, **Revolución**, 25.9.1961; Raúl Roa, **Verde Olivo**, 5.11.1962; Ernesto Guevara, **Revolución**, 16.4.1962; Osvaldo Dorticós, **Revolución**, 10.9.1962.
Leaving out of account the large amount of voluntary labour carried out by the Cubans, the sugar industry alone had absenteeism percentages of 6 to 7 in the 1960s: Carvajal, **op. cit.**, p. 143.
151. Carvajal, **ibid.**, p. 141; Law No. 759 of March 1960; Law No. 938 of February 1961; Resolution 5798 of August 1962; Law No. 1022 of September 1962; and Law No. 1166 of September 1964.
152. Cf. Salas, **op. cit.**, p. 335 and 337; e.g. Resolution 5798 of August 1962 and Ley de Justicia Laboral of 1965.
153. Lourdes Casal, 'Literature and Society', **Revolutionary Change in Cuba**, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, Pittsburgh, 1974.
154. **Bohemia**, Year 62, 11.9.1970, pp. 53-54.
155. **Ibid.**, p. 57.
156. **Ibid.**, p. 54.
157. Draft Law Against Loafing, Articles 1 and 3, published in **Granma Weekly Review**, 17.1.1971, p. 7.

158. *Ibid.*, Art. 4.
159. *Ibid.*, Art. 6 sub 1, 2 and 3.
160. *Ibid.*, Art. 3.
161. *Ibid.*, Art. 5.
162. *Ibid.*, Art. 10 section 1.
163. *Ibid.*, Art. 10 section 2.
164. *Ibid.*, e.g. Articles 12, 14, 15, 17.
165. *Granma Weekly Review*, 28.3.1971, p. 1.
166. *Con la Guardia en Alto*, April 1971, pp. 22-23.
167. *Ibid.*; *Granma Weekly Review*, *ibid.*, p. 5.
168. *Granma Weekly Review*, 11.4.1971, p. 3.
169. *Bohemia*, Year 63, 19.3.1971, p. 6.
170. Cf. *Granma Weekly Review*, 31.1.1971, p. 3; 14.3.1971, p. 1; 21.3.1971.
171. *Ibid.*, 31.1.1971, p. 3.
172. *Ibid.*, 14.3.1971, p. 1.
173. Ian McColl Kennedy, 'Cuba's Ley Contra La Vagancia, The Law on Loafing', *UCLA Law Review* 20, No. 6, August 1973, p. 1188; The Law on Loafing, esp. Articles 4 and 8, *Granma Weekly Review*, 28.3.1971.
174. The Law on Loafing, *ibid.*, Art. 9.
175. So Salas, *op. cit.*, p. 344; cf. *Granma Weekly Review*, 31.1.1971, p. 1.
176. Cf. *Bohemia*, Year 63, 19.3.1971, pp. 6-7.
177. *Ibid.*, p. 7.
178. Harnecker, *op. cit.*, p. 90; Cf. Agreement of the Council of Ministers and of the Political Bureau of the PCC of 22.10.1974 on the appointment of the Commission for the Preparation of the Constitution, *Revista Cubana de Derecho*, Year 5, Jan.-June 1976, No. 11, pp. 7-13.
179. De la Cuesta, *op. cit.*, p. 15.
180. Harnecker, *op. cit.*, p. 90.

181. Domínguez, *op. cit.*, p. 415.
182. *Granma Weekly Review*, 25.5.1975, p. 3. *Revista Cubana de Derecho*, Year 5, Jan.-June 1976, No. 11, p. 56, Table 7 is 'a summary of the modifications and additions to the text of the Draft Project of the Constitution which were proposed during the assemblies held for discussion by the people'.
183. *Granma Weekly Review*, 3.3.1975, p. 3, cited by Domínguez, *op. cit.*, p. 415.
184. *Ley Fundamental*, *op. cit.*, Articles 232 and 233.
185. Constitution, Art. 73 sub b.
186. On 15.2.1976. See, e.g., the official edition of the Constitution, Ministry of Justice, February 1976.
187. Harnecker, *op. cit.*, p. 90.
188. See, for example, the Cuban film 'La Familia'.
189. Domínguez, *op. cit.*, p. 415, citing *Granma Weekly Review*, 16.3.1975, p. 6.
190. *Ibid.*, pp. 415-416, from *Granma Weekly Review*, 29.11.1975, p. 2.
191. This commission was appointed by Law-Decree of the Council of Ministers, 22.10.1974: De la Cuesta, *op. cit.*, p. 15 and Harnecker, *op. cit.*, p. 92.
192. Harnecker, *ibid.*, p. 94; Domínguez, *ibid.*, p. 416, citing *Bohemia*, Year 67, No. 9, 28.2.1975, p. 50.
193. On 23rd April 1975: Harnecker, *ibid.*
194. *Ibid.*, pp. 95-6.

FROM BASE TRIBUNAL TO MUNICIPAL POPULAR TRIBUNAL: INCORPORATION WITHIN A NEW SYSTEM OF JUDICIAL ORGANISATION

The process of institutionalisation of the 1970s meant a total reorganisation of the judicial system. As has been seen, a National Commission for Juridical Studies started working on a new Law of Judicial Organisation and a new Criminal Procedure Law in April 1969. After being submitted for discussion by the population, these laws came into force in 1973.¹

In these two new laws the experimental basic administration of justice of the 1960s was incorporated in the new judicial system. We have already seen how the procedural structure of the base tribunals had its roots in the early Correctional Justice, how it developed under the new political and socio-economic conditions of the 1960s, and how it was laid down in the Criminal Procedure Law of 1973. The popular participation which had been the hallmark of these tribunals remained, but in the new legislation it lost some of its force.² As will be indicated below, this tendency continued in the 1970s, especially in 1977 when the base tribunals disappeared as such, to be replaced by the Municipal Popular Tribunals which had a higher competence and a more formal manner of functioning.

First, however, the new system of judicial organisation will be summarised. This was the system within which the base tribunals came to operate in the 1970s. It was a revised, coherent system of judicial administration, in which both old institutions and newly developed forms of judicial administration had their place. The ideas of socialist justice and 'socialist' or 'revolutionary' legality which were developed in a rapid tempo in the first three transitional years of the revolution form its foundation, albeit in a more elaborate form. These ideas, which were formulated at an early stage, can be traced in the explicit repudiation of the theory of the *Trias Política*, the new and very extensive functions of the Public Prosecutor in respect of socialist legality, and the revised organisational structure and job definition of the legal profession. At the same time, elements of the experimental popular administration of justice of the 1960s were introduced for all tribunals. Thus after 1973 all tribunals had lay judges, and both the election and possibility of recall of judges were generalised. Furthermore, by comparison with the Criminal Procedure Law of 1973, the Law on Judicial Organisation of 1973 was more strongly influenced by socialist examples especially from the Soviet Union³ and the German Democratic Republic. The new Criminal Procedure Law, with the exception of a few adaptations to socialist principles, was more in line with the old Spanish Criminal Procedure Law, the *Ley de Enjuiciamiento Criminal*, which was in force in Cuba until then.⁴

The new division of Cuba for the administrative purposes which was effected by the 1976 Constitution made a revision of the judicial system necessary. This was done in 1977 by means of revised versions of the Criminal Procedure Law and the Law on Judicial Organisation of 1973.⁵

In what follows a brief reference will be made to the Cuban elaboration of the Marxist theory of law, which was the ideological foundation of the new institutionalised judicial system of the 1970s. The organisation of the tribunals, as laid down

in the new legislation of 1973 and 1977, will be described. These changes had consequences for the functioning of basic level tribunals. A comparison of the experimental base tribunals of the 1960s with the municipal tribunals of the 1970s reveals a number of organisational and procedural changes. In particular, present day judicial practice contains a new type of court of law. Further, the new function of the Public Prosecutor and the role and place of the Cuban legal profession in the 1970s will be discussed because of the light they throw on the changes. Finally, an attempt is made to answer the question of whether the present day Committees for the Defence of the Revolution are still actively involved in the administration of justice.

A NEW THEORY OF LAW: NEW PRINCIPLES

The rapid political developments in the first three years of the revolution forced Cuban jurists to reflect on their own position within the revolutionary process and on their view of their own work.⁶ In 1961 an important shift had taken place in the official work ideology of the judiciary and the official viewpoints on its position. A pronouncement by the Supreme Court on August 21st 1961 made it clear that the duty of a judge was not only the application of legal norms. Within socialist law, judges were 'active guardians' of socialist legality and it was their duty in the consideration of each case 'to teach the citizens to be loyal to their socialist fatherland'.⁷ Old theories on the separation of powers were a thing of the past by 1961, according to the Attorney-General of the Supreme Court, Santiago Cuba:

State power was in fact single and indivisible, and in Cuba it has been in the hands of the people since 1959 instead of in the hands of the exploiters of the people.⁸

The developments in the basic administration of justice in Cuba in the 1960s that have been described took place within these newly defined boundaries; the experiments with the base tribunals were an attempt to find a specific design of their own within this general framework. The foundations of the new system of judicial organisation that was created in the course of the process of institutionalisation in the 1970s are a direct consequence and reflection of them.

It is generally the case that the developments in legal ideology in Cuba have been strongly influenced by the Marxist theory of law, as this has crystallised out in socialist countries. The influence of these countries has been considerable throughout the whole revolutionary period in Cuba, despite attempts to create a specifically 'Cuban' version in the 1960s. In the first years of the revolution Santiago Cuba was talking about 'socialist' and 'revolutionary' legality, and the students who left for the mountains in 1963 to start the first experimental tribunals had made a study of the socialist experiences in this field first. The influence of the Soviet Union fluctuated, but taken as a whole it can be said to have played a considerable role.⁹ The Marxist theory of law, as followed in the USSR and elsewhere, has left significant traces in the present Cuban judicial system; the influence of legislation and legal literature from the Soviet Union has been considerable. Spanish translations of Soviet legal literature are available in Cuba.¹⁰ Much Soviet legislation and legal practice has been taken as an example for the Cuban innovations. The recent Cuban work of the theory of law by Diego Cañizares, for example, is written from a Marxist-Leninist perspective.¹¹

The socialist theory of law as practised in present day Cuba can be seen to possess two important characteristics: the explicit use of 'law' as a political instrument; and the fundamental idea of 'social harmony' which is a principle underlying this legal theory and which implies a particular approach towards individual rights and the collective interest.¹² The explicitly political definition of law is derived from the Marxist view that socio-economic structures, politics and law are not separable from one another. Law cannot be comprehended from human thought alone, according to Marx.¹³ It is a social phenomenon which develops in accordance with the economic infrastructure of a society and which is in the last instance determined by it (although it does enjoy a relative autonomy). Legislation, the administration of justice and other legal institutions -- law, in short -- can either hold back and temporarily frustrate or stimulate historical developments determined by the forces and relations of production.¹⁴ In this view, law is a political instrument in capitalist countries too, whatever may be pleaded to the contrary. It serves the dominant interests in such countries in the first place and is thus, according to the Marxist analysis, a force of reaction. In a socialist society, on the other hand, the law should be politically progressive, aimed at the realisation of a 'communist society'.¹⁵

This principle was directly applied in Cuba with the rejection of the theory of the *Trias Política* in the course of the first eighteen months of revolution, a change that was institutionalised in the new system of judicial organisation of 1973. Cuba no longer recognises an independent judiciary. Since 1960 the Council of Ministers and the President of the Republic have appointed the members of the Supreme Court and the chairpersons of the *Audiencias*. The remaining judges were appointed by the Special Government Division (*Sala de Gobierno Especial*) of the Supreme Court. The lay judges of the base tribunals were exceptional in this respect. They were directly elected by the assemblies of neighbours and workers in the experimental basic administration of justice of the 1960s. After 1973 the election of judges was introduced at all levels. Since then both lay and professional judges are elected and supervised by the organs of Popular Power.

The second main feature of the Marxist-Leninist theory of law is the idea of social harmony.¹⁶ The difference between a socialist and a capitalist society, according to this ideological standpoint, is that contradictions in the former are not antagonistic. They do not have a class character, and collective and individual interests can finally coincide. In principle, according to this view, contradictions which find their expression in 'ordinary', as opposed to 'counter-revolutionary', criminality are capable of solution. This means an emphasis in the administration of criminal justice on the personality of the offender and on his or her re-education and integration in society. The patriarchal family model of judicial administration, which was so typical of Cuban basic judicial administration in the 1960s, plays a prominent role at this point.¹⁷ As the examination of the role of the CDRs has shown, the strong emphasis on 'education' is not confined to the Cuban legal system: it is to be found at all levels of Cuban society.

In this context the following account, which refers to the Soviet Union, could also be read as applying to Cuba:

Soviet law cannot be understood unless it is recognised that the whole Soviet society is itself conceived to be a single great family, a gigantic school, a church, a labour union, a business enterprise. The state stands at its head, as the parent, the teacher, the priest, the chairman, the director. As the state, it acts officially through

the legal system, but its purpose in so acting is to make its citizens into obedient children, good students, ardent believers, hard workers, successful managers.¹⁸

Cuban basic judicial administration in the 1960s could be described in the same terms, with a strong emphasis on the participation of the people. It was an explicit objective of the experimental base tribunals to lay a strong emphasis on education and re-education. The Cuban administration of criminal justice, influenced as it was by the Social Defence movement, provided a fertile breeding ground for these kinds of developments, as was seen in the earlier discussion of the 'pre-criminal state of dangerous behaviour'. However, the integration of this patriarchal system of the basic administration of justice among all the social strata and in the whole Cuban territory was a totally new phenomenon which was born with the revolutionary developments. At a more formal and ideological level, I would argue, the institutionalised system of criminal justice of the 1970s still displays the same characteristic. Socialist law is still seen in Cuba as a powerful instrument for the education of the people.¹⁹ It is not without significance that the most important laws of the 1970s were presented to the Cuban people for discussion before they came into force.²⁰

An important principle of the new institutionalised system of criminal law is the claim that the Public Prosecutor, the judiciary and the legal profession are each in their own way serving the same goal: the construction of a socialist society. Antagonistic contradictions between the general interest, represented by the Public Prosecutor, and the individual interests of the accused, are hardly recognised. In the words of the new law, the administration of justice serves the socio-economic and political system that is defined in the Constitution. Within the context of the new, widely extended duties of guarding socialist legality, the Cuban Public Prosecutor is responsible for the protection of the rights of the defendant during the preliminary investigation and during the enforcement of a sentence involving detention. The defence counsel, on the other hand, may not harm the interests of the socialist society in the course of the defence of the client, as the project for the 1976 Constitution formulated it. In a speech at the establishment of the Organisation of Lawyers' Collectives, Blas Roca stated that individual interests are inseparably bound up with the general interest and the two must more and more coincide.²¹ Cañizares considers it pointless to talk about the rights of the individual against the state in legal theory.²² While bourgeois legal theory derives human rights from (rational) human nature, according to the Russian jurist Tumanov, who has been quite influential in Cuba, the Marxist theory of law proceeds from the social aspect of human nature, from a person's position within the social process of production:

The theory of natural law makes absolute an idea of law which presupposes the human being to be an owner, an entrepreneur and an isolated individual, while the Marxist theory of law emphasises the necessity of a continuous development of the rights and liberties of men, in response to a further socio-economic development of society and the transition from the capitalist phase to a higher phase of development.²³

In socialist society the state is inalienably bound to the welfare of all individuals. Consequently, within the legal order which is closely tied to this state power, individual and common interests coincide. Cañizares is thus led to speak of the rights of the individual within the state, rather than against the state.²⁴ The

problematical relation between individual and collective interests in criminal justice in a socialist society is discussed below.

TWO LAWS ON JUDICIAL ORGANISATION

We turn to examine the structure of the new system of judicial organisation that was drawn up in the 1970s and the place of the basic administration of justice within it. We can start with the observation that, unlike the pre-revolutionary Constitutions which were in force in Cuba, such as that of 1901, the new laws no longer refer to the judiciary as an 'independent power'. In the new system of judicial organisation, the tribunals are an integral part of the socialist revolutionary power.²⁵ According to the law, this means that the tribunals are independent in the execution of their purely judicial duties:

The judges are independent in their function of dispensing justice and are obedient to no one but the law.²⁶

At the same time, however, the interpretation of the law must take place according to 'revolutionary principles'.²⁷ The most important task of the judicial administration, apart from that of raising socialist legal consciousness, is the preservation and restoration of socialist legality, i.e., the protection of the socio-economic and political system as enshrined in the Constitution and the protection of the life, liberty and other fundamental rights of every individual citizen.²⁸

In a speech to the Communist Youth Union early in the 1970s, Blas Roca said:

Politically and socially, the correct application of legal norms and their genuine observation mean the consolidation and reinforcement of the system set up by the Revolution to protect the life, security, property, rights and interests, both public and private, of the citizens, to raise the level of culture and education, to strengthen family bonds, to avoid accidents involving lives, health or property, to forestall, discover and combat without flagging the activities of the enemies of the Revolution, all kinds of offences and antisocial behaviour, to affirm the socialist norms of society, to re-educate those who fail, to form the new man and to raise the moral, patriotic and internationalist spirit of every citizen.²⁹

This is why, in the hierarchy of state organs, the tribunals are politically and organisationally subordinate to the Council of Ministers before 1976 and the National People's Assembly and the Council of State since then.³⁰

The 1973 and 1977 legislation combined the various jurisdictions that were in existence. Single judges disappeared for good and lay judges functioned in the tribunals at all levels. Judges were now chosen by political bodies, to which they were accountable for their functioning. The new judicial organisation of 1973 brought criminal, civil, administrative, military and 'revolutionary' justice together in one system. All the judicial instances in existence at that time were replaced by:

one national Supreme Court (*Tribunal Supremo Popular*), consisting of four chambers: the criminal chamber, the civil-administrative chamber, the military chamber and the state security chamber;³¹

the Provincial Popular Tribunals (*Tribunales Provinciales Populares*), consisting of three chambers: a criminal chamber, a civil-administrative chamber and a state security chamber;³²

the Regional Popular Tribunals (*Tribunales Regionales Populares*), consisting of two chambers each: a criminal and a civil-administrative chamber;³³

the old Base Popular Tribunals (*Tribunales Populares de Base*), which were not further divided into chambers and which dealt with both criminal and civil cases;³⁴

the Military Courts and Tribunals.³⁵

The Supreme Court was, as before, the instance for cassation, appeal and review of verdicts which had been passed by tribunals which were lower in the hierarchy. From 1973 onwards there was a bench of five judges: three professional judges, one of whom was President of the Court, and two lay judges.³⁶

The Provincial Tribunals were both appeal courts against verdicts passed by judges at a lower level and the courts of first instance for ordinary felonies, crimes affecting state security and serious civil cases.³⁷ They too had a bench of five judges: three professional judges, one of whom was President of the Court, and two lay judges.

The Regional Tribunals dealt with less serious felonies, the 'state of dangerous behaviour' and minor civil cases. They were also the courts of appeal against verdicts passed by the base tribunals.³⁸ Each chamber in a Regional Tribunal consisted of one legal professional, who was president, and two lay judges.³⁹

All tribunals except the base tribunals had a Governing Body (*Consejo de Gobierno*). This consisted of the president and chairpersons of the various chambers, plus the Public Prosecutor of the corresponding level.⁴⁰ The Governing Body of the Supreme Court had within its powers the important authority to issue binding instructions on the interpretation of the law. It also passed the general policy lines of the government on to the tribunals, thereby consolidating the political and organisational hierarchy.⁴¹

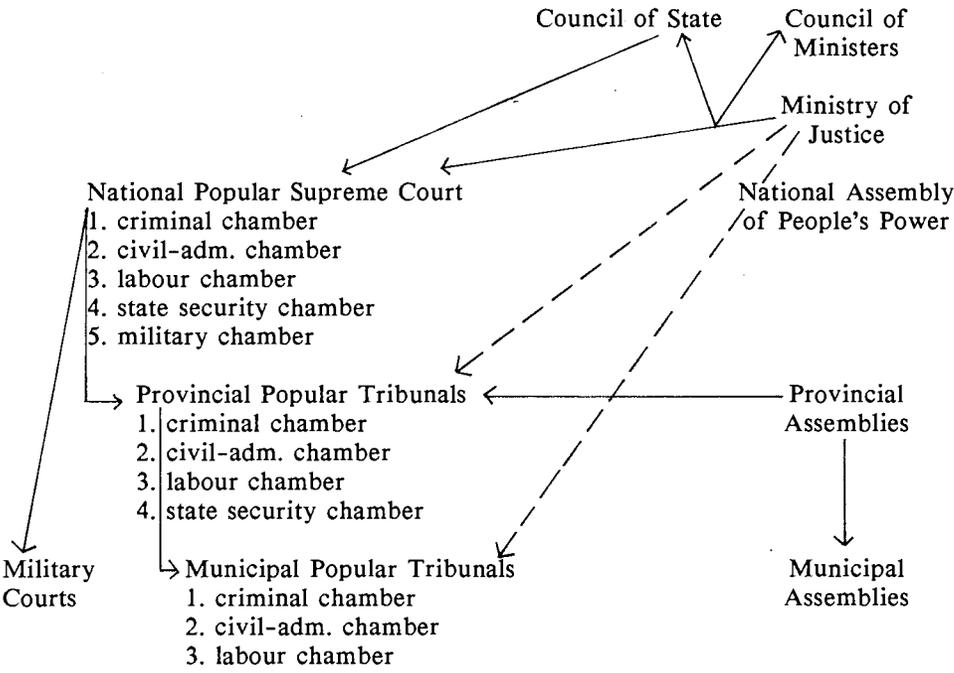
The base tribunals in the new legislation were still the instance where less serious felonies and misdemeanours at neighbourhood level were brought to trial. They were now also legally empowered to deal with certain civil cases.⁴² As in the experimental years, no legal training was required for these judges: both the president and the other two judges who sat on a bench were lay judges.⁴³

In 1977 this system was drastically altered, at least as far as the place and function of the base tribunals within the structure are concerned. The new administrative division of Cuba which was introduced with the 1976 Constitution necessitated an adjustment of the system of judicial organisation; at least, this was the argument which was put forward to justify the changes afterwards. In accordance with the administrative changes, the number of judicial instances after 1977 was reduced to one Supreme Court, 14 Provincial Tribunals and 169 Municipal Tribunals. The position of the Supreme Court and the Provincial Tribunals was not altered in essentials by the new law, and they continued to function with a bench consisting of two lay judges and three professional judges.⁴⁴

Only the competence of the Provincial Tribunals was extended to any degree.⁴⁵ The *Plenos* of the Supreme Court and the Provincial Tribunals, in which all the judges of the relevant tribunal sat, assumed the directive tasks which had previously been the responsibility of their respective Governing Bodies in the new law. In the case of the Supreme Court, the Governing Body became the executive organ of the Plenum, while at the provincial level the Governing Bodies disappeared. As a result

of these changes the Attorney-General of Cuba was now empowered to participate as a speaking and voting member of the assembly of the Plenum of the Supreme Court, and the Minister of Justice also had the right to speak there (though not the right to vote). It was permissible for a member of the provincial Public Prosecution to take part in meetings of the *Plenos* of the Provincial Tribunals.⁴⁶

THE JUDICIAL ORGANISATION FROM 1977



The Regional Tribunals were disbanded and the base tribunals were given the name of Municipal Tribunals (*Tribunales Municipales Populares*).⁴⁷ The more formal structure which they acquired was accompanied by a further extension of their powers. Unlike the earlier base tribunals, the Municipal Tribunal could be divided into so-called divisions or sections.⁴⁸ In contemporary Havana, and probably in the rest of the country too, this is still the common practice. Only in remote areas is the creation of 'sections' in accordance with the place of the administration of justice allowed; these sections are competent in all three areas of jurisdiction.⁴⁹ Only two of the three members of the bench are lay judges; since 1977 the president of the bench has to be a professional. A further change is in the degree of

formality of the criminal procedure in the Municipal Tribunals, as will be seen below.

Cases which came before the Regional Tribunals in accordance with the 1973 law were divided between the existing Provincial Tribunals and the newly installed Municipal Tribunals. Because the handling of cases of labour law fell under the jurisdiction of the ordinary courts after 1977, the Supreme Court, the Provincial and the Municipal Tribunals received an additional chamber for labour law.⁵⁰ The Municipal Tribunals thus deal with cases involving criminal, civil and labour law at present. The trial of contraventions remained the duty of these tribunals in 1977 for the time being; their competence in respect of less serious felonies was extended to those felonies which carried a maximum sentence of nine months detention or a fine of 270 units of currency.⁵¹ At the same time the Municipal Tribunals took over the competence to deal with offences connected with the pre-criminal state of dangerous behaviour from the Regional Tribunals in 1977;⁵² that is, behaviour like insanity, alcoholism and loafing.⁵³ In 1979 this situation changed when misdemeanours were removed from the jurisdiction of the Municipal Tribunals. They are now dealt with administratively by provincial and municipal organs of Popular Power. The new Cuban Penal Code of 1979 no longer refers to contraventions,⁵⁴ the regulation for their trial is relegated to a Decree-Law of the Council of State.⁵⁵ This lists a number of misdemeanours, including a large number from the old criminal law, the Social Defence Code, which previously came under the jurisdiction of the base tribunals and later under that of the Municipal Tribunals.⁵⁶ It is no longer permitted to impose sentences of detention in such cases. Contraventions recognised by the police or by special officials of Popular Power are noted and dealt with by special administrative bodies of Popular Power at the corresponding level. The latter are empowered to impose a fine for the contravention that is booked, and the whole procedure is written.⁵⁷ Appeal against the decision can only be made once. It must be lodged within two weeks with the instance which took the decision, which is required to reach an admonitory decision within a month.⁵⁸

The civil cases dealt with by the Municipal Tribunals nowadays are questions of family law such as alimony, which had also fallen under the jurisdiction of the base tribunals, as well as adoption, divorce, division of matrimonial property at divorce, claims up to a maximum of 1,000 pesos and other matters.⁵⁹ The labour cases which come before the labour chambers of the Municipal Tribunals are concerned with labour discipline. They include absenteeism, negligence at work, disagreement on wage levels, promotion chances and change of work.⁶⁰ The sanctions which can be imposed in such cases vary from a warning and withholding part of the wages to dismissal. Before February 1980 these sanctions were imposed by a labour council chosen by the workers within a place of work themselves; since then it is the management which has these powers. In both cases the party involved could and can lodge an appeal against a decision with the Municipal Tribunal.⁶¹

THE FIRST GUARANTEE OF POPULAR CONTROL: THE ELECTION OF JUDGES AND THEIR ACCOUNTABILITY TO THE VOTERS

A new feature of the system of judicial organisation introduced in the 1970s is the 'temporary' election of judges, their accountability to the electoral bodies and the introduction of lay judges at all levels of judicial practice. For the putting into practice of the new institutions the example of existing legislation in the Soviet union and other socialist countries has been followed on a number of points.⁶² In

the eyes of contemporary Cuban lawyers, they are important -- perhaps the most important -- guarantees of popular control of the administration of justice.⁶³

The first guarantee concerns the 'temporary' election of judges by the people or organs representing the people. This institution was introduced in 1973 for all tribunals. At that time the existing situation was taken as the basis so long as a definitive regulation, which could not be made before the installation of a new form of popular power, had still to be made. It was thus still neighbourhood and workers' assemblies which chose the lay judges for the base tribunals. The definitive selection was in the hands of a special commission, chaired by the local party organisation and consisting of representatives from the various political and mass organisations and from the National Union of Jurists. The judges were chosen for a period of three years and, with the exception of the chairpersons, exercised their judicial functions for four months of the year. In the remaining months they carried out their normal work. The president, who was also a lay judge, held office for the entire period of three years.⁶⁴ During their period of service, the judges received the same wages that they otherwise received for their customary work.

The judges of the Regional and Provincial Tribunals were chosen by similar organs at their respective levels. The lay judges were chosen for three years, the professional judges for five. One difference was that the lay judges exercised their judicial functions for only two non-consecutive months of the year.⁶⁵ The presidents of the various chambers were selected from the elected judges by the Governing Body of the Supreme Court.⁶⁶ For the time being it was still the Council of Ministers which appointed the judges of the Supreme Court; the professional judges who held office for five years; and the lay judges proposed by the National Direction of the various political and mass organisations and the Union of Jurists who held office for three years.⁶⁷ The president of the Supreme Court was nominated solely by the President of the Republic, who was assisted in his choice by the Council of Ministers.⁶⁸ The appointment of the chairpersons of the Provincial and Regional Tribunals was in the hands of the Governing Body of the Supreme Court.⁶⁹ The latter three categories held office for seven years.⁷⁰

The conditions for holding office for the lay judges of the base tribunals were not essentially changed in 1973 compared with the previous period. They were still required to have a good attitude towards work and other activities, a good reputation, a good moral record and an active involvement in the revolution. The minimum age was 21. The requirement of a minimum of six years education was dropped, presumably because this had become obsolete with the advances made by the revolution in the field of education.

These criteria applied to all lay judges from 1973; including those of the Supreme Court, the Regional Tribunals and the Provincial Tribunals. There was a difference in the age qualification, however: the minimum for the Supreme Court was 30 years, and for the other Tribunals 25 years.⁷¹ Apart from the criterium of a good attitude towards work, these criteria were also introduced for the professional judges from 1973. The professional judges also had to satisfy the demands of having been through legal training and of possessing the Cuban nationality. The minimum age requirements were replaced by a minimum number of years of experience: this was 8 for the Supreme Court, 5 for the Provincial Tribunal and 3 for the Regional Tribunal.⁷²

In 1977 this system of election was simplified and adapted to the new state organisation. Since then, the judges of the various tribunals are chosen by the people's representative bodies at the corresponding levels of Popular Power. The

judges of the Supreme Court are now chosen by the National Assembly of Popular Power; the president is chosen on the basis of a proposal by the chairperson of the Council of State, who is also chairperson of the Council of Ministers: Fidel Castro; the others are chosen on the basis of a proposal by the Ministry of Justice.⁷³ The judges of the Provincial and Municipal Tribunals are chosen by the Popular Assemblies of the respective province or municipality on the basis of a proposal by the Ministry of Justice.⁷⁴ The election of professional judges is for a period of five years; that of the lay judges is for a period of two and a half years.⁷⁵ The latter exercise their function for only two non-consecutive months each year, like the lay judges of the Municipal Tribunals.⁷⁶ During their period of office the lay judges receive the same wages that they receive for their customary work and retain all the rights and privileges attached to their normal functions.⁷⁷ In the remaining months they carry out their normal work.

The criteria for appointment as a judge, besides the possession of the minimum age qualification, are still revolutionary activism, a good moral background and a good reputation.⁷⁸ As was the case for the base tribunals, the minimum age requirement for lay judges in the Municipal Tribunals is 21.⁷⁹ Similarly, as was the case for the Regional Tribunals, the professional judges in the Municipal Tribunals must have a minimum of three years of experience.⁸⁰

The electors' authority was not limited to the elections alone. By the new law of judicial organisation of 1973, the tribunals were obliged to provide an account of their functioning (*rendición de cuenta*) to the electors each year, or whenever required.⁸¹ The electoral bodies were also empowered in 1973 to recall a judge during his or her term of office; a two-thirds majority was sufficient for such a recall (*revocación*).⁸² Besides recall, it was also possible to dismiss a judge. The authority to take this measure (*separación*) lay with the Governing Body of the Supreme Court. It could be imposed in the case of blatantly reprehensible behaviour on the part of a judge, such as the committing of a punishable offence which carried the sentence of detention, or behaviour that made him an object of dishonour in the eyes of the people.⁸³ The regulations on *rendición de cuenta* and *separación* were not altered substantially in 1977. The tribunals are now accountable for their functioning to the people's assemblies of Popular Power, and these are the organs which can recall individual judges. With the agreement of the electoral body the mandate of a judge can be revoked at any time, either at the initiative of the body itself or at that of the Governing Body of the Supreme Court, the Attorney-General or the Minister of Justice. In 1977 the Governing Body of the Supreme Court lost its right of dismissal.⁸⁴

It is difficult to gauge the extent of the effectiveness of this form of popular control in Cuban judicial practice. Interviews with Cuban lawyers and the study of the relevant legislation raise certain questions regarding the real nature of this popular election of judges. There are some striking differences with the previous election of lay judges for the experimental base tribunals. In present day Cuban practice, judges are generally re-elected after the completion of their term of office, and this is true of lay judges too. The crucial factor is their performance in office: did this meet the technical criteria of familiarity with the law and moral criteria too?⁸⁵ The conduct of an individual judge is analysed by the immediately superior tribunal. The higher tribunals are not only responsible for the lower ones, but they also supervise their functioning;⁸⁶ for this purpose they can always ask for information from the lower tribunals.⁸⁷ Moreover, it is the professional judges of the higher tribunals who are in charge of the training courses for the professional

judges of the immediately lower tribunals. On the basis of the analysis of the functioning of an individual judge, an evaluation is held by the Provincial Directions of the Tribunals of the Ministry of Justice, at least where judges of the Provincial or Municipal tribunals are concerned. By the principle of 'double accountability' (discussed below) these bodies are also accountable to the Provincial Popular Assemblies. If the functioning of a judge satisfies the criteria laid down, he or she can be re-elected for a further period of office, and in certain cases may be promoted to a higher tribunal. In the last instance it is the Ministry of Justice which makes proposals to the relevant popular assemblies.⁸⁸ On the basis of this list containing the relevant information the Assembly elects new judges or re-elects the old ones.⁸⁹ When asked whether judges are ever recalled by their electors for personal misconduct, the answer in Cuba is 'Rarely, but it can happen'. It seems that it is more frequent for revocation to be instigated by the judge himself or herself; this may be for medical reasons or if the person finds the work too demanding.⁹⁰

In the light of the preceding discussion it is worth asking how much freedom to manoeuvre is held by the popular assemblies of Popular Power in the choice and evaluation of judges. Since 1977 it is these assemblies which formally have the last word in the elections. However, the procedure of evaluation and proposal suggests a considerable degree of interference on the part of the judiciary and the administration. In view of the role of the Ministry of Justice here, leaving aside the question of the margins of freedom within which the assemblies move -- how much freedom of choice is left by the list of proposals, for example? -- the election of judges in contemporary Cuba can be characterised as, to a certain extent, a judicial 'appointment'. Such an institution is by no means unfamiliar within the traditional Cuban system of civil law.⁹¹

As far as the basic administration of justice and the developments which have taken place in it in the last twenty years are concerned, it can be stated that the judges at this level no longer come directly from assemblies of the people in their immediate neighbourhood. It is through the intermediary of popularly elected municipal assemblies that the choice of candidates proposed by the Minister of Justice is made. This means that certain professional judges of these tribunals may now come from a neighbourhood outside the one where they exercise their functions.⁹² However, I was told that it was a general ideological principle to elect judges who were resident in the district where their tribunal functioned. In cases where a district had too few trained lawyers it might be necessary to deviate from this guideline.⁹³

The fundamental idea behind the basic administration of justice that was introduced in the 1960s, namely that trials should be conducted by lay judges chosen by and from the neighbourhood residents who were in principle old acquaintances, colleagues or neighbours of everybody, has thus become a relic of the past.

THE SYSTEM OF DOUBLE ACCOUNTABILITY

A *rendición de cuenta* is first and foremost the accountability of a tribunal to its electors. It is the tribunal as a whole, not the individual judges, whose conduct is evaluated. This evaluation is carried out not only by the electoral body by which the tribunal in question was chosen, but also by the electoral bodies to whom the higher tribunals are accountable which are responsible for the lower tribunals. There

is a principle of double accountability at issue here. In accordance with the law, the evaluation by the electoral bodies does not deal with purely judicial duties. The judges are independent as far as their judicial functions are concerned.⁹⁴ In what follows we shall follow the procedure of a *rendición de cuenta* and discuss its significance as an instrument of control within the present Cuban system of judicial administration.

A *rendición de cuenta* is always a written procedure.⁹⁵ A report is never concerned with the contents of judicial decisions, but with administrative-economic matters and the degree of work discipline and efficiency displayed.⁹⁶ Normally it includes an overview of the structure of the tribunal: the number of chambers and the number of judges; a report on the work discipline of the personnel, including absenteeism; statistical data on the type of cases dealt with by the tribunal, the number of convictions and the number of acquittals; and a conclusion, which offers suggestions for improvement in cases of inefficiency.⁹⁷ Every tribunal prepares an annual report during the months of January, February and March.

The written *rendiciones de cuenta* are sent to the chairpersons of the executive committee of the corresponding popular assembly.⁹⁸ This committee studies the report in the first instance and usually invites the president of the tribunal to discuss points which are unclear and to supply additional information. The report made by the committee eventually comes into the hands of the members of the assembly, who can present their views and opinions on the report in a general discussion. This discussion finally leads to a proposal for the tribunal concerned which is drawn up by a special commission of the assembly, the Commission for Legality and Domestic Order (*Comisión de Legalidad y Orden Interior*). The tribunal can then proceed to work with this proposal in the year ahead and in ensuing years.⁹⁹

The Municipal Tribunals are the first to compile their annual report, which is done before February 1st. It is usually the president of the tribunal who is responsible for this, assisted by the professional judges of the various divisions and chambers.¹⁰⁰ A copy of the *rendición de cuenta* for the municipal popular assembly is sent to the immediately superior Provincial Tribunal and to the Supreme Court of the Ministry of Justice.¹⁰¹

The Provincial Tribunals present their annual reports immediately afterwards, in the last week of February. For this purpose the chairpersons of the various chambers present a report on their own activities to the Plenum of their tribunal before February 20th. These reports also include details on the Municipal Tribunals which fall under their jurisdiction. After receiving the approval of the Plenum this *rendición de cuenta* is sent, along with any changes or additions which may have been made, to the Provincial Popular Assembly, and copies are sent to the Supreme Court and the Ministry of Justice.¹⁰²

The *rendición de cuenta* of the Supreme Court is prepared in the same way. In this case it is the *Consejo de Gobierno* which compiles the final draft. This draft is presented for the approval of the Plenum in March before being submitted.¹⁰³

The result of these legal regulations is that the Plenum of the Supreme Court is in the last instance responsible for the functioning of all tribunals, from the highest to the lowest levels. It is responsible for the latter in that it also directs them.¹⁰⁴ In 1980 a particular problem was raised by the *rendición de cuenta* for that year, according to the vice-president of the Supreme Court. The national average of acquittals in criminal cases seemed to be high: 40%. In the report this was attributed among other things to deficiencies in the pre-trial phase and to the

fact that the Public Prosecutor was too prompt in bringing cases to trial.¹⁰⁵ Two years later it appeared that a commission had been formed within the Supreme Court to look into this problem and to come up with a solution. This commission still located the problem in the actions of the Public Prosecutor in often making a faulty assessment of the feasibility of cases that were brought up for trial.¹⁰⁶ The principle of discretionary powers is not available to the Public Prosecutor in Cuba: it does not have the authority to decide to halt a prosecution if this would be in the common interest. To reduce the excessive number of cases brought up for trial, the Supreme Court has various means at its disposal. Its Governing Body can pass instructions of a more general nature on to the lower tribunals at the instigation of the Plenum.¹⁰⁷ The Plenum, which includes the Minister of Justice and the head of the Office of the Public Prosecution as well as all the judges of the Court, is also empowered to issue binding instructions to the lower tribunals on the correct way to apply legislation.¹⁰⁸ Since the Attorney-General also sits in the Plenum, internal binding regulations for the Public Prosecutor can be formulated that are in conformity with those issued to the lower tribunals.¹⁰⁹

In view of the system described above, the control of the municipal and provincial assemblies over the judges elected by them cannot have been more than marginal. As with the other functions of these popular assemblies, their role is limited to the execution and interpretation of the general guidelines formulated at national level. As a result of the system of double accountability, the accountability of a tribunal to the popular assembly corresponding to its level is complemented by the system of control within the hierarchy of the tribunals which has its peak at national level. While the first type of accountability is only concerned with administrative and organisational affairs, in the accountability of the lower tribunals to the Supreme Court more is at stake: not only questions of organisation and policy but also the purely judicial functions of the tribunals fall under the control of the Supreme Court. The application and interpretation of legislation are controlled not only by appeal and cassation procedures, but the interpretation of the law provided by the judge is itself also restricted by the binding instructions issued by the Plenum of the Supreme Court. At the same time, the presence of the Minister of Justice and the Attorney-General within the Plenum of judges gives this control on the application of legislation a political dimension. As demanded by the law and socialist legality, the judiciary is independent as regards its function of administering justice. As far as the interpretation of the law is concerned, however, it is required that this takes place in accordance with the principles of the socialist state.¹¹⁰ And in a socialist country like Cuba, it is in the last instance the Communist Party as ideological vanguard of the working class which lays these principles down.¹¹¹

The base tribunals of the earlier period functioned outside the judicial hierarchy, independently of the other tribunals. The Municipal Tribunals, on the other hand, are included within the all-embracing structure of control of the new system of judicial organisation. Through the principle of double accountability they are responsible, as regards their political and administrative-organisational functions, both to the popular assemblies at the corresponding level and, via the higher tribunals, to the popular assemblies at provincial and national level. The judicial functioning of the Municipal Tribunals is under the supervision of the Provincial Tribunals and of the Supreme Court.

THE SECOND GUARANTEE OF POPULAR CONTROL: LAY JUDGES

At first lay judges were confined to the experimental base tribunals. In 1973 the principle of lay judges was introduced at all levels of the judiciary. Until 1977 the base tribunals had exclusively lay judges. Since 1977 the Municipal Tribunals have two lay judges and one professional lawyer as president.

The president of the Provincial Tribunal of Havana, Graziela Prieto Morales, regarded the principle of lay justice as being of such importance because it represented a specific approach within the judicial system, that of the 'working people'. Partly because lay judges only work as such for two months of the year, she claimed, they can maintain an open view of justice that is not swayed by professional or routine considerations.¹¹² The Polish legal sociologist, Podgórecki, describes the comparable institution of lay justice in Poland in the following way:

The intention of the legislature, when the institution of lay judges was first established, was to introduce an element of everyday experience into court procedure...

Another function of the lay judges was to disseminate the legal awareness gained and shaped by them in the court among their original social and occupational settings.¹¹³

However, the formulation of the purpose of the institution is not necessarily a description of how it works in practice: in the system of Municipal Tribunals which has been in operation in Cuba since 1977, what is the real influence exerted by the lay judges who have had no professional training and who administer justice for two months of the year under the chairpersonship of a professional? In the course of attending a number of criminal trials held by Municipal Tribunals in Havana in 1980, 1981 and 1981, I gained the impression that the lay judges' contribution is generally small. During these hearings it was always the chairperson who did most of the talking, put difficult questions and cautioned the defendant. It was very rare for a lay judge to put a question. One sitting was exceptional in that the regular president was not there and her place was taken by a young lawyer who had probably just completed her studies. The bulky, middle-aged lay judge who sat on the bench on this occasion repeatedly took up the questioning in a manner which was by no means reticent. This was the first and last time that I witnessed such an initiative on the part of a lay judge in a Municipal Tribunal.¹¹⁴

Two Cuban lawyers told me that the influence of the lay judges on the verdict was not to be taken lightly. Graziela Prieto Morales, president of the Provincial Tribunal of Havana, and Aldo Prieto Morales, Professor of Criminal Law, both stated that the lay judges played a considerable role during the consultations that took place before the final verdict was delivered. In the case of the Municipal Tribunals there is usually only a short consultation, and the sentence is pronounced immediately after the handling of the case. It should not be forgotten, however, that the lay judges are a majority in the bench when it comes to casting a vote: two lay judges against one professional judge. Morales gave his former wife as a good example of an active lay judge:

My former wife was a lay judge in a Provincial Tribunal and was very active in the bench of judges. She also had a highly developed political consciousness, so that she took initiatives in respect of defendants which were not directly a part of her judicial functions. When a young man seemed likely to be held in preventive custody because he had no money to pay the surety (*fianza*) required by

law as a provisional measure, she contacted his family and managed to get it paid.¹¹⁵

It would not be surprising, however, to find that the lay judges did not exert such an influence on the course of the criminal process and on the final sentence. There are important differences in training and experience between professional and lay judges. The legal training takes five years, and each year a month is spent in legal practice.¹¹⁶ In 1981, at any rate, the training provided in criminal law was strongly orientated in a positivistic direction, i.e. the main requirement of the students was an excellent familiarity with the existing legislation.¹¹⁷

As might be expected, the legal training received by a lay judge after being elected is much shorter. The lay judges follow a course consisting of two or three weekly classes for a period of five or six months. These classes deal with the definition of crimes and the corresponding penalties, and with the lengths of the major sentences and the rights of the accused during trial. Graziela Prieto Morales referred to the contents of this training as the most necessary and practical points. The courses vary from tribunal to tribunal and from chamber to chamber; they only deal with the specific set of problems corresponding to the tribunal or chamber in which the lay judge is to function.¹¹⁸ They are organised by the Education Department of the Ministry of Justice.¹¹⁹ In the normal run of things, the professional judges within a particular tribunal organise the courses for the lay judges there. The professional judges themselves attend refresher courses given by the professional judges of the immediately superior tribunal.¹²⁰ Although the lay judges are often 'educated workers',¹²¹ and may even be lawyers,¹²² in most cases they will have much less of a juridical background and experience than the president of the bench. They pick up their elementary legal knowledge from the president, who organises the courses for newly-elected lay judges as one of the professional judges within the tribunal. Besides this limited training, the lay judges are also at a disadvantage as regards experience, for while the professional judges work full-time, the lay judges only exercise their functions for two months each year since 1977. This discrepancy remains even when lay judges are re-elected for a new period after the completion of their term of office or are promoted to serve on a higher tribunal.¹²³

Comparative analysis of the functioning of lay judges leads to the conclusion that the role of the non-professional within a mixed bench of professional and lay judges is generally passive.¹²⁴ An inquiry conducted in 1965 in Polish criminal courts where the bench consisted of one professional judge and two lay judges indicated that the lay judges rarely took an active part in the course of the proceedings, and in 65% of the cases they took no part at all. They rarely put questions, if at all. In half of the cases the professional judge proposed the penalty to be imposed. In only a quarter of the cases was this initiative taken by a lay judge. If the latter hesitated, then the formulation of the proposal was taken over by the professional judge. In half of the cases the consultations on the verdict were unanimous. In a quarter of the cases differences of opinion were resolved through discussion. In the remaining cases it was the professional judge who resolved the conflict by means of a settlement.¹²⁵

On the basis of the evidence presented on the practice of the Cuban Municipal Tribunals and of research carried out in other socialist countries on comparable institutions, it seems reasonable to assume that the 'guarantee of popular control' embodied in the institution of lay justice in Cuba as it was shaped in 1977 is not a complete certainty. By definition, the influence of the lay judges in the new system is bound to decline as the cases brought before the tribunals are dealt with in a

more formal and professional legal manner. Nevertheless, as Podgórecki also points out in his remarks on the Polish case, the genuine influence of the constant presence of the two lay judges on the conduct of the professional judge is difficult to gauge. The presence of the two lay judges within the bench can in itself influence the behaviour of the professionally trained president in a specific way. Podgórecki refers here to the effect of a so-called 'control reference group', i.e.:

A group whose evaluations of the principle of behaviour are taken into consideration; though it is an object neither of aspiration nor of avoidance, the fact that its presence is acknowledged or taken for granted modifies behaviour toward an adjustment of one's own relevant criteria to those which are known to be respected by the control group.¹²⁶

REAPPRAISAL OF THE LEGAL PROFESSION?

The introduction of legally trained judges within the new Municipal Tribunals and the concomitant reduction of non-professional participation in the basic administration of justice are not isolated features: they are a part of a general reappraisal of the legal profession which took place in the 1970s.

The experimental base tribunals of the 1960s owed their special character largely to the fact that justice was administered in a very simple fashion in comprehensible language by lay judges. This character fitted in with the ideological goal of the period: the dissolution of the division between intellectual and manual labour. From 1970 onwards, however, a renewed interest in professionalism can be detected. With the setting in motion of a comprehensive process of institutionalisation, the work of the legal profession came in for a new appraisal.

Fidel Castro had this to say in 1982:

It seems that when we implemented the university reform there were so many law students that they were seen to be too many. In a way, they symbolised the law of the past, and we needed to train more engineers, more top technicians for industry, and so we came to neglect law. Now we have discovered that in our tribunals, in our district attorney's offices, in enterprises and everywhere, experts are needed in juridical sciences. Some attention will have to be paid to them, above all to our regular law courses.¹²⁷

This must have been a relief for those traditional Cuban lawyers who had experienced the experiments with the base tribunals as something of a farce.¹²⁸

This development left its mark on the nature of the study of law. While the 1960s saw a reduction in the number of law students to a minimum -- only 219 of the 26,899 students at the University of Havana were law students at that time-- in 1980 185 new students were registered annually for daytime legal studies at the same university. The duration of the course at the present time is five years. One month each year is spent in practical apprenticeship; in the first two years of the study this month is devoted to acquiring familiarity with the future work, and in the last three years it is spent in juridical work in an enterprise or institution. There is the guarantee of a job in the legal profession to every student who completes this training, thanks to close cooperation between the university and the various organisations and institutions which require juridical personnel.¹²⁹ Incidentally, it cannot always be easy to reconcile this promise of work with the ideo-

logical principle that judges should as far as possible come from the district where they find work.

Besides the daytime course the Law Faculty of the University of Havana has an evening course for those who are engaged in other work in the daytime. A recommendation from the work centre is required for admission to this course. In 1980 there were 163 such students.

In 1980 a new 'free course' was started, which was open to everybody. Instead of lectures, the course material was sent by post and examinations were held two or three times a year. According to a professor of the faculty, there was an enormous response, with 12,000 registrations in the first year.¹³⁰

In the daytime course the first two years covered subjects such as the history of law, including Roman law, political economy and philosophy. In the last three years of the course the various branches of law were taught. At least as far as criminal law is concerned, the approach followed during the course is very positivistic, with all emphasis being put on a thorough familiarity with the new legislation. The manner of presentation of the material is rather scholastic. Allowing for exceptions, it is still true to say that in general it tends to leave little scope for critical approaches or for approaches which focus on problems or practice. In my own experience, refresher courses for lawyers who are already practising have a less rigid character.¹³¹

In the 1960s an attempt was made to abandon the traditional, formalistic character of law courses in Latin America and to make law students responsive to revolutionary practice. With the establishment of the experimental base tribunals they were taught not to derive juridical solutions primarily or exclusively from the law, but first of all to adapt to the everyday practices of the Cuban people.¹³² In view of the present character of legal training, this tendency does not seem to have persisted. Apart from the annual, compulsory periods of apprenticeship, legal education in Cuba now has the same traditional, legalistic content and design as that to be found in the rest of Latin America.

With the institutionalisation of the far-reaching transformations which accompanied the first years of the Cuban revolution, Cuban lawyers seem to have reverted to their old role: the application of the law and no more. A lawyer from Havana who had been trained in the 1960s told me in 1983:

Law can play a stimulating and progressive role, but at the moment it is lagging behind social developments.¹³³

Perhaps Castro was referring to the same thing two months earlier when he made the following negative remarks about the state of juridical science in Cuba:

We'll have to bring in the specialists, and I don't think we're really very knowledgeable about law, about juridical science, but anyway...¹³⁴

THE PUBLIC PROSECUTOR AND THE BAR: INNOVATIONS AND A NEW IDEOLOGY

Although less significant for the functioning of the basic administration of justice, the changes which institutions like the Public Prosecutor and the Bar have gone through in the course of the revolution are typical of the new legal system. Neither the Public Prosecutor nor defence counsels occupied more than a summary place in the base tribunals.¹³⁵

The new system of judicial organisation meant an enormous extension of the functions and authority of the Public Prosecutor. It became the guardian of socialist legality. In 1973 its lowest level was that of regional divisions. There is now a municipal department of the Public Prosecutor and the municipal district attorney is regularly involved with cases of a specific kind at the basic level. While the lay judges of the base tribunals of the 1960s had an active part in the preliminary investigation, since 1977 this has become a duty of the police under supervision of the Public Prosecutor. With the transfer of the supervision of the preliminary investigation to the Public Prosecutor in that year, the figure of the examining magistrate disappeared from Cuban criminal procedure law. There were similar changes affecting the supervision of the implementation of sentences imposed by the lowest judges in the hierarchy. It is still a rare occurrence for a defence counsel to take part in proceedings before a Municipal Tribunal. Lay defence has been abolished. Changes in responsibilities and structural transformations within the Bar provide an interesting picture of the more general shift in mentality in Cuba regarding 'law' and the role of the legal profession within society. It is to these changes that we now turn.

In 1973 the Public Prosecutor's jurisdiction was considerably extended beyond the original boundaries of criminal law. In Cuba emphasis is laid on the strong influence exerted on the creation of a new type of Public Prosecutor -- stronger than that detectable in other innovations of the 1970s -- by comparable institutions in other socialist countries, particularly the USSR. In 1973 the Attorney-General of Cuba, Dr. J. Santiago Cuba, crowned the work of codification with the following words:

The most important point to be emphasised, from our point of view, is the fact that Law 1250 [the Law on Judicial Organisation of 1973] creates a Public Prosecutor of the Republic (*Fiscalía General de la República*), with an organisation and functions which correspond in their fundamental aspects to those of their counterparts in the socialist countries.¹³⁶

As in the Soviet Union, the Cubans claim to have been inspired by the ideas of V.I. Lenin in the new version of the Public Prosecutor. As the Cuban Vice-Attorney, René Burguet Flores, remarked in 1978, from the earliest years of Soviet power Lenin developed helpful guidelines for the establishment of the Soviet Prokurata.¹³⁷

Lenin attributed an extraordinary importance to the control of socialist legality and considered that the Public Prosecutor (*Fiscalía*) was the organ most suited for this purpose.¹³⁸

These new ideas seemed to have abandoned the motif of the 1960s, that 'law' as a separate professional discipline had no place in the communist society for which everyone was working with complete dedication. The ideas which lie behind the new system of judicial organisation and which came to the fore in the creation of a new Office of the Prosecution display a preference for strong and adequate forms of organisation and rules which are clearly formulated and obeyed as strictly as possible. Many new laws were enacted in the second decennium of the revolution, and the number of Cuban lawyers, which had dropped so drastically in the 1960s, rose rapidly.¹³⁹ Lawyers and the legal profession won back much of the prestige that they had given up during the first ten years of the revolution. Osvaldo Dorticós Torrado, President of Cuba, formulated these ideological changes as follows in 1973:

It is clear that for Marxists the State, as an instrument of coercive power, must disappear in a more or less remote future as a result of a long historical process...

But what the supporters of this thesis forget is that, precisely in order to arrive at that society, which is the supreme future aspiration of the revolutionary Marxists, it is necessary to go through a long transitional phase during which the requirement of creating social discipline cannot be ignored. This can be achieved in different ways: by institutional regulations, by political education, by raising political consciousness and the consciousness of social duty, but also by the implementation of the law, the effectiveness of its power, and the supreme guarantees of socialist legality.¹⁴⁰

For Lenin, socialist law was:

A powerful instrument in the service of the Revolution and the consolidation of the socialist relations of production. For this reason it was indispensable to observe unswervingly the laws and regulations which proceed from the State and to be vigilant in their execution, since the smallest disorder, the tiniest violation of the laws which have been promulgated, the smallest degree of illegality is an attack on the socialist order and constitutes a breach which will be welcomed by the enemies of the workers.¹⁴¹

Like the principle of legality, associated with the idea of the Rule of Law, so the principle of socialist legality binds the actions of State organs to the law in the first place. It goes further in demanding of social organisations and individual citizens not only a strict observance of the law but also an active contribution to its implementation.¹⁴² The principle of socialist legality is aimed not only to protect the individual sphere of liberties of the citizen against unlawful encroachments on the part of the State, but also to maximise the involvement of the individual citizen in the legal order. The comprehensive character of socialist legality implies that its most important guardian, the Public Prosecutor, cannot be limited to the observance of criminal law. As in the Soviet Union, the new style of Public Prosecutor in Cuba supervises the observance of all laws by everybody.¹⁴³ Another general feature of socialist legality, the lack of discretionary powers in the prosecution of crimes, is not new in Cuba. Before 1959 the Public Prosecutor did not have these discretionary powers either. He was obliged to initiate criminal proceedings in every case in which there were indications that a crime had been committed, without having the legal possibility of abstaining from taking legal action on the grounds that this would be in the public interest.¹⁴⁴

WATCHING OVER SOCIALIST LEGALITY

Influenced by this ideology and inspired by the Soviet example, the Public Prosecutor created in Cuba had as its first and most important task to watch over and protect the new socialist legality. In the words of the 1977 Law on Judicial Organisation:

The first duty of the Public Prosecutor of the Republic is to see that socialist legality is observed by ensuring that the law and other legal regulations are strictly kept by the State organs, by economic and social organisations, and by the citizen body.¹⁴⁵

In 1978 at any rate, the criminal law function of the Public Prosecutor was the one in which it was the most frequently concerned.¹⁴⁶ Besides this function, its duties include the investigation and settlement of infringements of the law in general, either on its own initiative or in response to complaints,¹⁴⁷ active involvement in crime prevention;¹⁴⁸ and supervision of the correct execution of criminal sanctions.¹⁴⁹

The first of these tasks is formulated in a very general way and implies a very extensive field of potential activities. The procedure which has been elaborated to deal with these activities for the time being is the following. Non-criminal complaints regarding violations of laws or regulations are first investigated to see if they are genuine. The Public Prosecutor is authorised to use a number of measures to this end, such as asking for information from all kinds of instances and state organisations and requiring them to provide the same.¹⁵⁰ When the investigation has been completed the Officer concerned can draw up a pronouncement (*Dictamen*) concerning the infringement which had been the object of complaint. This declaration is sent along with suggestions for a possible solution to the direction of the organisation or work centre where the infringement took place. Protests against the *Dictamen* can be made to the immediately superior official within the Public Prosecution.¹⁵¹ If a body or organisation ignores the declaration and recommendations of the Public Prosecutor, the immediately higher organ is informed.¹⁵²

As far as I have been able to judge, the actual use of this procedure and these powers was still in a premature stage in 1983.¹⁵³ The potential powers of supervision of the Public Prosecutor, however, have been enormously increased by these new activities. This involves both the work of criticism: opposing corruption and arbitrariness; and the work of preservation: the Public Prosecutor still is a state apparatus for the defence of state interests and is manned by legally trained personnel.¹⁵⁴

In terms of criminal justice, the practical interpretation of the general duty to protect socialist legality implies the obligation to prosecute criminal offences -- the traditional, absolute principle of legality of Cuban criminal law -- and to protect the rights of defendants during the preliminary investigation.¹⁵⁵ To further the latter task, the Public Prosecutor was given the definitive supervision of the preliminary investigation in 1977. This task had previously, i.e. before 1973, fallen under the jurisdiction of the Examining Magistrate (*Juez Instructor*).¹⁵⁶ This new structure is generally legitimised in Cuba with the argument that the Examining Magistrate did no more than copy the work that the police did in the preliminary investigation anyway; lack of time prevented him from doing more.¹⁵⁷

Watching over the strict observance of the law implies supervision of the execution of penalties.¹⁵⁸ Although the Law on Criminal Procedure makes the tribunal which has imposed a sanction responsible for its implementation in the first instance,¹⁵⁹ in practice it is the Ministry of Home Affairs which is responsible for the execution and the Public Prosecutor which ensures that the correct procedure is followed.¹⁶⁰ Dr. Burguet Flores, Vice-Attorney of Cuba, told me that the Public Prosecutor's job is important, while the tribunals have only a limited part to play. The district attorneys regularly visit centres of detention as part of their duty. They check the length of detention, whether the prisoner is in the right quarters, whether the right programme of treatment is being followed, etc. The Public Prosecutor also deals with complaints made by prisoners. Burguet Flores stated that all centres of detention have a post box for complaints, to which only the Public Prosecutor has access. There is a special department for this work within the Public

Prosecution, the Department for Legal Inspection of the Penitentiaries (*Dirección de la Control de la Legalidad en los Establecimientos Penitenciarios*).¹⁶¹

THE PUBLIC PROSECUTOR AND THE BASIC ADMINISTRATION OF JUSTICE

The extension of the functions of the Public Prosecutor had its consequences for the basic administration of justice. As we have seen, the Public Prosecutor occupied a very minor role in the early Correctional Justice and in the base tribunals of the 1960s. The Law on Judicial Organisation of 1973 was a continuation of this state of affairs. It recognised three levels within the Public Prosecution: national, provincial and regional.¹⁶² It was only in exceptional cases that the regional district attorney intervened in the conduct of the base tribunals, such as when they were dealing with cases of pre-criminal dangerous behaviour.¹⁶³ It was not until 1977 that this situation changed, when a municipal department of the Public Prosecution was set up to replace the regional section.¹⁶⁴

The interference of the Public Prosecutor in the Municipal Tribunals has remained relatively small, however. Intervention by the district attorney in municipal criminal cases is optional, unlike the situation as regards the Provincial Tribunals and the Supreme Court. As was the case with the Correctional Courts and the base tribunals,¹⁶⁵ the criminal case is opened by a Municipal Tribunal when the tribunal takes cognisance of the offence.¹⁶⁶ The preliminary investigation by the Municipal Tribunals is so brief that the intervention of the Public Prosecutor in it is negligible.¹⁶⁷ The criminal procedure of the Municipal Tribunals also resembles that of the Correctional Courts and the base tribunals in that there is in principle still direct contact between the tribunal and the police or individual accusers. A public charge laid by the Public Prosecutor is not obligatory,¹⁶⁸ although the Public Prosecutor at present does claim to take an interest in criminal cases regularly at this level.¹⁶⁹ Where a district attorney cannot be present permanently at the tribunal, he or she will appear at least two or three days a week to take a part in the most important cases, such as theft and certain minor traffic offences.¹⁷⁰ Such cases are reserved for days on which the district attorney is present. Less frequent appearance is seen as not doing one's job properly.¹⁷¹ The Public Prosecutor must always intervene in the trial of the pre-criminal state of dangerous behaviour such as vagrancy, prostitution, insanity and antisocial behaviour.¹⁷² The Public Prosecutor sometimes intervenes in civil cases which come before a Municipal Tribunal too, such as questions of custody and inheritance.¹⁷³

While the role of the Public Prosecutor in the preliminary investigation of the Municipal Tribunals is negligible, this is by no means the case for its role in the phase of implementation. The experimental basic administration of justice of the 1960s was characterised by the extremely close involvement of the judges in the carrying out of the sentences they pronounced, which often involved radically new sanctions. There are now few traces of this approach to be found. The possibility open to the base tribunals for imposing alternative sanctions was drastically cut back in 1973.¹⁷⁴ In 1981 Burguet Flores spoke of a very limited choice of sanctions. Despite the wide range of possibilities made available by the 1979 Penal Code, the Public Prosecutor rarely imposes other sanctions than a fine or detention. Burguet Flores explained this limited choice by the lack of experience with the newly introduced sanctions. The same phenomenon was confirmed for the Municipal Tribunals by J. Terry Menéndez, President of the Municipal Tribunal of 'Havana Vieja': he stated that the most common sanctions imposed by these tribunals at that time were

a fine or detention. When questioned on the involvement of the criminal judge in the implementation of a sanction such as detention, his reply echoed the one I was given by Burguet Flores:

The judges have nothing to do with the implementation of sanctions. This is a police matter [i.e. it falls under the jurisdiction of the Ministry for Home Affairs]. The Public Prosecutor is the instance which supervises this side of police work. Rehabilitation is the work of the *re-educadores*, social workers in prisons and institutions. Havana has only one prison for those serving a short sentence.¹⁷⁵

THE BAR, THE MINISTRY OF JUSTICE AND LEGAL AID

The changes which took place in the course of the revolution affecting the organisation, ideology and function of the legal profession did not directly influence the developments within the basic administration of justice. This can be attributed to the small amount of contact that there was between lawyers and the lower tribunals. In neither the Correctional Courts nor the base tribunals did lawyers have a role of any significance in the defence of those who were brought to trial there. Professional legal counsel was not compulsory, and the law even allowed lay defence.¹⁷⁶ The role of professional defence counsellors is still a minor one in the present day Municipal Tribunals.¹⁷⁷ Professional legal aid for defendants who appear before the Municipal Tribunals is still not compulsory, though the 1977 Law on Criminal Procedure has now done away with lay defence.¹⁷⁸

The new place and role of the legal profession in Cuba is still worth discussing here, however, for developments within the basic administration of justice have been influenced by general changes in the mental climate in Cuba as regards 'law' and the role of the legal profession within society. These changes can be detected in the ideological and structural-organisational changes which the legal profession has undergone.

After the first three transitional years of the Cuban revolution, when the radical reforms and the curtailment of certain individual constitutional rights were met with protest from the Bar, the legal profession disappeared from the limelight for a time. Many lawyers left the country, and many of the pro-revolutionary lawyers presumably came to occupy posts in the government.¹⁷⁹ In the 1960s only a very small percentage of students was allowed to study law. The course of study was orientated towards practice and marked a break with the formalistic tradition. It was not until the 1970s that the wave of institutionalisation swept lawyers back into prominence. The lawyers' collectives which had been introduced on an *ad hoc* basis in the 1960s¹⁸⁰ were now universalised. The 1973 Law on Judicial Organisation put a stop to the independent exercise of the legal profession, and made appearance as defence counsel before a tribunal dependent on membership of a Lawyers' Collective (*Bufete Colectivo de Abogados*). The only exceptions to this rule were lawyers who were attached to enterprises or universities.¹⁸¹ The lawyers' collectives are united in an 'autonomously functioning' national organisation whose supreme body, the National Assembly, is composed of delegates from the separate offices.¹⁸² The National Executive Committee (*Junta Directiva Nacional*) is chosen by this assembly.¹⁸³ While the 1973 law made membership of a lawyers' collective conditional on the approval of its head, since 1977 the National Executive is also authorised to take this decision.¹⁸⁴ The conditions for admission were also tightened up in

1977.¹⁸⁵ In the last resort it is the Minister of Justice who has ultimate control of the collectives.¹⁸⁶ Since 1977 the Minister has the authority to ratify the regulations affecting the lawyers' collectives, to inspect the work of individual lawyers and to serve as the last resort for appeal against decisions of admission or expulsion.¹⁸⁷

New conceptions of law have inspired both the new place and organisational form of the Cuban legal profession and its new definitions of its activities.¹⁸⁸ The idea of social harmony and the explicit recognition of the political nature of law are central to the new legal conceptions. According to the principle that social contradictions are non-antagonistic in a socialist society, a lawyer acting in defence of the individual interests of his or her client in a criminal trial will not come into fundamental conflict with the collective interests defended by the State. In socialist society it is an assumption that State power is inextricably linked with the welfare of all individuals. As Blas Roca expressed it in a speech at the assembly which established the lawyers' collectives, individual interests are inseparably bound up with the general interest and the two must more and more coincide.¹⁸⁹ It is this train of ideas which makes it possible for an independent organisation of Cuban lawyers' collectives to be under the control of the Ministry of Justice. Interests defended by lawyers need not be in conflict with the general interests of all. Moreover, the explicitly political character of the law means that lawyers of necessity adopt a political stance, and this choice must be one that is in the interests of the State and is not opposed to them. This applies to cases where an individual defendant is defended against the State too. As the law states:

In their work before the Tribunals, the function of lawyers is to defend the interests they represent conscientiously, without abusing the means and resources of defence guaranteed by the law in a manner tending to prevent justice from carrying out its proper social function.¹⁹⁰

Lawyers will try to ensure that their intervention in the trials contributes to the social education of the parties and of the citizen body in general.¹⁹¹

Or, as two Cuban lawyers put it:

It is the duty of the defence counsel to defend the interests of his or her client within the limits set by the law and socialist morality and at the same time to assist in discovering the objective truth.¹⁹²

Another lawyer, who worked in a legal aid centre in Havana, described the contact between defence counsel and the Public Prosecutor in criminal trials in the following terms:

There must be no cooperation between the Public Prosecutor and the defence counsel. The latter acts in defence of his or her client, the Public Prosecutor defends the interests of society. Defence counsel assumes the innocence of the client, while the Public Prosecutor uses everything which can be used against the accused.¹⁹³

The two Cuban lawyers quoted above had more difficulty in deciding whether the lawyer's general duty to contribute to the education of the people and to discover the objective truth might in practice come into conflict with the defence of the individual interest of a specific client. At first they could not understand questions of this kind, and eventually they answered:

Your question is typical for lawyers from capitalist countries. There is an important difference between capitalist and socialist countries in that in the former ordinary crimes can also have a political dimension. In such countries there is a fundamental contradiction between the State, which defends the ruling class and its interests, and the political offender with whom a lawyer can identify. In Cuba the situation is entirely different. The State belongs to the people. It defends the interests of the people, its work, its food, its medical care, its schools, etc. Those who are opposed to this are counter-revolutionaries. They are the ones who want to return to the pre-revolutionary situation. They are not in solidarity with us lawyers, even though they will still be defended by lawyers who are simply 'doing their job'.¹⁹⁴

Defence in a criminal trial is guaranteed by the Constitution and other laws: 'Every accused person has the right to defence'.¹⁹⁵ However, the defence must accommodate itself to the moral and political coordinates of the revolution in the present phase of development. The practical-political question of the exact plotting of these coordinates and of who sets them is a difficult problem for any society. In Cuba the definition of the limits is clearest in the case of political, i.e. counter-revolutionary crimes.¹⁹⁶ It is obvious that in terms of the distinction between crimes which merely express 'internal contradictions within the people' and crimes which are committed within the context of a 'conflict between the enemy and ourselves', the latter are by definition excluded from the horizons of the revolution. The new laws on criminal procedure of the 1970s confirm this and provide for restrictions on the defence and legal protection of defendants accused of crimes involving state security.¹⁹⁷ However, although the Supreme Court and the Provincial Tribunals still have chambers for state security, such crimes against the state seem to occur very rarely nowadays. Crimes which fall under this category, such as sabotage, use of the mass media for anti-state activities, rebellion and terrorism were in 1980 at any rate so rare that the Chamber for State Security of the Provincial Tribunal of Havana was inactive for months.¹⁹⁸

There are also limits as to what can and what cannot be defended in non-political trials. The following two examples of Cuban justice show that the struggle for the emancipation of working women from traditional roles can be accommodated within these limits, but that the emancipation of male homosexuals cannot.

Concern for the younger generation is a high priority of the Cuban revolution. This is reflected in the relevant legislation: the Cuban Penal Code of 1979 treats the neglect of minors in one's care as a crime for which the minimum prison sentence is three months and the maximum nine months. The same penalties apply for (divorced) parents who refuse to pay alimony for the children which are no longer under their parental care.¹⁹⁹ This legislation is used occasionally by divorced parties to fight out their quarrels. By lodging a complaint it is possible for one to bring his or her ex-partner before the tribunal. In two cases which I witnessed the municipal judge seized the opportunity to indicate the equality between men and women as far as caring for children is concerned.

In the Municipal Tribunal of Vedado, a modern district in the centre of Havana, a man accused his ex-wife of neglect of their children, who were in her care. From the school the children attended he had heard that they had been missing classes. The woman's answer that she had been ill was sufficient for the white female president and the two black male lay judges. The president gave the father

the following lesson: 'You are the father. If there is illness in your wife's house, you must help out there instead of coming here to accuse your wife.'²⁰⁰

In a similar case observed in Spring 1980, the lawyer had no difficulty in defending the woman who had been accused. In this case it was the ex-husband's brother, a law student, whose accusation landed the woman in court. He claimed that the woman shamelessly mistreated her three-year old child. He told the hearing that he had found the child alone on the street at night. When he took it home, the mother turned out not to be at home. The woman, who had the assistance of a lawyer, was subjected to detailed questioning on this. On the evening in question she had left the house to make a telephone call in a call box. During the twenty minutes she was away the child must have gone out to look for her. She denied negligence. She worked in the daytime in the Ministry of Home Affairs and did her best to look after her child as well as working. She got up every day at 5 a.m. to take it to the crèche, and she picked it up there in the afternoon.

Before the defence counsel could begin, the president of the tribunal made it clear to the brother-in-law exactly where he stood. When the latter continued to assert that the woman neglected her child, he was abruptly interrupted. What did he think? That caring for the child was the sole responsibility of the mother? That kind of machismo had no place in Cuba now. Childcare was a question for the whole family, including the in-laws. The case was settled. The president hardly paid any attention to the defence counsel's remarks, which were a summary of what the woman had already said. The call for an acquittal was respected by the bench after the three judges had held brief deliberations behind the table. The motivation of the verdict of not guilty was primarily a reprimand of the man. His accusation was declared without foundation. Instead of coming before the tribunal with complaints like these, he would do better to help his sister-in-law in the future and to encourage his brother to do the same.²⁰¹

The government-supported campaign for the emancipation of women and against machismo, which has deep roots in Cuba, is waged in the courtroom too. No obstacles will be put in the way of a lawyer involved in the defence of a client in such a case. Matters are different, however, when a lawyer is asked to defend a case involving homosexuality. A large part of the Cuban population still views homosexuality as immoral, and this opinion is shared by officialdom in its regulations for social and political organisations.²⁰²

In a case involving a homosexual student, Cuban lawyers were very reluctant to defend him in an appeal procedure against an administrative decision. The university had decided to bar him from following courses and taking examinations in 1971, probably because of his homosexuality, although this was never stated explicitly. He later told me that it had been very difficult to find a lawyer who was prepared to defend him. Eventually he did manage to find one and was readmitted to the university after the Supreme Court had passed judgement. The reversal of the Provincial Tribunal's decision in this case was on purely formal grounds, however, and the student has never openly admitted his homosexuality.²⁰³

This course of events demonstrates the problems concerning legal defence in such implicit political conflicts. At the municipal level, it should not be forgotten, it is rare for a defence counsel to be called. Legal aid is not an obligation at this level. By not obliging the Officer of Justice and the defence counsel to be present, the law confirms the non-contradictory character of the criminal procedure at this level. The idea of social harmony finds its clearest expression here. The presupposition is that collective and individual interests here are not essentially antagonistic.

These are only 'internal contradictions within the people'. Ideally, the conflict which lies behind a crime or offence can be resolved by means of re-education and integration in society. These features, which are typical of the whole Cuban criminal procedure, are most prominent in cases of minor crime or antisocial behaviour. The informality of the procedure which both confirms and reinforces this aspect, however, is less in the present Municipal Tribunals than it was in the earlier base tribunals.

APPLICATION OF THE LAW OF CRIMINAL PROCEDURE: ACCUSATION AND PRELIMINARY INVESTIGATION

The innovations within the system of judicial organisation involved essential changes in the place and functioning of the basic administration of justice. After 1973 there were no longer experiments, under the supervision of the Ministry of Justice, carried out by students and the people independently of the other tribunals. The process of institutionalisation of the 1970s meant a slow but sure incorporation of the base tribunals in a uniform new type of judicial organisation. In 1977 the tribunals were given a new name. Some typical and fundamental aspects of the experiments, such as the election of judges for a fixed period and their accountability to the electorate, were formalised and generalised within the new system. Other features, such as the close and direct link between the neighbourhood and the judges, were watered down considerably in the new set-up. The president of a chamber was no longer a lay judge, but a professional lawyer, who might come from another neighbourhood or county. In the new system for the election of judges, the higher tribunals and the Ministry of Justice in particular play an influential and substantial role. In addition, the basic administration of justice came under the supervision of the Supreme Court.²⁰⁴ The executive organs of this court could issue binding instructions for all tribunals and could demand any information that they might require from the lower tribunals.²⁰⁵

With the new place and composition of the basic administration of justice, a number of noteworthy changes also took place with respect to the functioning of these tribunals. There are differences between the present Municipal Tribunals and the base tribunals of the 1960s in their practical functioning and in the formal-judicial sphere, where the Municipal Tribunals display a more formal approach to the proceedings. The variety of sanctions available to the base tribunals has been drastically cut back and the influence of the judges on the execution of the sentences they pass has also been reduced.

The loss of informality in the Municipal Tribunals is not only a question of the increased frequency with which the Public Prosecutor intervenes and the disappearance of the possibility of a lay defence. There have also been legal changes in the preliminary proceedings and in the procedure for instigating appeal. The character of the hearings of the present Municipal Tribunals differs clearly from that of the sittings of the base tribunals in the 1960s. The criminal procedure followed at the level of the basic administration of justice has become more formal.

The fact that the Municipal Tribunals deal with crimes of a more serious nature than the base tribunals did -- those for which a maximum sentence of nine months detention is prescribed in place of six -- will certainly have played a part in this, as well as the wider authority of these tribunals regarding the pre-criminal state of dangerous behaviour. The introduction of a legally trained president will have facilitated and encouraged the introduction of a certain degree of formality.

As was the case with the base tribunals, the preliminary proceedings preceding trial by a Municipal Tribunal are characterised by direct contact between the tribunals and the police or individual prosecutors. The preliminary investigation is kept as summary and short as possible.²⁰⁶ The criminal trial is started once the tribunal has taken cognisance of the case.²⁰⁷ By comparison with previous practice, the Public Prosecutor takes a greater interest in cases which are brought before the Municipal Tribunals. Its intervention is limited to the most important cases, including theft and certain traffic offences. It is only obliged to intervene in the case of the pre-criminal dangerous state.²⁰⁸ In other cases there is no official public prosecution. The accuser who is sometimes seen at cases which come before a Municipal Tribunal is, strictly speaking, no more than an informant.²⁰⁹ Given the summary nature of the preliminary investigation of the Municipal Tribunals, these accusers often play an important part during the sitting. The informants of minor offences, who often go into their accusation in more detail during the hearing, can vary from the injured party to a concerned neighbour or a dedicated CDR member from the neighbourhood. This picture resembles the practice of the base tribunals in the 1960s.

An illustration: a case of theft was introduced in detail by the injured party, a young woman, before a Municipal Tribunal in Old Havana. She said that the defendant, a girl of around 18, came to her house every day. At a certain moment when she was away, the girl stole a pair of shoes and a pair of trousers (articles which are still scarce in Cuba). The shoes were found by the police in the accused's house. After admitting her guilt, the defendant was sentenced to three months detention, the minimum period of detention for this offence.²¹⁰

We have already seen how divorcees might continue their quarrels by accusing one another of neglect of the children in their care. In such cases it is sometimes only a question of who starts first. In the case of a woman who accused her ex-husband of bodily harm, the man might probably just as well have accused her of neglect of their child. During the trial it transpired that the woman who had placed the charge had come home drunk on the night in question and had had a quarrel with her present friend. At that moment her ex-husband came to say that their child, who was in the care of the mother, was still on the street. It was midnight. In the ensuing argument the man had assaulted her, she claimed. During the trial it appeared that the man had a clean criminal record and was an active Party member [*militante*]. He also worked in a 'micro-brigade'.²¹¹ He was fined 30 pesos.²¹² If the man had accused the woman of neglect of their child, there is a good chance, in view of the evidence that came up during the trial, that the woman would have been convicted. The conflict might have been resolved in a more creative way if the variety of alternative sanctions available to the base tribunals in the 1960s was still in practice.

Apart from the injured parties themselves and those who have a direct interest in the case, it is sometimes alarmed neighbours who assume the role of accuser before a Municipal Tribunal. Every Cuban citizen, as we have seen, who discovers a crime is obliged to report it.²¹³ Moreover, the campaign against crime is still a high priority within the CDR organisation which at present comprises some 80% of the Cuban population.²¹⁴ The direct involvement of the people in the day to day running of the basic administration of justice is thus still intact as far as this is concerned. Like the former base tribunals, the Municipal Tribunal operates in the following case as a direct extension of the social control exerted by the members of a neighbourhood on one another. A white middle-aged woman came to tell the

Municipal Tribunal of Old Havana that a young black couple who lived in her block of flats neglected their ten-year old son. On a number of occasions the boy was to be found wandering about the staircase alone at night. On one occasion he had sheltered in her flat until 1 a.m. The young mother's defence was that she had been to the hospital that day with her youngest child. When she got home she could not find her eldest son anywhere. This was because he was in the flat of the older woman who had now lodged the accusation. The president reprimanded the couple, pointing out that children have a right to shelter, food and protection and that the father has a duty to assist his wife in the task of childcare. They were sentenced to a fine of 100 pesos each.²¹⁵

Since 1977 the police have been given more time to assemble evidence during the first phase of the investigation in cases where the suspect is under arrest. While the 1973 Law on Criminal Procedure laid down that the arrested person must be brought before the tribunal within 24 hours of being arrested,²¹⁶ the 1977 Law on Criminal Procedure extended this limit to 72 hours. In a case where the suspect was not under arrest the tribunal must be notified as soon as possible; in 1977 a maximum period of 20 days was fixed.²¹⁷ Another change is that a summons must be made for every denunciation of an offence that is brought to the cognisance of the Municipal Tribunals.²¹⁸ In the 1973 legislation this rule applied only to crimes which came under the jurisdiction of the Regional or Higher Tribunals.²¹⁹ The 1977 legislation retained virtually unaltered the regulation that preventive detention must be ended if the detainee pays a maximum surety of 100 pesos in the case of a felony and a maximum surety of 50 pesos in the case of a misdemeanour.²²⁰ Since 1979, however, detention is no longer used for misdemeanours.²²¹

PUBLIC TRIAL: A SELECT PUBLIC

Although the character of the sittings of the Municipal Tribunals differs in many respects from that of the sittings of the base tribunals in the 1960s, as the description and reports indicate, there is little evidence of this difference in the legal regulations for the judicial proceedings. Only the explicit rule that public hearings must be held in the evenings has been dropped; in fact, it was already dropped in the 1973 Law on Judicial Organisation.²²² At present the hearings of the Municipal Tribunals are held in the day, in those hours when every Cuban is expected to be working. This shift from the evening to the day hours obviously affects the numbers and type of public which can attend the hearings. Eye-witness accounts of the base tribunals in Havana in 1968 speak of halls which were filled to overflowing. Attempts were made to get as many neighbours as possible to attend the trials. A lay judge from the same period stated that at first there were no premises available and that the hearings had to be held on the street. The public consisted of some 200 or 300 people.²²³

The same lay judge said that nowadays a Municipal Tribunal is not usually attended by more than between 5 and 20 persons. The rooms in use in the various buildings for this purpose cannot accommodate many more. Although the law permits hearings to be held outside, this is very rare in practice.²²⁴ At the start of such a sitting there are often ten to fifteen people waiting, whose numbers may increase or decrease in the course of the morning. Besides witnesses and informants or accusers there are often relatives or acquaintances of the accused, who leave again once the trial in which they are interested is over.²²⁵ It almost never happens that the public attends the hearing just to follow the trial. In fact, the odd individual

who comes to spend the day for pleasure on the public bench may be viewed with suspicion. In one case an elderly, rather down-at-heel man was sent out of the courtroom of the Municipal Tribunal of Old Havana by one of the court officers after he had spent the greater part of the morning following the cases that came up. The court officer was presumably acting on the basis of the fact that loitering is seen as a state of pre-criminal dangerous behaviour and can be tried as such by the criminal judge.²²⁶

Not only is the interested citizen virtually barred from attending sittings of the Municipal Tribunals, but no attempts are made to encourage the participation of the public there. From interviews and direct observation I have been unable to find anything resembling the former *Juicio de Consulta* or the *Juicio Análisis*.²²⁷ The situation has changed, and manuals for judges no longer mention the possibility of asking for the opinion of certain members of the public on the case or opening a free discussion between the accuser and the accused.²²⁸ The only time that I saw anybody spring up during the trial to say something, it was when the accuser or accused replied to the statements of the other party which contradicted his or her own.²²⁹ On the other hand, while the rest of the public plays a marginal role in the proceedings, the role of the informant during the public trials of the Municipal Tribunals is often a considerably important one.

The handling of cases by the Municipal Tribunals tends to be much shorter than was the practice of the base tribunals. The account of the base tribunal of San Ramón indicates that a case could take from twenty minutes to two hours. The lay judge Abel Miguel González recalled that the average length of a case was one hour.²³⁰ The sittings of the Municipal Tribunals which I attended varied from five to twenty minutes, depending on the nature of the case and the volubility of the speakers. Sometimes a president lapsed into heated discussions with the accuser or accused, sometimes the accused was subjected to a battery of short and sharp questions and was further kept in silence. It was rare for a detailed account of the personal background to be presented. A middle-aged woman from Old Havana was sentenced to a fine of 120 pesos in no time for the theft of a bottle of perfume from a shop. On the basis of the case file, her short admission of guilt was enough. There was no discussion of motive or personal background.²³¹ While the trial of the quarrel between two divorcees who came to blows, which has been presented above, took some twenty minutes, a later case of a quarrel between neighbours in which a man had assaulted a neighbour of his was settled in five minutes. When the man wanted to speak after the fine of 30 pesos had been pronounced, the president refused to allow any further discussion with the reminder that the man could lodge an appeal if he wanted.²³² In a case of receiving stolen goods that came up for trial in the Municipal Tribunal of Vedado, a relatively large amount of time was devoted to the case and explicit attention was paid to the suspect's personal background. The accused was defended by a lawyer. The accused had a permit for making and repairing shoes, but his neighbour had accused him of buying leather which he knew to be stolen. After the neighbour and the accused had had their say, the defence counsel delivered a long and convincing speech. He presented a letter from the accused man's CDR which spoke of his good background. The defence counsel further tried to demolish the neighbour's accusations with juridical arguments on the weakness of the sources on which his accusation was based. The old black lawyer, who was wearing a baggy jacket instead of a toga, pointed to his own rings and watch. 'How can I say where they come from if I've had them for so long? The same applies to the accused and the leather he uses to make his shoes

with'. During the last part of the defence one of the lay judges nodded his approval. After a short consultation in another room, however, the judges decided to fine the man 100 pesos.²³³

One of the few other changes in the legal regulations on judicial proceedings in the first instance concerns the separate mention of the sanction 'reprimand'. The fact that this sanction was always applied in the sentences pronounced by the base tribunals in the 1960s was approved in the Law on Criminal Procedure of 1973 in the following section:

If the principal sanction imposed is exclusively that of a reprimand [*amonestación*], it will be delivered during the sitting by the president or by a member of the tribunal designated for that purpose.²³⁴

Despite the fact that the new Penal Code of 1979 introduced the 'reprimand' as a major penalty,²³⁵ the Law on Criminal Procedure of 1977 has dropped this clause on the 'reprimand' and the procedure to be followed by the Municipal Tribunals in applying it. Although the 1979 Penal Code gives the judge a fairly wide range of sanctions,²³⁶ the judges in the Municipal Tribunals rarely make use of them all. The commonest sentences are a fine or a short period of detention.

Although the officially sanctioned penalty of a 'reprimand' is not frequently imposed by the judges in the Municipal Tribunals nowadays, the discussions with the accusers and accused and the motivation of the sentence often include cautionary remarks. We have already seen the case of the law student who accused his sister-in-law of negligence towards her child; he was sent home after being taught a lesson on his machismo. In another case, involving threatening behaviour, the same president of the court delivered a reprimand in an informal and lively way. A woman had brought her ex-husband to trial. She told the judges at the hearing that he kept following her and bothering her. He wanted to come back to her, but his feelings were not reciprocated. On one occasion when she refused to speak to him, he threatened her with a knife. The man offered in his defence during the sitting the fact that he still wanted to go back to his ex-wife and that he had never threatened her with a knife. The president's response was informal. Without consulting with the two lay judges, he began a tirade against the man. How on earth did he suppose that he had the right to bother his ex-wife? She had made it quite clear that she didn't want anything to do with him. They were no longer bound together and love cannot be won by force; it must come from both sides. They are divorced now, he must leave his ex-wife alone, and that's that! If he cannot accept this, further measures will have to be taken. In the man's presence the woman was told that if he bothered her again she was to notify the police immediately, who would ensure that the case came up for retrial.²³⁷

Finally, the appeal procedure has also been made more formal. The appeal (*apelación*) introduced in 1973 for the basic administration of justice was retained in the 1977 legislation as a means of appealing against a decision of a Municipal Tribunal. It was still the means resorted to in cases where the death penalty was at issue or where the sentence had been pronounced by a judge of the lowest level, i.e. the Municipal Tribunal.²³⁸ An appeal can be made to the Provincial Tribunal by both the convicted person and the Public Prosecutor against a sentence passed by a Municipal Tribunal for a felony.²³⁹ Before 1977 the law provided for the start of the appeal procedure either orally during the pronouncement of the verdict or later in the presence of the clerk of the court.²⁴⁰ After 1977 the appeal must be lodged within three days in writing, together with a brief statement of the grounds for

appeal, with the Municipal Tribunal which pronounced the contested verdict.²⁴¹ Within fifteen days --before 1977 this was within ten days -- the case is reopened before a public sitting of the Provincial Tribunal.²⁴² As was the case before with the Regional Tribunals, the Provincial Tribunals deal with these appeal cases in the same informal manner as that formerly applied to cases in the first instance. For example, the bench of judges retires during the hearing and delivers a verdict immediately afterwards, a procedure which is not followed for cases which come before them in the first resort.²⁴³

OFFENCES TRIED BY THE MUNICIPAL TRIBUNALS: ECONOMIC AND PROPERTY OFFENCES

In this section I deal with the types of offences and crimes which are dealt with by the present Municipal Tribunals, and compare them with the types of offences which were tried by the base tribunals in the 1960s.

In 1977 the jurisdiction of the basic administration of justice was widely extended.²⁴⁴ As far as criminal law is concerned, this meant an extension of the offences which came up for trial at this level to include those with a maximum penalty of nine months detention or a fine of 270 pesos (units of currency). The limit was previously six months detention or a fine of 180 pesos (units of currency).²⁴⁵ The Municipal Tribunals were also empowered in 1977 to deal with the pre-criminal state of dangerous behaviour. At present this category includes insanity, alcoholism, prostitution, loafing and general antisocial behaviour.²⁴⁶

The Penal Code of 1979 raised a number of misdemeanours to the status of felonies and thereby to the competence of the Municipal Tribunals. The other misdemeanours were deleted from the Penal Code and were dealt with at an administrative level by organs of Popular Power.²⁴⁷ The latter include contraventions of the health regulations and those on general security,²⁴⁸ certain disturbances of the public order,²⁴⁹ and damage to property.²⁵⁰ Some misdemeanours, such as verbal abuse, no longer appeared.²⁵¹ Others, such as (parental) neglect of minors,²⁵² certain varieties of immodest behaviour in public,²⁵³ and a single specific disturbance of the public order²⁵⁴ were included in the 1979 Penal Code as less serious felonies.

In the early years of the base tribunals in the Cuban countryside they were mainly called upon to try cases of damage to property, theft and other offences involving property rights.²⁵⁵ A base tribunal in San Ramón, Havana, tried cases involving violent behaviour, insulting behaviour, slander and disturbance of the public order in 1968-1969. Theft and economic crimes were significantly less frequent.²⁵⁶

Statistics available on the crimes tried by the Municipal Tribunals in 1982 reveal a shift in the frequency of certain offences. The Cuban Ministry of Justice has made the following overview available. It makes no separate mention of the pre-criminal state of dangerous behaviour which also falls within the jurisdiction of the Municipal Tribunals.²⁵⁷

Table 6: National Survey 1982

Offences brought to trial before the Municipal Popular Tribunals and convictions

| Offence | Cases brought to trial | Convictions* |
|--|---------------------------|----------------|
| Threatening Behaviour and Coaction | 13,095 | 6,500 |
| Theft | 34,386 | 17,765 |
| Misappropriation of electricity, gas, etc. | 370 | 463 |
| Misappropriation of appliances | 891 | 896 |
| Misappropriation of public funds by negligence | 3,457 | 1,921 |
| Swindle and other kinds of fraud | 4,990 | 3,444 |
| Bodily harm | 23,725 | 18,774 |
| Assault | 2,504 | 3,488 |
| Traffic injuries | 3,158 | 1,467 |
| Traffic damage | 10,393 | 6,322 |
| Other traffic offences | 16,737 | 15,901 |
| Public indecency | 3,455 | 2,527 |
| Sexual assault | 1,104 | 618 |
| Corruption of minors | 86 | 48 |
| Sexual intercourse with girls aged 14 to 16 | 804 | 148 |
| Receiving stolen goods | 4,647 | 3,672 |
| Prohibited gaming | 765 | 850 |
| Illegal possession or occupation of housing | 497 | 351 |
| Other crimes against the national economy | 30,397 | 23,143 |
| Public disorder | 4,555 | 7,224 |
| Defamation | 3,058 | 1,635 |
| Damage | 7,551 | 4,123 |
| Others | 27,864 | 21,025 |
| <u>Total</u> | <u>198,489</u> | <u>142,305</u> |

* Convictions with firm sentences in the first instance.

These statistics indicate that the Municipal Tribunals were mainly confronted with cases involving theft, other property offences and economic offences in 1982: these account for 79,635 of the total.²⁵⁸ There were significantly fewer cases which came up before the Municipal Tribunals involving bodily harm, threatening behaviour, disturbance of the public order and offences against public decency: 48,438.²⁵⁹ These were the top offences in the records of the base tribunal of San Ramón. A third important place in the 1982 figures is occupied by traffic offences: 30,288 cases came up for trial. This type of offence does not appear in the San Ramón records, because at that time it came under the jurisdiction of the Correctional Judges.²⁶⁰

It should not be forgotten that the 1968-1969 and 1982 statistics are not strictly comparable. The base tribunals did not try exactly the same offences as the Municipal Tribunals. The latter have a different jurisdiction and in principle they try more serious offences. Moreover, the new Penal Code which has come into existence in the interval between the two sets of statistics contains many new types

of offences and excludes certain others.²⁶¹ Verbal abuse, for example, which was relatively common in the San Ramón tribunal, was deleted in the 1979 Penal Code. Furthermore, we cannot draw hard and fast conclusions from the comparison of statistics taken from the functioning of one base tribunal in the course of a year with national statistics on the functioning of the larger Municipal Tribunals in the course of a year fourteen years later. There are striking differences between the Municipal Tribunals themselves regarding the commonest kinds of offence brought before them, even within the city of Havana alone during one and the same period. In 1981, 11 of the 14 trials which I attended in Vedado, a busy, modern district of Havana, concerned traffic offences.²⁶² On the other hand, of the same number of trials which I attended in Old Havana, a traditional working class area close to the harbour, 8 involved economic and property offences and 3 quarrels between neighbours and/or brawls. The president of the Municipal Tribunal 'Old Havana' acknowledged the prevalence of traditional offences in this district:

It is a district with its own special character: it is central, musea and so forth attract many visitors from outside and it is a dock area, which is the source of enough problems by itself.²⁶³

Without trying to draw more conclusions from this comparison of statistics from the 1960s and 1980s than they allow, we can at any rate conclude that minor economic and property crimes are still frequent in Cuba. They form a type of antisocial behaviour that is often brought to trial. Offences of this kind are generally viewed seriously by the CDR organisation and others.²⁶⁴ The people is still encouraged and mobilised to wage a special campaign against offences of this kind.²⁶⁵

THE COMMITTEES FOR THE DEFENCE OF THE REVOLUTION

An account has already been provided of how the Committees for the Defence of the Revolution, the CDRs, came to acquire an increasingly important role in the apparatus of criminal justice in the course of the 1960s. The system of collective vigilance established by the committees in the early 1960s as a weapon against the counter-revolution was put into operation at the end of the decennium to combat common crime. The committees played an active role in the elections of lay judges for the base tribunals. They could assume responsibility for the lay defence of a committee member who was called to appear before a base tribunal and they could stand moral surety for the release on bail of a member who was under preventive arrest. Further, especially after 1968, the committees were actively involved in carrying out all kinds of rehabilitation work and social prevention work: the prevention of crime and other antisocial behaviour. In this way both the experimental base tribunals and the mass organisations like the CDRs were used in the 1960s in an attempt to bridge the traditional gap between the official dispensation of justice and the Cuban people.

When we turn to assess the involvement of the CDRs in the administration of justice since 1970, we can note that the campaign against crime is still an important task of the committees. The collective revolutionary surveillance of the immediate neighbourhood against criminals and counter-revolutionaries is still seen as one of the most important duties of the organisation.²⁶⁶ Since 1976 the activities of the committees in the field of crime prevention are closely coordinated with the National Commission for the Campaign against Crime (*Comisión Nacional de la Enfrentamiento al Delito*).²⁶⁷ The situation has changed in that these activities are

limited to the organisation of information meetings. Specific rehabilitation work is no longer carried out by the CDRs, except in cases where this is explicitly laid down in the new Penal Code. They no longer act as lay defence for members who have to appear before the criminal chambers of the Municipal Tribunals either. They have retained the right to stand moral surety for members who are summoned to appear for trial, however.

The committees also carry out certain new activities of a supportive nature connected with judicial administration. The chairperson of a CDR is required to be present when an inventory is made in the house of a neighbour who has died or left the country for good. The committees can also receive a summons for a neighbour who happens to be away and ensure that the summons reaches the right person.²⁶⁸

Practically every CDR member -- which means 80% of the Cuban population above the age of 14 -- carries out a night watch once every one to three months. The shifts are of three hours: either 11 p.m. to 2 a.m. or 2 a.m. to 5 a.m. Workers also hold similar patrols in and around their place of work in the weekends.²⁶⁹ The result is a closely meshed surveillance network which must help guarantee the safety of every neighbourhood and street throughout the land.

Cuban sources refer to the positive effect of the CDR vigilance system on crime reduction.²⁷⁰ When the 1977 official crime statistics revealed a tripling of property and drugs offences compared with 1969, the First CDR Congress, which was held in Autumn 1977, paid considerable attention to this. The criticism of the way the existing system worked that was made at the congress led to a reorganisation of the vigilance system and to new mobilisation campaigns to encourage CDR members to participate in a more conscientious way.²⁷¹

Table 7: Property Offences per 100,000 capita

| Year | Total per 100,000 capita |
|------|-----------------------------|
| 1959 | 543.1 |
| 1960 | 482.7 |
| 1961 | 461.6 |
| 1962 | 489.4 |
| 1963 | 232.6 |
| 1964 | 133.2 |
| 1965 | 272.2 |
| 1966 | 317.0 |
| 1967 | 335.2 |
| 1968 | 341.4 |
| 1969 | 203.8 |
| 1977 | 608.3 |

Luis Salas, *Social Control and Deviance in Cuba*, Praeger, New York, 1979, p. 105.

Table 8: Drugs offences 1959-1968 and 1976-1977. Recorded arrests

| Year | Total | Total per 100,000 capita |
|------|-------|-----------------------------|
| 1959 | 21.87 | 1464 |
| 1960 | 8.72 | 595 |
| 1961 | 4.09 | 284 |
| 1962 | 3.35 | 237 |
| 1963 | 4.64 | 336 |
| 1964 | 4.04 | 300 |
| 1965 | 7.33 | 566 |
| 1966 | 5.13 | 405 |
| 1967 | 10.06 | 810 |
| 1968 | 3.13 | 257 |
| 1976 | 6.14 | 590 |
| 1977 | 6.89 | 681 |
| o al | | 6505 |

Luis Salas, *Social Control and Deviance in Cuba*, Praeger, New York, 1979, p. 52.

A year later, in September 1978, the crime rate for the period November 1977 to April 1978 was shown to have dropped by 4% compared with the same period in 1966-1977.²⁷² In 1981 the rate of crime that occurred during the CDR night patrols had dropped by 20% compared with the three preceding years. In the first half of 1983 a further drop of around 20% was recorded compared with the same period in 1982.²⁷³ Data from the first seven months of 1981 indicated that in general the top crime of 1977, robbery with violence, had dropped by 40% compared with 1977.²⁷⁴

The discussion on the crime problem was initiated during the First CDR Congress in 1977 by one of the delegates. The call for more police was answered positively by Fidel Castro in his concluding speech. There was a shift as compared with the 1969 National Forum on Domestic Order, where the solution of the crime problem had been sought in a strengthening of the surveillance activities of the committees. In line with the strong emphasis that was laid on the absence of a necessity for professional qualifications in the late 1960s, the 1969 Forum had tried to make it clear that:

Police work is social and political work. It does not concern the police alone, but it is a matter that concerns everybody in cooperation with the police.²⁷⁵

The view that was gaining ground in the 1970s, however, that a certain degree of professionalism was a necessity, was reflected during the 1977 CDR Congress in the call for a larger and better equipped police force. One of the delegates, Rosa Maria Tabío Figuera, delivered a vehement criticism of the rising crime figures at the Congress. She indignantly told the Congress about a shop that had been set on fire. An elderly woman who saw something suspicious near the shop warned somebody in olive green uniform who was standing on the street corner. The man did not react, however, and later turned out to be one of the gang. He escaped to-

gether with the other arsonists. When an *acto de repudio* was held, a large number of people had congregated on the scene of the crime. They did not intend to attack the man when he was brought up for trial, but to demand his execution. He was not put on trial there out of fear for what the public would do to him. Rosa Maria Tabío then continued:

Comrades, you laugh, but I consider this to be a very serious problem...

We need more police, we need professionally trained police, not the auxiliaries we have at the moment, poor things, who come out of work to put on their checked shirts and green trousers and to spent the night walking about before going off to work again the next day. No, we need real police who earn a proper wage...

This is a problem which concerns all of us, a problem that concerns all organisations...but especially a problem for the National Revolutionary Police... [applause].

We women carry out our patrols...But as for the second watch-- and don't suppose that I'm criticising the male comrades here, because we have to be fair -- we women are given more tasks and more work each day, and this has to be looked into. If you have a union meeting, if you have to organise the Economic Plan, if you have Party meetings...²⁷⁶

Castro's concluding speech at the Congress was in the same spirit:

In the Committees for the Defence of the Revolution it was said: we need more police. It's true, they're right. What a pity that we need a police force, that we have to have guardians of law and order! But if there is no police force, and citizens have to rest and sleep, who is going to watch over them and protect them against attacks of this kind, against crimes to their property? Who is going to do it? It's clear, we all have to combat this kind of crime. All of us! We have to combat crime and to carry out a labour of education to create a new ethic. It's a long struggle -- don't suppose that it's an easy struggle -- no, it's a very long struggle which can only be won if everybody shares in it.

More police? Yes, we need more police. It's an expense which the State will have to bear. People who would otherwise be engaged in productive work will have to switch to this kind of work. But we don't have a choice...²⁷⁷

Immediately after this First CDR Congress the National Revolutionary Police was enlarged and better equipped. In 1979 the Minister of Home Affairs, who is responsible for the police force, referred to the importance of modern science for the police. In this respect too a certain degree of professionalism was regarded as valuable. The campaign against crime needed to make use not only of the traditional sciences of criminal law, including criminology, but also of sociology, pedagogy and the electronic processing of data.²⁷⁸

This increased professionalism in the fight against crime did not exclude the CDR surveillance, however. On the contrary, afterwards the Congress turned out to have been an encouragement to carry out all sorts of improvements in the organisation. The Congress and especially Fidel Castro's speech were seen by the CDRs as a reason to treat their surveillance duties more seriously than they had done in the past.²⁷⁹ After the Congress was over, the CDRs were assisted by the police and the

Ministry for Home Affairs in identifying the weak spots in their surveillance system and trying to remove them by organisational improvements. Discussions were held at neighbourhood level to see why the percentage of those who participated in CDR vigilance had dropped, and considerable attention was devoted to the reorganisation of the *Centros Operativos*, the centres which coordinated CDR surveillance within a zone. To improve the efficiency of the system of surveillance, new municipal centres were set up alongside the old zone centres, and the CDR members who were to run these centres were carefully picked and trained. The cooperation between the CDRs and the police was to be guaranteed by agreements on regular consultations, which were held fortnightly at zone level.

The guideline on *Actos de Repudio* was that every criminal act was to be followed by such a meeting. These meetings, which were held within 72 hours after a crime had been committed, were attended by all those involved in the system of surveillance to review the case critically. They were still being held in 1983.²⁸⁰

Furthermore, information meetings were organised in collaboration with the Ministry for Home Affairs and the Public Prosecutor to deal with vigilance strategies, causes of criminality, etc.²⁸¹ The organisation of these meetings probably took place in close consultation with the *Comisión Nacional de la Enfrentamiento al Delito*, which had been established in 1976. It was composed of members of the Public Prosecution, the Judiciary and the police, as I was told by a high-ranking official of the Public Prosecution in 1981. Its function is to analyse where certain types of crime are committed and their causes. On the basis of its findings the commission adopts preventive measures in cooperation with the CDRs and other bodies, such as organising monthly information meetings in the neighbourhoods.²⁸² In fact, cooperation between the CDRs and the Public Prosecutor has a longer history.²⁸³ The measures taken implied a renewed strengthening of the CDR surveillance, but compared with the previous practice they laid a stronger emphasis on cooperation and particularly dependence on the police.

The priority given by the CDRs to vigilance work does not appear to have slackened in the meantime. In 1980 it was reinforced by the establishment of special Schools for Combatting the Enemy (*Escuelas Combatiendo al Enemigo*). In these schools the various specialists in the field of surveillance within the organisation were given a seven-day course dealing with the theoretical and practical aspects of vigilance and crime prevention. These specialists include those responsible for surveillance within the CDR zones and the members of the special CDR detachments which patrol the coast against illegal infiltration (*Destacamentos Mirando al Mar*).²⁸⁴ Besides these schools, a new kind of mass assembly is organised nowadays, the *Activos de Vigilancia*, where 'the most important duty of every CDR member', i.e. the 'revolutionary' surveillance, is discussed by all the members of a neighbourhood.²⁸⁵

SOCIAL PREVENTION AND REHABILITATION

In 1977 the CDRs were deprived of a number of social preventive and rehabilitation duties. The individual activities carried out by members of the organisation with reference to specific cases of antisocial behaviour in the neighbourhood or with ex-convicts were transferred in that year to Popular Power. Since then it is the Department of Security and Social Assistance of Popular Power which is responsible for this work, in collaboration with the Social Prevention Department of the Ministry for Home Affairs.²⁸⁶ Each municipality thus has a department of Popular

Power which is concerned with social and economic problem cases, with caring for pensioners and aftercare for ex-convicts.²⁸⁷ The CDRs have a supportive role in this work. Unlike the FMC, which had some 1,100 social workers involved in prison visiting and the aftercare of juvenile delinquents and women convicts in 1980, the CDRs no longer have any social workers involved in rehabilitation work.²⁸⁸ Of course, the committees keep an eye on ex-convicts when they first return to the neighbourhood, and are ready to lend a helping hand when it comes to finding work or other problems, as well as taking care of the families of convicts during their detention. This work is no longer done by specially trained social workers, however, as was previously the case. It is now a duty of all the members of a committee, intended to support the work of the Security and Social Assistance Department of Popular Power and the 'Organs for the Prevention of Crime' of the Ministry for Home Affairs.²⁸⁹

The committees have retained their function of signalling antisocial behaviour in the neighbourhood. This is in fact a consequence of their surveillance work. The discussion presented below between a resident and a delegate of Popular Power shows how potential antisocial behaviour was tackled as a problem affecting the Municipal Assembly of Popular Power, the neighbourhood committee and the relatives concerned.

On November 2nd 1979 William Fuentes, a delegate in the Municipal Assembly of Popular Power in Santiago de Cuba, presented a report on his work to the residents of his electoral district, CDR I 'Domingo Alonso'. A woman from the neighbourhood asked him the following question:

Comrade Delegate, my name is Eliana Romero and I have two children, aged thirteen and eleven. I would like you to do something about the following problem. About a month ago I had a quarrel with Sánchez, who runs the off-licence in our neighbourhood. He sells beer to children under age and that is forbidden by law. The fact is, there is a group of youths from the neighbourhood who have been drinking beer on the street for some time... and not just in small doses; they spend the whole evening sitting on a bench near the park with bags full of bottles of beer. I don't want my two boys to get mixed up in that kind of behaviour. So I went to the shop to complain, but Sánchez said that he couldn't do anything about it and that they bought the beer somewhere else. But I know that they buy it from him, they've told me so themselves when I asked them where they got it. I know too that some of them are under age because I know them, they're local boys. To keep it short, Sánchez insists that he can't help it. I think that the authorities must have a word with him to point out his responsibilities to him, and that there should be an investigation to stop the youths from buying beer and drinking it on the street. I do my best to bring up my children and I don't want others setting them a bad example. After all, alcohol is a big enough problem.

William Fuentes, the delegate, answered:

Comrade, the problem that you mention is not new to me. First of all, Sánchez must be spoken to at any rate, since from what you say it seems that he doesn't take your complaint seriously and doesn't realise his responsibility properly. We must find out what his version is. But, leaving that aside for the moment, there is also

the problem of the youths drinking beer on the street and thus setting a bad example. The solution of this problem is first and foremost a matter for the CDRs. They must talk with the youths and their parents and find out why they do it and why their parents don't try to stop it...

Another resident interrupted:

Comrade Delegate, my name is Mariano Solis. I am the father of one of the boys Eliana is talking about. The people from the CDR have already visited me to talk about it. First, I want to point out that the boys don't drink large quantities of beer; I've never seen them drunk. I have told my son not to drink beer on the street. The problem is that there aren't many places in the neighbourhood where they can meet. They say that they don't like sitting in the restaurants and that they want a spot of their own where they can chat and drink, and so long as they don't have such a place, they go out on the street. I would therefore like to ask the comrade delegate to propose in the assembly that the neighbourhood gets a café for the youths, where they can have music and dance...

William Fuentes, the delegate, replied:

I think comrade Solis' remarks are very important. I shall propose in the assembly that an inquiry is held in the neighbourhood to see if there are more young people who would like a café. If that is the case, a plan will have to be made of how this is to be done, because it will cost a good deal. In any case, I shall convey your concern and ensure that something is done. I propose that we set the plans for it on the agenda of the next assembly where a report is presented.²⁹⁰

If a committee notes more serious irregularities in the neighbourhood, it will not hesitate to bring the matter before the Municipal Tribunal. On March 9th 1983 a CDR in Old Havana accused two brothers who were under age of homosexual behaviour and incest.²⁹¹ These were children from a so-called asocial family which had been under the scrutiny of the committee for some time already in accordance with the general duty of the CDR of social prevention. The case was tried behind closed doors. The younger brother, who was 15 years old, was not liable under criminal law and he was sent to a special school in Havana.²⁹² The other brother was given a three month prison sentence.²⁹³

The CDRs are an important source of information for the judge regarding the personal background of the accused. The same is true of his or her place of work. Sometimes this report is compiled by the police, after they have carried out investigations in the neighbourhood and at the suspect's work. In certain cases the lawyer or the accused person takes charge of a CDR report for the hearing.²⁹⁴ The CDRs are held in high esteem with regard to the trustworthiness of their information.²⁹⁵

There are only two specific cases in which the committees can be given an explicit rehabilitation order: conditional sentences and conditional release. Both the 1936 Social Defence Code and the 1979 Penal Code recognise both these institutions,²⁹⁶ but they differ in that the Penal Code officially involves social organisations in their implementation. According to this Code, a prison sentence of less than three years may be conditional. The tribunal may adopt this measure

If, on the basis of the convict's character, past record, personal relations and present background, there are substantial reasons to suspect that the punishment may achieve its purpose without the sanction having to be put into effect.²⁹⁷

The probational period is between one and five years. A conditional sentence is generally not applicable in the case of recidivists.²⁹⁸ One of the conditions that the judge can impose in the case of a conditional sentence is that the political, social or mass organisation, military unit or work centre of the convicted person assumes the responsibility of counselling and of adopting suitable measures to deter him or her from crime in the future.²⁹⁹ Other conditions which can be imposed in such cases include restoration of the damage caused and apologising to the injured party. The detention is still put into effect if the person on probation commits another offence during the probationary period and is given a prison sentence for it. The same applies if he or she fails to comply with other conditions imposed, displays antisocial behaviour, or when the organisation or unit which guaranteed the person's good behaviour retracts this pledge.³⁰⁰

The new law creates the same possibilities in the case of conditional discharge. A tribunal can give a person in detention a conditional release when at least half of the sentence has been completed. This decision may be taken on the basis of the detainee's character, personal record and behaviour after the committing of the crime, particularly during the detention. A tribunal must be able to conclude from these considerations that the person has improved and that the punishment has had its effect, without it being necessary to impose the entire period of detention right to the end.³⁰¹ Convicted persons who were under the age of 20 when they were sent to prison may be conditionally released after having completed a third of their sentence. Recidivists are excepted from this privilege. The rule applies to them only in extreme cases and then only when they have already completed two-thirds of their sentence. The probationary period is the length of the rest of the sentence.³⁰² In this case too the tribunal can impose the condition that

A political, social or mass organisation, military unit or place of work of the convicted person assumes the responsibility of counselling and of adopting suitable measures to deter him or her from further crime in the future.³⁰³

The rest of the sentence will have to be completed if the person on probation commits an offence during the probationary period or indulges in antisocial behaviour. The same applies if the guarantee given by an organisation or unit is retracted.³⁰⁴

In both cases the condition imposed by the judge involves a guarantee from a social organisation, which may be the local CDR, to counsel the person and to try to deter him or her from committing further offences. This institution is comparable with the moral surety which organisations like the CDRs can offer for the release of a member under provisional arrest.³⁰⁵ In these special cases too there are no specially trained social workers who counsel the convicted person who has been placed in the care of a committee. It is the local leadership of the neighbourhood committees which assumes this responsibility and which holds regular consultations with the conditionally discharged person on probation. With an eye to rehabilitation, attempts will be made to involve him or her in all kinds of CDR activities.³⁰⁶

This chapter has been concerned with the metamorphosis of the Cuban base tribunals in the 1970s. They were incorporated within a uniform system of judicial organisation. They were accountable to the political organs and acquired a relatively

strict hierarchical decisionmaking structure. Their field of operations was transferred from the neighbourhood to the municipality and their jurisdiction was extended to more serious crimes. One of the three lay judges of the judicial bench was replaced with a legally trained judge as president. The direct link between the people and the basic administration of justice seems to have been dissolved. The legally formulated procedure of these tribunals was given a more formal character and the day to day practice of their hearings was more bureaucratic and less personal than the atmosphere of the base tribunals of the 1960s. The contribution of residents to the hearings has been generally reduced to a minimum. These changes will be resumed and discussed in the following chapter. The very close link between base tribunals and neighbourhood residents which had been a goal of the 1960s has been loosened in the course of the 1970s. Another link between the people and the administration of justice is that formed by the CDRs via their various juridical activities. One of their most important duties, 'revolutionary' vigilance, was retained intact in the 1970s. In fact, this work has been stepped up by the enormous extension of the number of CDR members in this period. The CDRs are still a genuine source of information on the accused for the judge. Furthermore, they still have the function of warning about and denouncing criminal or antisocial behaviour in their neighbourhood. In the field of rehabilitation work and social prevention, however, the CDRs have lost a large proportion of their responsibilities, which have been taken over, along with a number of their previous administrative duties, by the organs of *Poder Popular*.

Notes to Chapter Nine

1. Cf. Chapter Seven; Héctor Garcini Guerra, 'Las Comisiones de Estudios Jurídicos', *Revista Cubana de Derecho*, Year 1, No. 1, Jan. 1972. These are LOSJ of 1973 and LPP of 1973.
2. Cf. Chapter Seven and Chapter Six.
3. In fact, the Russian Soviet Federative Socialist Republic. Cf. *The Soviet Codes of Law*, ed. William B. Simons, Sijthoff & Noordhoff, 1980.
4. According to Dr. Aldo Prieto Morales, in an interview held on 8.3.1983.
5. The new laws were the Ley de Organización del Sistema Judicial (LOSJ of 1977), Law No. 4, *Gaceta Oficial*, 25.8.1977, No. 36, pp. 489ff.; and the Ley de Procedimiento Penal (LPP of 1977), Law No. 5, *Gaceta Oficial*, 15.8.1977, No. 32, pp. 321ff.
6. See Chapter Two.
7. Prouncement No. 783, 21.8.1961 of the Government Division of the Cuban Supreme Court: *Revista Cubana de Jurisprudencia*, Year 1, No. 1, Jan. 1962, p. 104.
8. Santiago Cuba, *Memoria, leída por el Fiscal General del Tribunal Supremo*, 1.9.1961, pp. 9 and 11.
9. Cf. Chapters Four and Eight.
10. For example, W.A.Tumanov, *Bürgerliche Rechtsideologie*, Staatsverlag des Deutschen Demokratischen Republik, Berlin, 1975, p. 292, parts of which were published in serial form in the *Revista Cubana de Derecho* [Year 1, No. 2, Oct. 1972, pp. 159-187; No. 3, Dec. 1972, pp. 37-83; No. 4, 1973, pp. 53-67; No. 5, 1973, pp. 3-68; No. 6, 1973, pp. 3-53; No. 7, 1974, pp. 97-143]; A.T.Barabash & G.S.Concharova, 'Reforzar la lucha contra el ausentismo' (transl. of *El Estado Soviético y el Derecho*, No. 1, 1971) in *Revista Cubana de Derecho*, Year 1, No. 1, Jan. 1972; E.G.Tolkunov, 'El Control de la Legalidad Socialista por la Fiscalía de la USSR', *Revista Cubana de Derecho*, No. 6, Year 2, July-Dec. 1973, pp. 135ff.; Vladimir N. Kudriavtsov, 'Relaciones entre la teoría y la práctica en la organización de la lucha contra la delincuencia en la USSR', *Revista Cubana de Derecho*, No. 8, Year 3, June-Dec. 1974, pp. 137-155; Dzhan Jan-Magomédiv, 'El Concepto de la Culpabilidad en el Derecho Penal Socialista Soviético'; Evgueni Smirnov, 'La Libertad Individual y sus Garantías en la Unión de las Repúblicas Socialistas Soviéticas', *Revista Cubana de Derecho*, No. 9, Year 4, Jan.-June 1975.

11. Fernando Diego Cañizares, **Teoría del Derecho**, Editorial Pueblo y Educación, Havana, 1979.
12. **Ibid.**, pp. 100 and 101.
13. As cited in Diego Cañizares, **ibid.**, p. 3. Cf. K. Marx, 'Preface to "A Contribution to the Critique of Political Economy"', 1859 [Marx-Engels, **Selected Works**, Three Vols., Progress Publishers, Moscow, Vol I, pp. 503-504] and the commentary in Maureen Cain & Alan Hunt, **Marx and Engels on Law**, Academic Press, London & New York, 1979, p. 48.
14. Diego Cañizares, **ibid.**, pp. 3-6.
15. **Ibid.**, pp. 56-69.
16. **Ibid.**, p. 100.
17. Compare Chapter Seven.
18. Harold J. Berman, **Justice in the USSR**, Harvard University Press, Cambridge Mass., 1963, p. 366.
19. Diego Cañizares, **op. cit.**, p. 69.
20. See Chapter Eight.
21. Speech by Blas Roca, as member of the Secretariat of the Central Committee of the Communist Party of Cuba, at the National Congress for the Establishment of Lawyers' Collectives, **Revista Cubana de Derechos**, Year 3, Jan.-June 1974, No. 7, p. 82.
22. Diego Cañizares, **op. cit.**, pp. 101 and 102.
23. Tumanov, **op. cit.**, p. 292.
24. Diego Cañizares, **op. cit.**, p. 101.
25. Eloy G. Merino Brito, 'La Organización del Sistema Judicial Cubano', **Revista Cubana de Derecho**, Year 1, Oct. 1972, No. 2, p. 64; Aldo Prieto Morales, **Derecho Procesal Penal**, Vol. I, 1976, p. 69.
26. LOSJ of 1973, Art. 11^e and 1977, Art. 13².
27. Merino Brito, **op. cit.**, p. 65; LOSJ of 1973, Art. 10^c and 1977, Art. 12 ad 3.
28. LOSJ of 1973, Art. 4 and 1977, Art. 4.
29. Merino Brito, **op. cit.**, p. 67.
30. LOSJ of 1973, Art. 3 sec. 2, 1977, Art. 3; cf. likewise Merino Brito, **ibid.**, p. 65.

31. **LOSJ** of 1973, Art. 2 ad a and Art. 19.
32. **Ibid.**, Art. 2 ad b and Art. 20.
33. **Ibid.**, Art. 2 c and Art. 21.
34. **Ibid.**, Art. 2 d and Art. 23.
35. **Ibid.**, Art. 2 e and Art. 18.
36. **Ibid.**, Articles 26, 34, 35, 36 and 37. Within the Supreme Court there was a smaller body, the Plenum (*Pleno*), consisting of all judges, with the president in the chair. Its function was the trial of persons holding special office, such as the President of the Republic or the judges of the court itself: **LOSJ** of 1973, Articles 25 and 33.
37. **Ibid.**, Articles 41, 42, 43.
38. **Ibid.**, Articles 45 and 46.
39. **Ibid.**, Art. 30.
40. **Ibid.**, Articles 19-21, 24, 27 and 29.
41. **Ibid.**, Art. 32 f, resp. e.
42. The 1970 prohibition on the handling of these cases by the base tribunals was thus removed. At that time the Supreme Court had judged the authority exercised by the base tribunals in certain family law cases to be in breach of the Constitution: interview with Séfer Zárate, 3.3.1983; **LOSJ** of 1973, Art. 47 1^a and 1^b.
43. **LOSJ** of 1973, Art. 31, sec. 1. For the competence and composition of the base tribunals see too a publication of the Commission for Juridical Studies of the Central Committee of the PCC, 'Organos del Sistema Judicial', 1975, pp. 19-22.
44. **LOSJ** of 1977, Articles 19 and 35.
45. Cf. **LPP** of 1973, Articles 8-10 and **LOSJ** of 1973, stipulation 4, sub-sections a, b and c, with **LPP** of 1977, Articles 8 and 9 and **LOSJ** of 1977, Articles 25-30.
46. **LOSJ** of 1977, Articles 21, 24, 37, 20, 36. The member of the Public Prosecution who took part in the **Pleno** of the Provincial Tribunal only had the right to speak there: **LOSJ** of 1977, Art. 36 div. 1.
47. **Ibid.**, Art. 2.
48. **Ibid.**, Art. 45 section 2.

49. Reglamento de Los Tribunales Populares, **Gaceta Oficial**, 5.5.1978, Art. 68 sections 2 and 3.
50. **LOSJ** of 1977, Articles 27, 40, 45 and 46.
51. Cf. **LOSJ** of 1977, Art. 47¹ and **LPP** of 1977, Art. 8 with **LOSJ** of 1973, Art. 47 a and transitional stipulation 4, sub-sec. c.
52. **LPP** of 1973, Art. 9 and **LPP** of 1977, Art. 8.
53. **CDS** of 1936, 1973 edition [Ministry of Justice, Havana], 'Art. 48 b; **Código Penal (CP)**, Law No. 21, 15.2.1979, Art. 77.
54. **CP** of 1979, Articles 8-14; cf. **CDS** of 1936, e.g. Art. 17.
55. Decreto-ley 27, 'Sobre Infracciones Administrativas', **Gaceta Oficial Extraordinaria**, No. 12, 29.10.1979, pp. 39ff. This law was replaced in 1984 by a new decree, No. 80, **Gaceta Oficial Extraordinaria** No. 6, 29.3.1984. Cf. the commentary on the new law by Raúl Gómez Treto, 'La Nueva Legislación Cubana de Infracciones Administrativas', **Revista Jurídica**, No. 9, Year III, Oct.-Dec. 1985, pp. 7-162. This new law will not be further discussed here.
56. Cf. **CDS** of 1936, Articles 571-578 and Decreto-Ley No. 27 of 1979, **op. cit.**, Articles 18-23.
57. Decreto-Ley 27, **ibid.**, Articles 6-17 and 1.
58. I.e., the decision on the appeal must be taken within 15 days, and the party concerned must be notified of this final decision within the ensuing 15 days: Art. 15.
59. Interview with Edelia Casa Nueva, President of the Civil Chamber of the Municipal Tribunal 'Havana Vieja', 12.2.1983. The official value of one peso is roughly that of US \$1.25.
60. Interview on 4.3.1983 with Jorge Terry Menéndez, President of the Municipal Popular Tribunal 'Havana Vieja'.
61. Decreto-ley 32, **Gaceta Oficial Extraordinaria**, No. 4, 18.2.1980, Por cuanto I and Articles 1, 2 and 5; interview held on 29.4.1980 by a group of Dutch lawyers with members of the Labour Council and the Legal Advisor to the Tricontinental Sugar Transport Company in Cienfuegos; interview held on 24.4.1980 by the same group of Dutch lawyers with members of the Labour Chamber of a Municipal Popular Tribunal in Havana.
62. Cf. e.g. The Constitution of the Russian Soviet Federative Socialist Republic of 13th April 1978, Art. 164; The Law on Court Organisation of the RSFR of 27.10.1960, Articles 6, 7, 10, 16-19, 28, 33, 41, 56, 67: **The Soviet Codes of Law**, **op. cit.**, p. 48, resp. pp. 1222-1237.
63. Cf. Prieto Morales, **op. cit.**, p. 118.

64. **LOSJ** of 1973, Articles 83, 85 section 3, 86 sections 1 and 4.
65. **Ibid.**, Articles 81 and 86 sections 1 and 3.
66. **Ibid.**, Art. 82.
67. **Ibid.**, Articles 78, 79, 85 section 2 and 86 sections 1 and 3.
68. **Ibid.**, Art. 77.
69. **Ibid.**, Art. 80.
70. **Ibid.**, Art. 85 section 1.
71. See Chapter Three, Chapter Six and **LOSJ** of 1973, Articles 73 and 74.
72. **LOSJ** of 1973, Articles 71 and 72.
73. Constitution of the Republic of Cuba, 24.2.1976, Art. 73^m; **LOSJ** of 1977, Art. 74.
74. Constitution of 1976, Art. 105^h; **LOSJ** of 1977, Art. 75.
75. **LOSJ** of 1977, Articles 76 and 77 section 1.
76. **Ibid.**, Art. 77 section 4.
77. **Ibid.**, Art. 77 section 2.
78. **Ibid.**, Articles 66 and 68. I do not know how these demands were met in practice.
79. **Ibid.**, Art. 69.
80. **Ibid.**, Art. 67.
81. **Ibid.**, Articles 88,89, 90, 91.
82. **Ibid.**, Articles 92, 93, 94, 95, 96.
83. **Ibid.**, Articles 97-103; Prieto Morales, *op. cit.*, pp. 120-124.
84. **Ibid.**, Articles 79-84.
85. Interview, 25.2.1983 with Casa Nueva; and interview 4.3.1983 in the Ministry of Justice with members of the Direction of Tribunals: Antonio Rodríguez Gavira and José Alvarez Valdés, who was a correctional judge from 1959 to 1974, and with Yoram Bauta García, a member of the Direction of International Relations.
86. Interview 23.4.1980 with three members of the People's Supreme Court: Dr. Francisco Varona Duque, vice-president of the Court, Dr. Jesús Valdés García, member of the Criminal Chamber, and Dr. Enrique Marimón Roca, member of

the State Security Chamber. Cf. too **LOSJ** of 1977, Art. 12 sub 5, 37 sub 1, Articles 86 and 88.

87. **LOSJ** of 1977, Articles 21 sub 2^b, 37 sub 5.
88. Interview with Ministry of Justice, 4.3.1983.
89. Interview with Casa Nueva, 25.2.1983.
90. I was given this answer by Casa Nueva, *ibid.*; by officials of the Ministry of Justice, *loc. cit.*; and by Prieto Morales, in an interview held on 8.3.1983.
91. Cf. Constitution of the Republic of Cuba of 1940, Art. 180; Ley Orgánico del Poder Judicial (**LOPJ**) of 27.1.1909 [revised edition of 1950, ed. Jesús Montero, Havana, 1950], Articles 59 and 60; Henry W. Ehrman, **Comparative Legal Cultures**, Prentice-Hall, New Jersey, 1976, p. 71; René David, **Les Grandes Systèmes de Droit Contemporains**, Dalloz, Paris, 1974, p. 138.
92. For example, Felipe Navarro Amador, whom I met when he was a law student in 1981, was elected president of a criminal chamber of the Municipal Tribunal of Guanabacoa. He was not a resident in Guanabacoa at the time -- in fact he worked in West Havana -- but after his election as judge he did go to live there: interview 24.2.1983 with his friend and fellow student, Julio González.
93. Interview 4.3.1983 with Ministry of Justice, *loc. cit.*
94. **LOSJ** of 1973, Art. 11^e and **LOSJ** of 1977, Art. 13².
95. E.g. interview with Prieto Morales, 8.3.1983, *loc. cit.*
96. Interview with Graziela Prieto Morales, President of the Provincial Popular Tribunal of Havana, 24.3.1981.
97. Interview 4.3.1983 in the Ministry of Justice, *loc. cit.*
98. Reglamento de Los Tribunales Populares, **Gaceta Oficial**, 5.5.1978, Art. 78-80.
99. Interview 4.3.1983 with members of the Direction of Tribunals of the Ministry of Justice, *loc. cit.*
100. Reglamento, *op. cit.*, Art. 78.
101. *Ibid.*, Art. 78 section 2.
102. *Ibid.*, Art. 79.
103. *Ibid.*, Art. 80.
104. **LOSJ** of 1973, Art. 32 sub d-f; **LOSJ** of 1977, Articles 7 and 21 sub 3.

105. Interview 23.4.1980 with members of the Popular Supreme Court, *loc. cit.* This problem had already been pinpointed: 'Nota: Primer Periodo Ordinario de Sesiones', 28, 29 and 30 June, 1978, pp. 216ff. of the National Assembly of Popular Power. This report also expressed its concern over the high percentage of acquittals: 43%. Cf. Luis Salas, **Social Control and Deviance in Cuba**, Praeger, New York, 1979, p. 230.
106. Salas, *ibid.*, p. 230; cf. **LPP** of 1977, Art. 262.
107. **LOSJ** of 1977, Art. 21 sub 3 and 24 sub 1.
108. *Ibid.*, Art. 21 sub 5.
109. Interview 10.3.1981 with René Burguet Flores, Vice-Attorney General, and Miguel Angelo Gutierrez of the International Relations Department of the Public Prosecution. As Burguet Flores pointed out, the presence of a member of the Public Prosecution in the Plenum carries some weight by itself.
110. **LOSJ** of 1977, Art. 12 ad 3.
111. Cf. Constitution of 1976, Art. 5; Edouard Zellweger, 'The principle of socialist legality', **Journal of the International Commission of Jurists**, Winter 1964, edited by Séan Macbride, Vol. V, No. 2, Geneva, pp. 170-176; Ferdinand J.M.Feldbrugge, 'The Status of Law under Communist Party Rule', **Ruling Communist Parties and their Status under Law**, Dietrich André Loeber et al., (eds.), Law in Eastern Europe No. 31, Martinus Nijhoff, Dordrecht, 1986, pp. 3-21.
112. Interview 24.3.1981.
113. Adam Podgórecki, **Law and Society**, Routledge & Kegan Paul, London & Boston, 1974, p. 128.
114. I do not claim representativity for these hearings. I attended trials in three of the ten Municipal Tribunals of Havana in 1980, 1981 and 1983. As part of a Dutch delegation of lawyers, I attended the morning sitting of a Municipal Tribunal in a suburb of Havana on 24th April 1980. In February 1981 I attended three morning sittings of the Municipal Tribunal 'Linea y Calle M' in Vedado, a fairly modern area in the centre of Havana. In February 1983 I attended three or four morning sessions of the Municipal Tribunal 'Havana Vieja', a traditional working class harbour district in the centre of Havana.
115. Interview 7.2.1981 with Priéto Morales; interview 24.3.1981 with Graziela Priéto Morales.
116. Interview 24.4.1980 by a group of Dutch lawyers with Jesús Valdés García, councillor in the Supreme Court and representative of the National Union of Jurists, and three professors of the Faculty of Law of the University of Havana: Héctor Garcini, Professor of Administrative Law, José A. Grillo Longoria, Professor of Criminal Law, and Aldo Priéto Morales, Professor of the Law of

Criminal Procedure.

117. This observation is based on my attendance at lectures in criminal law and criminal procedure law at the University of Havana in February-April 1981.
118. Interview 24.3.1981 with Graziela Priéto Morales.
119. As laid down in **LOSJ** of 1977, Articles 64 and 65 sub 1. Between 1973 and 1977 this was a duty of a special department of the Supreme Court: **LOSJ** of 1973, Art. 68 section 1.
120. Interview 4.3.1983 in the Ministry of Justice, *loc. cit.*
121. Interview 4.3.1983 with Terry Menéndez, *loc. cit.*
122. Interview 7.2.1981 with Aldo Priéto Morales, *loc. cit.*
123. Interview 4.3.1983 with the Ministry of Justice, *loc. cit.*
124. See, for example, K.Kulcsár, 'Sozialer Wandel und die Mitwirkung des Laien-elementes in der Rechtspflege', **Jahrbuch für Rechtstheorie und Rechtsso-ziologie** 3, Düsseldorf, 1972, pp. 491-508 and **People's Assessors in the Courts. A Study on the Sociology of Law**, Akadémiai Kiadó, Budapest, 1982 on lay judges in Hungary; N.H.M. de Roos, **Lekenrechters. Een empirisch onderzoek naar het functioneren van de lekenrechters bij de Raden van Beroep voor de Sociale Verzekeringen** on The Netherlands.
125. This research, which was started in 1964, was carried out by members of the Institute of Legal Science of the Polish Academy of Sciences under the direc-tion of S.Zawadzki: Podgórecki, *op. cit.*, pp. 126-137.
126. Podgórecki, *op. cit.*, p. 135.
127. Fidel Castro in a speech 20.12.1982 in celebration of the Second Congress of the **Federación Estudiantil Universitaria**, **Granma Semanal**, 2.1.1983, p. 4.
128. Interview 22.3.1983 with Séfer Zárata. Cf. Chapter Five, note 7 on the criti-cism voiced during the National Forum of the Ministry of Home Affairs in 1969 on the fragmented and chaotic state of the existing system of judicial administration.
129. Interview with Grillo Longoria, 24.4.1980, *loc. cit.*; interview with Julio Gon-zález, 24.2.1983, *loc. cit.*
130. Héctor Garcini, interview 24.4.1980, *loc. cit.*
131. See note 118.
132. Compare Chapter 6.
133. Interview 22.3.1983 with Séfer Zárata, *loc. cit.*

134. Fidel Castro, speech 22.12.1982, **Granma Semanal**, 2.1.1983, p. 3.
135. See Chapter Seven.
136. Dr. Santiago Cuba, Attorney-General of the Republic, in a speech, 'El nuevo Sistema Judicial', **Revista Cubana de Derecho**, Year 2, July-Dec. 1973, No. 6, p. 89.
137. René Burguet Flores, 'Ideas de Lenin sobre la Fiscalía y el Control de la Legalidad Socialista', **Revista de Información Jurídica**, Fiscalía General de la República, 1978 (1), pp. 4-11.
138. *Ibid.*, p. 5.
139. In 1980 an annual quota of 185 new daytime law students were registered. In the same year 163 students were admitted to evening classes and 10,000 students enrolled for the 'free course' in law: interview 24.4.1980 with Héctor Garcini, *loc. cit.*
140. Osvaldo Dorticos Torrado, President of the Republic, speech 'El Nuevo Sistema Judicial en Cuba', **Revista Cubana de Derecho**, Year 2, July-Dec. 1973, No. 6, pp. 75-83.
141. Burguet Flores, *op. cit.*, p. 5.
142. E.g. Zellweger, *op. cit.*, p. 168; **LOSJ** of 1977, Art. 5 jo. 12 sub 1 and 2. For the development of the notion of socialist legality in the USSR see, e.g., Gordon B. Smith, 'Development of "Socialist Legality" in the Soviet Union', **Perspectives on Soviet Law for the 1980s**, F.J.M. Feldbrugge & William B. Simons (eds.), Law in Eastern Europe No. 24, Martinus Nijhoff, The Hague, 1982, pp. 77-97 and Teruo Matsushita, 'Legality in East and West: a comparative study of "Socialist Legality"', *ibid.*, pp. 99-108.
143. **LOSJ** of 1977, Art. 106 section 1. Cf. Zellweger, *op. cit.*, p. 198; Art. 176 of the Constitution of the Russian Soviet Federative Socialist Republic of 13.4.1978.
144. Cf. Art. 3 of the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic, 27.10.1960, **The Soviet Codes of Law**, *op. cit.* See too **LPP** of 1977, Art. 109 sub 1; **LPP** of 1973, Art. 106 sub 1; Prieto Morales, *op. cit.*, I, p. 68 and cf. **LEC** of 1888, Art. 105.
145. **LOSJ** of 1977, Art. 106:
 Corresponde a la Fiscalía General de la República, como objetivo primordial, el control de la legalidad socialista sobre la base de la vigilancia del estricto cumplimiento de la ley y demás disposiciones legales por los organismos del Estado, entidades económicas y sociales, y por los ciudadanos.
 Cf. Art. 130 of the Constitution of 1976 and Art. 129 of the **LOSJ** of 1977

146. Cf. **LOSJ** of 1977, Art. 106 section 2 sub 5; course in criminal procedure law by Dr. A. Prieto Morales, Professor of the Law Faculty, University of Havana, Spring 1981.
147. **LOSJ** of 1977, Art. 106, section 2 sub 1, 2, 3, 11 and 13.
148. *Ibid.* sub 10.
149. *Ibid.* sub 9.
150. '¿Es el Fiscal solamente un acusador?', *Revista Jurídica*, Fiscalía General de la República, Havana, Year 2, 1980, pp. 12-15; **LOSJ** of 1977, Art. 106, sub 11 and 13; Reglamento de la Fiscalía General de la República, *Gaceta Oficial*, 28.3.1978, Art. 3 sub b, j and l (identical to Art. 106, sub 2, 11 and 13 of **LOSJ** of 1977).
151. *Revista Jurídica*, *ibid.*, pp. 14 and 15.
152. **LOSJ** of 1977, Art. 106 sub 2.
153. Interview with journalist from the evening paper **Juventud Rebelde** who was responsible for writing about 'socialist legality', March 1983.
154. **LOSJ** of 1977, Art. 121 jo. Art. 66.
155. **LPP** of 1977, Art. 109 sub 1 and 2; **LPP** of 1973, Art. 106.
156. The Spanish Ley de Enjuiciamiento Criminal (**LEC**) of 1882 recognised initially a strict separation between the **sumario**, the inquisitorial preliminary investigation, and the **juicio oral**, the accusatorial judicial proceedings. The Examining Magistrate (**Juez Instructor**) led the preliminary investigation and could impose provisional measures in the so-called **Auto de Procesamiento**. In 1899 the absolutely inquisitorial nature of the preliminary investigation was weakened, in so far as the accused had access to the documents and could attend the hearing of witnesses after this **Auto de Procesamiento**. In 1973 this function of the **Juez Instructor** was done away with by the introduction of the **Ley de Procedimiento Penal**. The 1977 amendment introduced a new **instructor**, the so-called 'Instructor of Police', who is responsible in the first instance for criminal investigation and the assembly of evidence. These functions are under the supervision of the Public Prosecutor (Art. 105, **LPP** of 1977). The investigation is carried out as quickly as possible, and at any rate within a period of 60 days, which may be extended to six months with the authority of the Public Prosecutor (*ibid.*, Art. 107). The **Auto de Procesamiento** of the **Juez Instructor** was replaced in 1973 by the **Audiencia Verbal** of the tribunal. The police were obliged to notify the tribunal which would eventually handle the case of a person's arrest within 24 hours. The tribunal then proceeded to try the case no more than 72 hours later in the so-called **Audiencia Verbal** and decided whether or not to impose provisional measures (**LPP** of 1973, Art. 244). In 1977 this regulation was amended. The police must now notify the 'Instructor of Police' of an arrest within 24

hours, who in turn must notify the Public Prosecutor of the case within 72 hours. The latter must decide whether to impose provisional measures within 72 hours. If the district attorney decides to impose such measures, this decision must be ratified within 72 hours by the tribunal that is to try the case (LPP of 1977, Art. 245). The provisional measures include: detention on remand, bail or moral surety, house arrest or the obligation to report regularly to the police (*ibid.*, Art. 255).

For an account of the present day Cuban law on criminal procedure see Adèle van der Plas, 'Cuban Criminal Procedure: An Overview', *Review of Socialist Law*, Vol. 6, 1980, 1, March, Sijthoff & Noordhoff, Alphen aan den Rijn, pp. 31-51. Cf. also LPP of 1977, Articles 105 and 109 sub 3 with LPP of 1973, Art. 105 section 1 and LEC Art. 19²; Eloy G. Merino Brito, 'El proyecto de Ley de Procedimiento Penal', *Revista Cubana de Derecho*, Year 4, 1973, pp. 118-123; *idem*, 'La Organización del Sistema Judicial Cubano', *Revista Cubana de Derecho*, Year 1, Oct. 1972, No. 2, pp 74 and 75.

In his 1972 article (p. 75) Merino Brito warned against the loss of legal protection which threatened to result from the withdrawal of the Examining Magistrate from the preliminary investigation:

The importance of the examining magistrate, as created by the present Ley de Enjuiciamiento Criminal, was not exactly in his role as investigator of offences brought to his cognisance, since with the perfecting of police techniques the judicial inquiry in fact passed from his hands into those of the police, but in the legal and constitutional guarantees offered by his impartial and balanced position to the parties in the criminal trial, and especially with respect to the rights of personal liberty of the accused, as well as his or her rights to take part in the investigation and to choose the means of defence. One does not need to be clairvoyant to affirm the obvious fact that if the procedural legislation which is at present being worked out by the Commissions for Juridical Studies entrusts the task of the investigation of crimes exclusively to the police, they will have to provide the necessary legislative means to ensure that those material and formal guarantees retain their existing strength and effectiveness.

157. For example, interview 10.3.1981 with Burguet Flores and interview 6.4.1981 with Jesús Valdés García, member of the Criminal Law Chamber of the Supreme Court.
158. LOSJ of 1977, Art. 106 sub 9.
159. LPP of 1973, Art. 492 and LPP of 1977, Art. 482.
160. Interview 22.4.1980 by a group of Dutch lawyers with members of the Ministry of Justice, including the head of the Department of Lawyers' Collectives and the head of the Juridical Department.
161. Interview 10.3.1981 with Burguet Flores.
162. LOSJ of 1973, Art. 131.

163. See Chapter Seven; Reglamento de la Fiscalía General de la República, *Gaceta Oficial*, No. 28, 21.12.1973, Art. 53 sub c; LOSJ of 1973, Art. 143; Prieto Morales, *op. cit.*, II, p. 182.
164. LOSJ of 1977, Art. 109 refers to 4 divisions: Fiscalía General, Fiscalías Provinciales, Fiscalías Municipales and Fiscalía Militar.
165. Cf. Santiago Cuba, speech at the opening of the courts, 'Los Tribunales Populares', September 1966, p. 14; Military Decree No. 213, 25.5.1900, Art. III.
166. LPP of 1977, Art. 359.
167. Interview 4.3.1983 with members of the Direction of Tribunals of the Ministry of Justice; interview 4.3.1983 with Terry Menéndez.
168. E.g. Aldo Prieto Morales, interview 8.3.1983.
169. *Ibid.*
170. The district attorney also tries to attend if he or she thinks it likely that a legal remedy will later be called for: interview 4.3.1983 with Terry Menéndez.
171. Interview 4.3.1983 with members of the Direction of Tribunals of the Ministry of Justice.
172. The trial of these kinds of cases was transferred from the Regional Tribunals to the Municipal Tribunals in 1977: LPP of 1977, Articles 404 and 405. Art. 405 section 2 makes an exception for cases of insanity.
173. Interview 4.3.1983 with Terry Menéndez.
174. See Chapter Six; Resolution No.13, 10.5.1973, of the Ministry of Justice.
175. Interview 4.3.1983 with Terry Menéndez.
176. See Chapter Seven; LPP of 1973, Art. 374.
177. They can appear at hearings of a Municipal Tribunal, but this is a rare occurrence: from personal observation I would estimate their appearance in (very roughly) 6% of the cases.
178. LPP of 1977, Art. 368.
179. Thus Dr. Aldo Prieto Morales.
180. Prieto Morales, *op. cit.*, I, p. 142. He attributes this to an initiative of the Ministry of Justice.
181. LOSJ of 1973, Art. 171; LOSJ of 1977, Art. 145.

182. Reglamento de los Bufetes Colectivos, Resolution No. 938, 20.12.1978, Ministry of Justice, passed by the First National Assembly of Lawyers' Collectives, 12th and 13th December 1978, Articles 8, 10-12.
183. *Ibid.*, Articles 13-15.
184. Cf. **LOSJ** of 1973, Art. 174 and **LOSJ** of 1977, Art. 151.
185. *Ibid.* One of the additional criteria was a good moral record ('poseer buenas condiciones morales').
186. **LOSJ** of 1973, Art. 173 and **LOSJ** of 1977, Art. 149.
187. **LOSJ** of 1977, Articles 149, sub 1 and 2, and 153.
188. See above, pp.
189. See note 21.
190. **LOSJ** of 1977, Art. 143, in conformity with **LOSJ** of 1973, Art. 169.
191. **LOSJ** of 1977, Art. 144 and **LOSJ** of 1973, Art. 170.
192. Interview 13.4.1981 with two lawyers: Dr. Tomás de Aquino Oquendo and Dra. Edith Carol Gonzáles, and with Josefa Gonzáles, a member of the secretariat of the Executive of the Lawyers' Collectives.
193. Interview by a group of Dutch lawyers with members of the Lawyers' Collective 'Havana Vieja', April 1980.
194. Tomás de Aquino Oquendo, interview 13.4.1981, *loc. cit.*
195. Constitution of 1976, Art. 58.
196. Cf. José A. Grillo Longoria, **Los Delitos en Especie**, Tomo I, Editorial Orbe, Havana, 1982, pp. 25-42.
197. **LPP** of 1977, Articles 249, section 2 and 258; **LPP** of 1973, Articles 244 section 3 and 256.
198. Thus the President of the State Security Chamber of this Tribunal, Graziela Prieto Morales, in an interview given to a group of Dutch lawyers on 23.4.1980.
The Cuban government and Amnesty International have stated that since the end of the 1970s large numbers of political prisoners have been released or are now out of prison after completing their sentence. In its report **Political Imprisonment in Cuba** (November 1986) Amnesty International speaks of the release of thousands of political prisoners since 1979. In 1977 Fidel Castro claimed that there were 2,000 to 3,000 political prisoners in Cuban prisons at that time in an interview with Barbara Walters (broadcast by the North Ameri-

can television network, ABC news). Since then large numbers have been released, including Hubert Matos (in October/November 1979: cf. Chapter Two) and Armando Valladares Pérez (in October 1982, through mediation by the French President, Mitterand). Both had been put in prison in the first three years of the revolution for counter-revolutionary activities. Cuban commentary on the case of Valladares claimed that he had been a member of Batista's police force and that he was arrested in 1960 for his part in a large number of bomb attacks and his contacts with the CIA (cf. *Cuba Libre, Venceremos, Union for Solidarity with Cuba*, Year 9, No. 3/4, July 1982, p. 12; Fidel Castro in July/August 1983 in *Conversaciones con Periodistas Norteamericanos y Franceses*, Editora Política, Havana, 1983).

The Amnesty International report claims that there have also been 'political' trials in recent years and refers to convictions for 'rebellion' (CP of 1979, Articles 103 and 104), 'enemy propaganda' (Art. 108), 'illegally leaving Cuba' (*ibid.*, Art. 247) and 'sabotage' (*ibid.*, Art. 109 section 1). 'Enemy propaganda', 'rebellion' and 'sabotage' are dealt with in Statute I of the CP of 1979, 'Delitos contra la Seguridad del Estado' [Crimes against State Security], which are tried by the State Security Chambers of the Provincial Tribunals (cf. Art. 41, *LOSJ* of 1977).

199. CP of 1979, Art. 373, resp. sections 1 and 2, and Art. 329. Before 1973 neglect of minors was a misdemeanour: cf. CDS of 1936, [1977 edition], Articles 497 and 498 with CDS of 1936, [1969 edition], Art. 576 sub 4.
200. Morning session of the Popular Municipal Tribunal, 'Línea y Calle M.', Havana, 9.2.1981.
201. Sitting of a Municipal Tribunal in one of the suburbs of Havana, 23.4.1980. The hearing was attended by a group of 23 Dutch lawyers. For the same sitting see Willem de Haan, 'Institutionalising van Volksrechtspraak in Cuba', *Delikt en Delinkwent* 11, 1981, 5, pp. 345-363.
202. By way of example we can take the statutes of the Cuban Communist Youth Organisation (UJC). The guidelines for this organisation include both a faultless moral public and private life and the struggle for full equality between men and women:

The moral principles of Communism are the basis of the educational work of the Union of Communist Youth and they define the values, attitudes and conduct by which the new man is to be created. To this end, its action is oriented on the following foundation:

A deep-seated collectivist spirit, respect for socialist legality, an awareness of what citizenship and the preservation of socialist property mean, modesty, honour, proletarian courtesy, austerity, moral purity in public and private life.

The struggle for the exercise of complete equality of rights and duties between men and women and relations of mutual cooperation in social duties, in the home and in caring for the education of children.

Source: Statutes of the Union of Communist Youth, Department of Revolutionary Orientation of the Central Committee of the Communist Party of Cuba,

Havana, 1977.

According to two female members of the UJC interviewed in February 1981 and other young Cubans interviewed in March of the same year, moral purity excludes homosexuality.

See further Henk van den Boogaard, **Homoseksualiteit: Ideologie en Politiek, Cuba**, SUA, Amsterdam, 1982; Henk van den Boogaard and Kathelijne van Kamme, **We cannot jump over our shadow; a global view of lesbian and gay oppression and liberation**, IGA Pinkbook, Amsterdam, 1985.

203. Based on interviews with this student, Fernando, in March 1981 and his dossier. I am in possession of the location of this pronouncement. A former Cuban musician, Cesar, had similar difficulties when he was accused in 1973 of public indecency (**Escándalo Público**), i.e. homosexual acts in public. He suspects that this was a trap set by his jealous colleagues. It was impossible to find a lawyer prepared to defend him in the town in Eastern Cuba where he lived at the time, and he was forced to conduct his own defence. Although the matter was later set right, he lost his job as a musician for good, as he later told me in an interview on 22.3.1981 in Havana.
204. **LOSJ** of 1977, Art. 21 sub 3.
205. **Ibid.**, Articles 21⁵ and 2^b.
206. Cf. **LPP** of 1973, Articles 365-379; **LPP** of 1977, Articles 359-373; Chapter Seven.
207. **LPP** of 1977, Art. 359 and **LPP** of 1973, Art. 365; Prieto Morales, **op. cit.**, II, p. 174. Everyone in Cuba who discovers a criminal act is obliged to report it immediately: **LPP** of 1977, Art. 116 and **LPP** of 1973, Art. 116. Exceptions to this rule are lawyers and relatives of the accused: **LPP** of 1973 Art. 117 and **LPP** of 1977, Art. 117.
208. **LPP** of 1977, Articles 404 and 405.
209. Interview with Dr. Aldo Prieto Morales, 8.8.1983. Unlike the former Ley de Enjuiciamiento Criminal, the new Cuban Law of Criminal Procedure only recognises the possibility of a private criminal action in exceptional cases. Cf. **LEC** of 1888, Art. 101 with **LPP** of 1973, Articles 278 and 430, and with **LPP** of 1977, Articles 273 and 420. Cf. Prieto Morales, **op. cit.**, II, pp. 49-52.
210. Municipal Popular Tribunal, Havana Vieja Calle Brasil (Vigente Rey), 28.2.1983. The crime is specified in Art. 381 jo. Art. 380 of the 1979 Penal Code.
211. These brigades consist of workers who are temporarily released from their work, on full pay, to build houses, for example. This may take a number of years. After completion, the workers have the right to live in the houses themselves. The new district of Alamar, on the outskirts of Havana, was constructed in this way.
212. Municipal Popular Tribunal 'Havana Vieja', 9.3.1983.

213. **LPP** of 1973, Art. 116 and **LPP** of 1977, Art. 116.
214. E.g. interview 27.4.1981 with Gola Colás.
215. Municipal Popular Tribunal 'Havana Vieja', 28.2.1983.
216. **LPP** of 1973, Art. 368.
217. Cf. **LPP** of 1973, Art. 368 with **LPP** of 1977, Art. 362.
218. **LPP** of 1977, Art. 361 jo. 120.
219. **LPP** of 1973, Art. 120.
220. For misdemeanours the maximum of 50 pesos was changed to 25 pesos: **LPP** of 1977, Art. 363.
221. Cf. **CP** of 1979, Articles 8-14 and Decree-Law No. 27, 1979, Art. 1.
222. Although a Ministerial Instruction of 12th June 1973 prescribed the hours for the holding of trials by the base tribunals as 7 to 12 p.m., the 1973 Law on Judicial Organisation, Art. 55, (and **LOSJ** of 1977, Art. 50) fixed them in the daytime. Cf. Chapter Six.
223. See Chapter Seven.
224. Cf. **LOSJ** of 1977, Art. 15. On 28th April 1980 the Attorney-General of the Provincial Tribunal of Santa Clara said that this Tribunal would shortly be holding a sitting outside in the country. This was the only time that I heard of the use of this article in practice. Interview 28.4.1980 with the Judges and Attorney-General of the Provincial Popular Tribunal of Santa Clara.
225. Cf. De Haan, *op. cit.*, pp. 348 and 352.
226. Municipal Popular Tribunal 'Havana Vieja', 28.2.1983. Cf. **CP** of 1979, Art. 77^e.
227. Compare Chapter Six.
228. See Chapter Seven.
229. This happened twice during a morning session of a Municipal Tribunal in Havana, 23.4.1980, attended by a group of Dutch lawyers. The president of this trial tended more than others to engage in heated discussions with the accusers and accused.
230. Interview 26.3.1983 with Abel Miguel González.
231. Municipal Popular Tribunal 'Havana Vieja', 9.3.1983. Cf. **CP** of 1979, Art. 381 jo. 380.
232. *Ibid.*

233. Municipal Popular Tribunal 'Línea', Vedado, Havana, 16.2.1981.
234. **LPP** of 1973, Art. 380⁹.
235. **CP** of 1979, Art. 28 sub 2^d. The **CDS** of 1936 did not mention it: cf. e.g. the commentary by J. Vega Vega in a post-academic course at the University of Havana, 'El Código de Defensa Social y el Nuevo Código, Tema VI, Sanciones', p. 8.
236. Cf. Vega Vega, *ibid.* See **CP** of 1979, Art. 28. The major penalties are:
- a) capital punishment
 - b) deprivation of liberty
 - c) restriction of liberty
 - ch) fine
 - d) reprimand
- The accessory penalties are:
- a) deprivation of rights
 - b) permanent or temporary loss of the rights of a parent or guardian
 - c) prohibition on exercising a certain trade or profession
 - ch) suspension of driving licence
 - d) prohibition to go to certain places
 - e) banishment
 - f) confiscation of illegally acquired property and of the instruments of crime
 - g) confiscation of goods
 - h) probation under supervision of the Organs for the Prevention of Crime
 - i) extradition of foreigners
237. Municipal Popular Tribunal in a suburb of Havana, 23.4.1980, attended by a group of 23 Dutch lawyers. Cf. De Haan, *op. cit.*, p. 206.
238. **LPP** of 1977, Art. 58, sub 3, 4 and 1.
239. *Ibid.*, Art. 380.
240. **LPP** of 1973, Art. 387.
241. *Ibid.*, Art. 381, Section 1.
242. *Ibid.*, Art. 381, Sections 2, 3 and 4.
243. *Ibid.*, Art. 382; cf. Chapter Seven.
244. **LOSJ** of 1977, Art. 47 sub 1 and **LPP** of 1977, Art. 8.
245. *Ibid.*, Art. 47^a and Fourth Transitional Stipulation, sub-section c.

246. **CDS** of 1936, Art. 48^b and **CP** of 1979, Art. 77; **LPP** of 1973, Art. 9 and **LPP** of 1977, Art. 8. See further on this topic Han Janse de Jonge and Adèle van der Plas, 'Strafrechtspleging in Cuba', **Recht en Kritiek**, 1981 (1), pp. 52-98.
247. Decree-Law No. 27 of 1979, *op. cit.*
248. Cf. **CDS** of 1936, Articles 574 resp. 572 (Ministry of Justice, **Manual**, 1966, pp. 19-32) with Decree-Law No. 27 of 1979, *op. cit.*, Articles 21 and 20.
249. Such as minor disturbances of the public order in public places (cf. **CDS** of 1936, Art. 571 sub 3 and Decree-Law No. 27 of 1979, Art. 18 sub 1).
250. Cf. **CDS** of 1936, Art. 577 and Decree-Law No. 27 of 1979, Art. 22.
251. **CDS** of 1936, Art. 576 sub 1.
252. **CP** of 1979, Articles 329 and 373. Up to 23.6.1973 (cf. **CDS** of 1936, 1959 edition with 1977 edition), parental neglect of a minor was treated as a misdemeanour in Art. 576 sub 4. Afterwards conduct which fell under that category as specified in the **CDS** of 1936 was treated as a less serious felony in Articles 503 and 504.
253. Cf. **CDS** of 1936, Art. 573, esp. sub 5, 8 and 11 with **CP** of 1979, Art. 359.
254. Cf. **CDS** of 1936, Art. 571 sub 1 and 5 with **CP** of 1979, Articles 234 section 2 and 242 section 1.
255. Santiago Cuba, *op. cit.*, p. 14.
256. See Table , from David Booth, 'Neighbourhood Committees and Popular Courts in the Social Transformation in Cuba', Ph. D. thesis, University of Surrey, 1973, p. 190.
257. I am grateful to the Department for International Relations of the Cuban Ministry of Justice for making this overview available to me in March 1983. The overview reveals that 'misappropriation of electricity', 'misappropriation of appliances' and 'disturbance of the public order' score higher in the list of convictions than in the list of cases brought for trial. I have not asked for an explanation from the Ministry of Justice, but it may be due to the fact that certain cases are brought up for trial as 'theft' but end up as convictions for 'misappropriation of electricity' or 'misappropriation of appliances'. The same applies to cases of 'bodily harm' which end up as no more than convictions for 'disturbances of the public order'.
The offences listed and their definition in the **CP** of 1979 or the Highway Code are as follows:
Amenazas y Coacción, (Articles 338 sub 1, 340 sub 2)
Hurto, (Art. 381)
Sustracción de Electricidad, Gas etc. (Art. 383)
Sustracción de bienes para usarlo (Art. 385 sub 4)
Malversación culposa (Art. 396 sub 4)

Estafa y otras defraudaciones (Articles 394 sub 5, 398, 399, 400)
 Lesiones (Art. 327)
 Maltrato de Obra (Art. 328)
 Lesiones en ocasión del Tránsito (Highway Code)
 Daño en ocasión del Tránsito (*ibid.*)
 Otros delitos contra la seguridad del tránsito (*ibid.*)
 Escándalo Público (Art. 359)
 Abusos Lascivos (Art. 355 section 3)
 Corrupción de Menores (Articles 368 and 371)
 Estupro (Art. 361)
 Receptación (Art. 401 sub 1 and 2)
 Juego Prohibido (Art. 251 section 1)
 Ocupación y disposición ilícita de vivienda (Articles 275, 276 section 1)
 Otros delitos contra la Economía Nacional (Art. 272)
 Desorden Público (Articles 228-245)
 Difamación (Art. 376)
 Daños (Articles 402, 403)
 Otros

258. The table shows 79,635 cases brought to trial involving theft, misappropriation of gas and electricity, misappropriation of appliances, swindle, misappropriation of funds through negligence, illegal house occupation, receiving stolen goods and other economic offences. 51,655 convictions were pronounced.
259. The table indicates 48,438 cases brought up for trial involving threatening behaviour, bodily harm, assault, disturbance of the public order, offences against public decency and immodest sexual advances. There were 39,130 convictions.
260. 23,690 of the 30,288 traffic offences which came up for trial led to convictions. Cf. also interview with Ismaél Séfer Zárate, 3.3.1983.
261. Cf. Grillo Longoria, *op. cit.*, 1982, for an extensive commentary on this law.
262. I attended three morning sittings of this Tribunal in February 1981.
263. Interview 4.3.1983 with Terry Menéndez. In such comparisons it would be interesting to know the average professional level of the residents in a specific neighbourhood and the extent to which they are integrated in the revolutionary process through membership of political and mass organisations. I have not carried out any research on these data.
264. The more serious economic offences which are tried in the first instance by the Provincial Popular Tribunals are generally punished with heavy prison sentences. Cf. the section 'Sentences' in the information bulletin *Legalidad Socialista*, issued by the Public Prosecutor.
265. See Chapter Five and the following section.
266. Interview 25.3.1983 with Rafaël Garrido Menéndez, member of the National Direction of the CDRs, head of History and Propaganda.

267. Interview 10.3.1981 with Burguet Flores.
268. Interview 25.3.1983 with Garrido Menéndez.
269. Interviews with Cubans in Havana who took part in these night watches.
270. In my experience it is relatively safe to walk the streets of a large Latin American city like Havana late in the evening or at night by oneself. Women in Havana said the same to me. The fact that many women come home late at night by public transport from their work, courses and meetings and that they carry out CDR night patrols and other surveillance duties points in the same direction. The difference with other large Latin American cities like Caracas or Mexico City is striking. Hints were dropped, however, that some neighbourhoods of Havana were an exception; the CDRs and the police found it difficult to control crime there, and it was sometimes jokingly suggested that the CDR patrols were not entirely free of criminal elements.
271. The First CDR Congress was held from 24 to 28 September 1977. 2,441 delegates elected by the committees took part: *Con la Guardia en Alto*, Nov. 1977, p. 22.
272. *Con la Guardia en Alto*, Sept. 1978, p. 48.
273. *Juventud Rebelde*, 22.2.1983.
274. Armando Acosta Condero, National Coordinator of the CDRs, 'Síntesis del Informe Central', *Con la Guardia en Alto*, Nov. 1981, No. 11, p. 24.
275. Pupo Pérez, Vice-Minister for Domestic Order, *Con la Guardia en Alto*, May 1969, p. 11.
276. 'Cuatro intervenciones inolvidables', *Con la Guardia en Alto*, Nov. 1977, pp. 44-45.
277. Fidel Castro, speech to the First CDR Congress, *Con la Guardia en Alto*, Nov. 1977, p. 11.
278. Speech by the Minister for Home Affairs on Radio Havana, 6.1.1979. Source: German Monitoring Service, Latin American Department.
279. *Con la Guardia en Alto*, Sept. 1978, p. 48.
280. Acosta Condero, *op. cit.*, p. 25; interview 25.3.1983 with Garrido Menéndez.
281. *Con la Guardia en Alto*, Feb. 1978, pp. 8-9; March 1978, p. 10; June 1978, pp. 20-21.
282. Interview 10.3.1981 with Burguet Flores; interview 24.3.1981 with Graziela Prieto Morales.

283. Cf. for example the Protocol of Mutual Cooperation (**Protocol de Colaboración Mútua**) between CDRs and the Public Prosecutor of August 1974: **Con la Guardia en Alto**, Aug. 1974, p. 22.
284. **Con la Guardia en Alto**, Aug. 1978, pp. 18-19.
285. **Con la Guardia en Alto**, No. 6, June 1981, pp. 12ff: 'Para enfrentar al Enemigo en cualquier circunstancia: Los activos de Vigilancia y las Escuelas Combatiendo al Enemigo'.
286. Interview 25.3.1983 with Garrido Menéndez.
287. Interview 27.4.1981 with Gola Colás.
288. Cf. Lourdes Tejeda González, 'Labor de la Trabajadora Social en la FMC', **Temas de Trabajo Social**, Ministry of Public Health, Psychiatric Hospital of Havana, Vol. 2, No. 2/3, May-Dec. 1980, pp. 7-12; interview 22.4.1980 given to a group of Dutch lawyers by three members of the National Direction of the FMC.
289. The 1979 Penal Code differs from previous criminal legislation in that it no longer refers solely to 'governmental supervision' in cases of conditional release: cf. CDS of 1936, Art. 99 B with CP of 1979, Art. 58 section 8. The law now provides the government with an explicit injunction to take charge of rehabilitation. It places the counselling of a conditionally released ex-convict and the supervision of his or her behaviour in the hands of the 'Organs for the Prevention of Crime' of the Ministry of Home Affairs, which is in charge of the police force. Cf. Vega Vega, 'Conferencias...', *op. cit.*, p. 12; *idem*, 'Comentarios a la Parte General del Código Penal Cubano', **Revista Cubana de Derecho**, Year X, Jan.-Dec. 1981, No. 17, pp. 169-171. Terry Menéndez referred during an interview held on 4.3.1983 to the 'Organs for the Prevention of Crime' as the police organs. Burguet Flores, in an interview on 10.3.1981, claimed that the 'Organs for the Prevention of Crime' were composed of the police and the CDRs. According to the law, these organs must assist the person in question in finding suitable work corresponding to his or her ability and training, and ensure the completion of training courses which have been started: CP of 1979, Art. 58 section 8. This legal obligation to help the ex-convict with regard to work and training is to take place in direct collaboration with other instances and organisations such as the relevant department of Popular Power, the CDRs, the FMC, places of work, etc.: interview with Julio González, law student and former chairperson of a CDR in Vedado, Havana, in March 1981.
290. Report of a **Rendición de Cuenta** meeting held on 2nd November 1979 in San Agustín street, Santiago de Cuba. It was attended by one of the writers of 'Poder Popular. De Macht aan het Volk', pp. 34-35, published by Venceremos, Association for Friendship between Cuba and The Netherlands, and its Belgian sister organisation, VZW.
291. Municipal Popular Tribunal 'Havana Vieja', 9.3.1983. Cf. CP of 1979, Art. 360 section 3.

292. CP of 1979, Art. 16.
293. Source: a Cuban acquaintance who was able to attend the closed hearing on professional grounds.
294. Interview 24.3.1981 with Graziela Prieto Morales.
295. Interview 26.4.1980 in Santa Clara given by members of the Public Prosecution and the Judiciary and three lawyers to a group of Dutch lawyers.
296. CDS of 1936, Articles 97, 98, 99; CP of 1979, Articles 57 and 58.
297. CP of 1979, Art. 57 section 1.
298. *Ibid.*, Art. 57 sections 4 and 2.
299. *Ibid.*, Art. 57 section 3.
300. *Ibid.*, Art. 57 sections 5 and 7.
301. *Ibid.*, Art. 57 section 1.
302. *Ibid.*, Art. 58, sections 2, 4 and 6.
303. *Ibid.*, Art. 58 section 7.
304. *Ibid.*, Art. 58, sections 9 and 10.
305. LPP of 1977, Art. 255 section 2.
306. Interview 25.3.1983 with Rafaël Garrido Menéndez.

CONCLUSION

In the preceding chapters an attempt has been made to offer some insight into the development of the basic administration of justice in Cuba since 1959. The neighbourhood tribunals which functioned in Cuba in the 1960s and which were transformed into the present Municipal Tribunals in the course of the 1970s have their roots in the old Spanish Correctional Police courts. The formation of the Cuban legal system owes a good deal to the influence which Spain exerted over its former colony, and until recently the administration of Cuban justice was largely based on old Spanish legislation. The old Spanish Criminal Procedure Law, the *Ley de Enjuiciamiento Criminal* of 1882, was in force in Cuba from 1889 to 1973. The Cuban Penal Code, the *Código de Defensa Social* of 1936, was a typical product of the 'Social Defence' movement in criminal law inspired by the Italian criminal legislation of that time. Before the introduction of this Social Defence Code, Cuba was still operating with the old Spanish Penal Code of 1870.¹ The Spanish colonial domination was not the only European influence on the Cuban legal tradition. Examples were also followed which were fashionable at a certain period on the European continent. As we saw from the history of Correctional Justice on Cuba, for example, Cuba's legal system has also been influenced by Anglo-American models. Under military government by North America, police courts were set up in Cuba from 1899 whose competence was comparable with that of the Correctional Judges of that time. In the same period attempts were made to introduce trial by jury and judicial elections -- typical common law institutions.

Since 1959 Cuba has been through a wave of profound transformations in its international political relations, economic system and politico-cultural traditions. Cuban revolutionary history may be divided into three periods for purposes of systematisation, each with its own specific characteristics, although these characteristics are not always absolute and unambiguous and there is considerable overlap between categories. The first period (1959-1962) was a key period and the choices made were of profound importance as far as Cuba's further development is concerned. The second period -- the 1960s -- was one of revolutionary idealism and élan. A choice had been made for a rapid, specifically 'Cuban-style' road to communism and the creation of the 'new man'. The third period -- the 1970s -- began with a series of economic and other setbacks, such as the failure to achieve the target for the 1970 sugar harvest. The results were a revision of the economic organisation and political orientation as well as a comprehensive process of institutionalisation.

The ups and downs of Cuba's revolutionary history in each phase are reflected in the new developments within the judicial administration. The changes in the administration of justice in the first three years of the revolution cannot be di-

forced from the context of the direct attacks with which the new government was confronted through the economic boycott and the violent counter-revolutionary activities in Cuba and abroad. Partly as a result of the new relationship with the Soviet Union it was possible to introduce new legal principles based on Marxist-Leninist ideology. During the 1960s experiments were conducted with alternative forms of basic judicial administration. In the third period these experiments were critically assessed before new legislation was introduced to install a new system of judicial administration.

THE FIRST PERIOD. SOCIALISM AND THE FIGHT AGAINST COUNTER-REVOLUTIONARIES

The opponents of Batista who were united in the Movement of the 26th of July were filled with 'bourgeois' ideals in 1959, such as the return to bourgeois democracy and the restoration of the Constitution, as well as the need to carry out social reforms. These ambitions had been fed by a long political tradition of nationalism, socialism and anti-imperialism which found expression in a well-known Latin American phenomenon: antipathy toward the northern neighbours, the United States.² After the military victory over Batista's forces, the new government tried to start up a process of change that was to put an end to the misery, poverty and oppression of the mass of the Cuban people. This initiative led to a process of radicalisation with its own dynamic, influenced by specific factors such as the existing domestic relations of power, international relations and that special force which always has to be reckoned with -- the personal charisma of a leader such as Fidel Castro. Independently of originally subjective intentions, such a dynamic is inherent in fundamental processes of transformation of this sort and is not a specifically Cuban phenomenon. In discussing the role of law in the transition to socialism, Lelio Basso claims:

Every movement that is striving for socialism, whether violently or not, calls forth substantial and difficult problems and in its course meets with contradictions which are linked to the contradictions of the society in which it has its origins...

Every country and every capitalist system³ is bound up in the network of imperialist relations and thereby forms a part of a worldwide system within which State organisation is [...] but a subsystem. There is a logic of imperialism too which cannot be overcome without a hard struggle.⁴

In this respect the first three years of the revolution in Cuba were decisive. It was in this period that this small country with a monoculture (sugar) exchanged its economic dependence on the United States for a new relationship with the distant socialist partners. This relationship has fluctuated during the course of the revolution, but the outcome has been a new type of dependence, at least in economic terms. Cuban politics, culture and justice have also been influenced by the contacts with the Soviet Union and other Eastern European socialist countries.

Not all of the ideals held by the Movement of the 26th of July when it took over government on January 1st 1959 proved to be capable of realisation in the ensuing years. In fact, there was a conflict of values during the first years of the revolution. This took the form of a collision of interests between so-called fundamental social and economic rights and individual freedoms. Ideals borrowed from the 1940 bourgeois Constitution were forced to give way in certain respects to the

'other' political objective in the first three years of the revolution: a decent minimum standard of living for the mass of the Cuban population. Important social reforms were carried out and international relations which were felt to be exploitative were broken in this period. The resultant open hostility of the United States and the increasing domestic tension occasioned a higher degree of severity in dealing with counter-revolutionaries and to the establishment of links with the Soviet Union.

In the legal sphere this meant the establishment and continuation of special Revolutionary Tribunals, the extension of the category 'counter-revolutionary crimes' and an intensification of the punishment for such crimes. In the course of this process protective constitutional rights occupied second place. The conflicts over this between the government and sectors of the legal profession, as well as conflicts within the profession itself, led many lawyers to leave the country.

Lawyers such as the Public Prosecutor, Santiago Cuba, played an important role at the time in the debate on the legal profession. The words of this well-known lawyer were at that time already strongly inspired by the Marxist-Leninist tradition as it had been developed in the Eastern European socialist countries. Besides, the political developments in Cuba were congenial to such an approach. In mid-1961 Santiago Cuba described the traditional theory of the Separation of Powers as irrelevant to the new Cuba. In the following year he pointed out the necessity of disseminating Marxism-Leninism among lawyers. After the purge of juridical institutions and the exodus of conservative lawyers who could accept neither the political changes nor the concomitant changes in the field of law, the basis was laid for a new system of judicial administration based on Marxist-Leninist ideology. The Supreme Court saw the role of the judge within Cuban socialist law as the 'active guardian' of socialist legality. It took a good ten years before an elaborate version of this ideology could form the basis of a new legal system of judicial organisation and administration.

The two fundamental principles of Marxist-Leninist legal ideology may be defined as the role of law as a political instrument and the idea of social harmony. The first of these originated in the practice of Cuba's first revolutionary years. Confronted with the problems of its size, its economic dependence, underdevelopment and the threats to its security, Cuba resorted to law as a political instrument against counter-revolutionaries in the solution of so-called 'conflicts between the people and the enemy'. The fundamental constitutional right of individuals to protection against arbitrary State activities was curtailed in favour of the right of the collectivity to continuation of the revolutionary, i.e. socialist development. It was a policy which, according to opinion polls held at the time, was supported by the majority of the Cuban population.

THE SECOND PERIOD.

REVOLUTIONARY ELAN AND IDEALISM VERSUS AUSTERITY

The idea of social harmony was only fully worked out in the second period: the 1960s. This was a period of idealism, marked by an independent domestic and foreign policy and mass mobilisation. The relationship with the Soviet Union was an ambivalent one. The need for a stable trading partner lay behind the conclusion of important long-term trade agreements with the USSR in 1964. Furthermore, the Soviet Union had a long experience in trying to build socialism and communism in one country and it thereby enjoyed a certain inevitable status as a model for the

Cuban efforts. On the other hand, Cuba's attitude during the 1960s was not always an unreserved pro-Moscow one. There were various frictions with the Escalante fraction and Fidel Castro's attitude towards the Soviet leaders was at times very cool. The emphasis was on trying to find a *Cuban* road to communism that was ideologically autonomous. There were conflicts between Cuban and Soviet foreign policy in theory as well as in practice on the question of support for armed liberation movements in parts of the Third World, with Cuba adopting a stance in support of them and the Soviet Union adopting the opposite standpoint. This reached a climax in 1966 when the Organisation of Latin American Solidarity (OLAS) was set up at the First Conference of the Organisation for Solidarity with the Peoples of Africa, Asia and Latin America.

Developments at home were to be achieved by a massive mobilisation of the population. Attention was devoted to the implementation of far-reaching political and cultural changes as well as to the work of economic construction. Moreno has described the attempts made to transform values in Cuba which were held to be responsible for underdevelopment. Equality was to replace the structural inequality between rich and poor, town and country, intellectual and manual labour, black and white, man and woman. Individualism must make way for collectivism, even at times at the expense of political liberty. Values such as free economic competition and the private property associated with it were to be transformed.⁵ The new values were those of the 'new man', the consciously altruistic citizen who acted out of solidarity. Money and material incentives were replaced by a moral sense of duty as the driving force behind efforts for the good of the collective.

The involvement required of the Cuban population was secured in these years through political education and discussion, but above all through participation. It would be difficult to overestimate the value of the participation of the people in mass organisations such as the ANAP, the association of small farmers; the CTC, the national union; the FMC, the national womens organisation; and the CDRs. The educational and voluntary work carried out by the CDRs, their contribution to the fight against the counter-revolutionaries and the rising crime rate were an important practical support for the revolution. The fact that popular participation also contributed to a revolutionary change of mentality was as, if not more, important, however. The high point of this political tendency was in the late 1960s, between 1966 and 1970. In the increasingly difficult economic situation this political line acquired a more or less military character from 1968.

The experiments carried out with the base tribunals from 1962 onwards were a significant and important instrument within this general policy of mass mobilisation. The trial of so-called 'contradictions within the people', petty crimes and relatively minor offences committed by ordinary men and women in the street, was developed on the basis of the second of the principles of the Marxist-Leninist theory of law: the idea of social harmony. According to this ideology, in a socialist society there are no antagonistic contradictions between the public interest and the individual interests of a defendant. A person's bad behaviour must be capable of correction by means of reprimands, discussions and alternative penalties within a re-educational framework. Although the particular offence committed is the *raison d' être* of the trial, it is not so much the offence itself which is on trial as the defendant's general behaviour and attitude towards the revolution. By placing the trial of these kinds of offences in the hands of the people itself, two objectives could be attained. The election of lay judges by and from residents of the neighbourhood, and the attendance of the neighbourhood at the hearings, made the people familiar with

the socialist legality which the new government wanted to see implemented. At the same time, the people not only got to know the new norms; the popular tribunals encouraged acceptance of these norms and thereby legitimised the new government. As Karst and Rosenn stated:

National laws that have not 'penetrated' into a rural area... surely persuade no one in that area that he or she is a member of a national community.⁶

The legal process had an obvious role to play in broadening the scope of the moral community. If it is appropriate to speak of 'national integration' as a developmental goal, then that goal also demands that the system of rights and obligations be expanded into a truly national system. (We note parenthetically that the concept of 'integration' is potentially misleading. A society can be integrated in a variety of different ways; no social system is more integrated, for example, than the classical hacienda. Development-- a form of change -- in fact implies disintegration of some social structures and their replacement with others. If, however, the term 'integration' is intended to convey the idea of the lowering of class-barriers and an increased social mobility, then it surely is an important development goal).⁷

The experimental base tribunals did not only contribute to a general policy of mass mobilisation. They also fitted in with the general shift of emphasis away from professional skills. Like the differences between town and country, rich and poor, the difference between intellectual and manual labour must be reduced too. The appointment of lay judges was in perfect accordance with this norm. Moreover, the lay judges were a relatively cheap replacement for academically trained lawyers. The numbers of professional lawyers had declined drastically in the first three years of the revolution and the number of university law students in the 1960s was minimal: the educational priorities of the time were the training of medical students, technicians, agricultural experts and experts in the other skills which a developing country so urgently needs.

The experiments with the base tribunals in the 1960s had a more far-reaching significance. They were not just instruments to serve a particular political purpose. They were a special and unique form of judicial administration on the Latin American continent. The traditional gap between judicial administration and the ordinary man or woman in the street, in the countryside or in the mountains was bridged. This was not done by bringing people to the law courts or taking the formal legal system to the people. It was done by following a tradition which is in force in certain isolated areas of Cuba and in other parts of Latin America: 'trial', i.e. conciliation by members of the community themselves. For this purpose students and lecturers from the Faculty of Law of the University of Havana left for the countryside to develop a 'new' type of basic administration of justice there in cooperation with the local population. Housewives, cane-cutters, rail workers, waiters, etc. were elected as judges by their neighbours. In their spare time they accepted complaints, initiated preliminary investigations, passed sentence and supervised the execution of the penalties imposed. Meetings were regularly held to evaluate their functioning and training courses were organised. The judges were responsible for cleaning their own courtrooms, they shared the administrative tasks among themselves and towards the end of the 1970s they were also entrusted with certain duties of social preven-

tion. Ismaël Séfer Zárate, national *asesor* from 1968 to 1973, describes this period as one of activity and inspiration:

I was lucky enough to experience it and to travel throughout the whole country as national *asesor*. The work was very interesting and demanding. I slept for only a few hours each night and was extremely involved in my work. I was impressed and moved by the care and sense of justice with which ordinary people treated 'law'. There were the people from Cienna de Zapata, exploited and poor cane-cutters for centuries...There were the lay judges from the village of Media-Luna in the East, where the river had overflowed and caused considerable damage to the houses and to the local base tribunal. Nevertheless, the hearings continued in the house of the president of the tribunal which had also been damaged by the flood. Priority number one was the continuity of the tribunal, and repairing his house came in the second place for the president. The base tribunals were a very special experiment which taught me a lot.⁸

The result of the experiments was an informal kind of basic administration of justice with a high rate of involvement by the neighbourhood. The neighbourhood residents were not only encouraged to take an interest in the proceedings through the election of their own judges. During the open sessions held in the evenings discussions with the public were opened. Through the mass organisations such as the CDRs all the neighbourhood residents took an active part in the detection of criminal or antisocial behaviour. They could file charges themselves and defend their fellow neighbours who were brought before the tribunal. The members of the mass organisations were also engaged in rehabilitation activities during or after the completion of the sentence.

Simplicity and comprehensibility were the *sine qua non* of a form of basic judicial administration of this type. The Cuban experiments tried to enhance them by increasing the degree of informality. For the first ten years of the base tribunals' existence trials were not conducted according to existing legislation but in line with ministerial instructions issued by the Ministry of Justice. For substantive law the *Código de Defensa Social* was followed, while the criminal procedure was based on the legislation on Correctional Justice. The definitions of criminal and antisocial behaviour given in the Penal Code were followed and the competence of the base tribunals was confined to misdemeanours and less serious felonies. For simplicity's sake, though, the official legal definitions were avoided, and the lay judges called theft 'theft', insulting behaviour 'insulting behaviour', and so on. If a definition required more precision, this was provided from practical examples. The base tribunals were also able to experiment with alternative penalties which were not included in the existing penal code. The guidelines here were also couched in terms of examples and only laid down a maximum sentence for certain penalties. The criminal procedure followed by the base tribunals was probably freely developed in practice and was at a certain moment fixed by the Ministry of Justice in written courses for new lay judges who required training. The final result, as laid down in the Criminal Procedure Law of 1973, did not differ much from that followed earlier by the Correctional Judges, with the exception of a few fundamental changes. For instance, the legal safeguards of the accused were improved by the introduction of the right to appeal, the so-called 'review', which was replaced in 1973 by the procedure of appeal (*apelación*). Furthermore, the defendant's rights with respect to

the evidence which might be used against him or her were improved, and in the final regulation on criminal procedure for the base tribunals as laid down in 1973 the possibility of convicting an accused of an offence on the sole basis of a confession was ruled out. Such convictions had been possible under the Correctional Judges for both misdemeanours and offences. Such safeguards were of only relative benefit to the accused, however, in the setting of the base tribunals in the 1960s, as a number of illustrative cases demonstrated. The informal nature of the criminal procedure was reinforced by the specific features of the base tribunals and the circumstances in which they functioned in practice. The involvement of neighbourhood residents in the detection and prosecution of criminal and antisocial behaviour closed the loopholes which traditional procedural safeguards had kept open. Social control within the neighbourhoods was close, and it was closely tied up with the judicial apparatus of the basic administration of justice and the general political ideology which it represented.

The informal character of criminal procedure can be viewed from different positions. On the supposition that a criminal trial involves a conflict between irreconcilable interests, formal regulations can have a protective function for the individual interests of the accused against those of the State or the collectivity. In such a case one could speak of criminal procedure as a form of 'secondary control' which is exerted over the primary control exercised over the citizen via the instigation of a criminal process. However, on the supposition that individual and public interests are in harmony, the need for such a secondary control diminishes. Such a viewpoint also implies that the penalty or measure imposed in the course of the criminal proceedings is in the interests of both society and of the convicted person. Re-education can correct the ways of a transgressor of norms, at least in so far as he or she is not to be seen as a class enemy. Factors such as the pursuit of the best interests of the accused and a stress on the role of the accused as a member of the collectivity can play a part in the evaluation of a criminal process in terms of what is good, honest and humane. This second viewpoint can be found in the European movement in criminal law, *Défense Sociale*, which exerted a profound influence on Cuban legal theory and practice in the 1930s. It can also be found in the idea of social harmony on which the Marxist-Leninist theory of law is based and which has been influential in Cuban legal ideology since 1959. Without wishing to suggest naïvely that post-revolutionary Cuba in the 1960s was a society which had done away with social contradictions, this view of criminal law procedure has considerable merits. It provides the insight that informality within criminal law procedure does not necessarily entail a weakening of the position of the accused. On the contrary, in certain circumstances informality can contribute to a more humane and socially just manner of dealing with social conflicts and deviant behaviour. Weber had the following to say about informal law:

The propertyless masses especially are not served by a formal 'equality before the law' and a 'calculable' adjudication and administration, as demanded by 'bourgeois' interests. Naturally in their eyes justice and administration should serve to compensate for their economic and social life-opportunities in the face of the propertied classes. Justice and administration can fulfil this function only if they assume an informal character to a far-reaching extent. It must be informal because it is substantively 'ethical'.⁹

Informal justice can only be evaluated within the specific historical context in which it is applied, as Abel and others have stressed.¹⁰ In the revolutionary transi-

tional period of the first ten years of the Cuban revolution there was little call for formal legal regulations. The priority was given to substantive justice, adapted to the practical needs of the moment. In his reaction to the criminal trial of the pilots of Batista in 1959, Fidel Castro had said:

We shall be respectful of the law, but of the revolutionary law: respectful of rights, but of revolutionary rights -- not the old rights, but the new rights we are going to make.¹¹

In 1963 Castro added:

We preferred not to hurry, since it is not a good method to think up laws and institutions first and then to try to adapt reality to these ideal forms. *It is not reality which must adapt to the institutions, but the institutions which must adapt to reality.*¹²

As has been seen in the discussion of Pepinsky's study, small-scale communities where everyone knows everyone and where there is little immigration or emigration do not need formally binding regulations as much as forms of community where the members are mobile and anonymous.¹³ In short, the neighbourhood and village communities of Cuba in the 1960s concentrated on informal rather than on formal methods of social control in accordance with their form as small-scale communities of neighbours who know one another. Law as an instrument of control can recede to the background or disappear entirely if other forms of social control are in operation, such as psychiatric control or mutual social control by members of a neighbourhood.¹⁴

It is important to bear in mind that the Cuban base tribunals of the 1960s were not just embedded within a broad domestic political movement of mass mobilisation, but that they were also a constructive part of this movement. According to Schurmann, an organisation can exert control, i.e. assure itself of loyal members who behave as is expected of them, in two ways: it can exert direct external control in the form of army, police or criminal legal intervention, and it can exert indirect control, whereby ideology plays an important role, by influencing motivation and personality. Schurman mentions the re-education and publicity campaigns of the 1960s in the People's Republic of China as an example of the second, indirect approach.¹⁵ The various large-scale mobilisation campaigns held in Cuba in the same period can also be seen as examples of this indirect form of social control. The experiments with the base tribunals in the 1960s fitted in with these forms of indirect control. For example, campaigns were held to ensure that all children under a certain age attended primary school. In this connection, cautionary trials were held at which the errors of parents who kept their children at home were exposed.

The introduction of new norms in Cuba in the 1960s took place in close association with the already existing forms of social control within neighbourhood and village communities. Mass organisations were set up all over Cuba for this purpose. For instance, the CDRs organised small units such as a block of houses, neighbourhood or village to form a revolutionary neighbourhood committee. In this way systems of neighbourhood control and mutual social control which were already in existence were integrated within the indirect social control exercised by the State. Speeches of revolutionary leaders like Fidel Castro were treated as guidelines for the political and moral activities of active committee members. Attempts were made to convince the other neighbours of the correctness of these standards and the necessity to observe them. The committees organised vigilance patrols to assist the police and the army in their fight against crime and counter-revolutionary activities. The same applied to the experimental base tribunals. Directly in touch with the day

to day life of the ordinary man or woman in the street or the mountains, the lay judges administered justice. Sometimes this was in areas where no State judicial administration had existed before and where internal conflicts had always been resolved by the intervention of a neighbour. Through the special nature of the tribunals, existing forms of social control -- everybody knows everybody and accepts the right of a neighbour to mediate in conflicts -- became a natural part of the official maintenance of norms. Within the legal traditions of Latin America, this was a special and far-reaching intertwining of official judicial administration with informal forms of maintaining order within often isolated communities in the countryside. And it was an intertwining of direct and indirect forms of social control.

THE THIRD PERIOD. ECONOMIC REVISION AND POLITICAL REORIENTATION

The Cuban basic administration of justice which was taking shape in the 1960s went through profound changes in the course of the third period, the 1970s. These changes too can be set within the more general political and economic developments of the period.

The course of the Cuban revolution conforms to Huntington's thesis that successful revolutions generally pass from a first phase of mass mobilisation to a second phase of institutionalisation. In a number of areas it had become apparent that the policy of the late 1960s was no longer realistic. The economic dependence of Cuba meant that an autonomous line of policy *vis-à-vis* the superpowers could not be kept up indefinitely. The death of Che Guevara in Bolivia and the heavy losses sustained by other guerrilla movements in Latin America which counted on Cuban support were a serious disappointment and a blow for the foreign policy of international solidarity which Cuba had followed in the 1960s. Economically Cuba was faced with a large shortage toward the end of the 1960s. The large-scale mobilisation of the people to meet the target for the 1970 sugar harvest had had negative effects too. Absenteeism from work was on the increase, and the concentration on one sector of the economy -- sugar harvesting and the sugar industry -- meant the neglect of other sectors of the Cuban economy.

1968 can be seen as a turning point in Cuban foreign policy. Afterwards the ties with the socialist partners in Eastern Europe grew increasingly tighter and more harmonious. Cuban foreign policy became more pragmatic and flexible. In 1972 Cuba was admitted to COMECON, the Eastern European Council for Mutual Economic Cooperation. The closer ties with the Eastern European partners since 1970 were beneficial for the Cuban economy, which went through a period of record growth, partly as a result of the rise in sugar prices on the world market, in the first half of the 1970s. But another result has been a strengthening of Cuba's new and apparently inevitable economic dependence, at least for the time being. Immediately after the record sugar harvest of 1970 the Cuban economy was reorganised. The idealism of the 1960s -- moral awareness, mass mobilisation and moral work incentives -- gave way to a more technical approach that concentrated on higher efficiency. The introduction of certain market mechanisms and material work incentives along Soviet lines was seen as inevitable.

The organisation of State power that had been in operation in the 1960s was retrospectively seen as 'provisional' and was replaced through the Constitution of

1976 by the introduction of a new system of popular power: *Poder Popular*. The formal structure of this organisation closely resembles that of the Soviets as laid down in the Constitution of the USSR. In Cuban everyday practice the new organs of popular power provide the people with an institutionalised possibility of participating at the local level. This means an involvement of the residents in housing and other specific day to day social problems which crop up in their neighbourhood. At the national level, though, the possibility of popular participation and involvement has been shown to be considerably less, partly as a result of the specific nature and role of the Cuban Communist Party within the system. Moreover, the role of mass organisations like the CDRs was reduced in a number of spheres with the setting up of *Poder Popular*. Administrative tasks which the committees had previously carried out were transferred to the new organs of popular power. The CDRs retained their politico-ideological work, but the accent had shifted from mobilisation of the population to two duties: introducing the new legislation and familiarising the population with it; and encouraging the people to participate in the elections for *Poder Popular* and the projects initiated by *Poder Popular*.

The limits which Cuba came up against at the end of the 1960s were not confined to the economy and international relations. The limits had been reached as far as the willingness of the Cuban population to keep making greater sacrifices in voluntary work and other areas was concerned. This problem also affected the organisation of the base tribunals, according to a report published in the 1970s. An attempt was made to compensate for the decreasing readiness of law students to work in base tribunals in the countryside as 'legal advisors' by increasing the legal knowledge of the lay judges themselves. This was done by means of a National Training School for the Popular Tribunals established specially for this purpose. However, it was also becoming more and more difficult to find candidates willing to carry out the voluntary and demanding work of a lay judge. The number of their responsibilities -- stretching from preliminary investigation to social prevention --, the intensity with which each case was handled and the demands made to improve the level of legal knowledge must have been a heavy burden for the ordinary volunteer, especially over a period of time. The same is true of the eagerness of neighbourhood residents to attend hearings of the base tribunals evening upon evening in addition to their duties of neighbourhood surveillance, following courses, and so on. These experiences must have contributed to the much less idealist form which the base tribunals received after 1973. And it must have confirmed the suspicions of those traditional Cuban lawyers who viewed what was going on in the neighbourhoods with the lay tribunals as little more than a carnival.

In 1969 the first initiatives were adopted to unify the existing system of judicial administration, which was seen as fragmentary, obscure and inefficient. They led to the enactment of a new Law of Judicial Organisation and a new Criminal Procedure Law in 1973, which were both adapted in 1977 to fit in with the new administrative-legal division. The new organisation of the judicial administration in particular closely resembled that of the Soviet Union and of other Eastern European socialist countries. At the same time as the incorporation of the base tribunals in the 1973 legislation, the variety of alternative penalties which the base tribunals had been able to impose was abolished by a ministerial resolution. The only options left were detention, fine and reprimand. In the same year hearings were transferred from the evenings to the daytime. The elected lay judges were given four months paid leave from their ordinary work to carry out their duties. It was the first step towards a lightening of the burden of the lay judges, but at the same time it had

consequences for the participation and involvement of residents in the administration of justice. After all, virtually no one was able to attend the hearings of the municipal tribunals now that they were held in the daytime, during normal working hours. The neighbourhood was still directly involved in the election of neighbourhood judges, and it was still the assemblies of neighbourhoods and workers which elected the lay judges of the base tribunals. The commission which selected the candidate judges was no longer composed as before. It now consisted of Party members, delegates from mass organisations and from the National Union of Jurists. During the first ten years of their existence the base tribunals had only been subject to the control of residents from the neighbourhood, the *asesores* of the Ministry of Justice and local Party members.

At any rate, up to 1977 the elections and such institutions as *rendición de cuenta* and *revocación* gave the residents, in association with the selection commission, the opportunity of exercising direct control over the functioning of the judges. However, a new and comprehensive control system was created parallel to the first. The Laws on Judicial Organisation of 1973 and 1977 were based on a hierarchically organised judiciary where the higher tribunals supervised the lower ones in terms of both internal organisation and policy and tasks involving the administration of justice. The application and interpretation of legislation was not only supervised by means of the right to appeal but was also tied to binding instructions issued by the organs of the Supreme Court, in which both the Minister of Justice and the Attorney-General sat.

In 1977 the say which neighbourhood residents had in the election and supervision of the judges of the base tribunals was reduced even further. From 1977 the base tribunals were referred to as Municipal Tribunals. Their judges were no longer elected and supervised by neighbourhood assemblies, but indirectly by the Municipal Assemblies of *Poder Popular*. In present day practice, the election of judges does not differ much from the traditional appointment of judges. Normally the Ministry of Justice proposes a judge before the assembly of *Poder Popular* for a further term of office after having evaluated his or her performance with the assistance of the immediately higher tribunal. In most cases a judge is re-elected for a further period. The fact that one of the lay judges of the judicial benches of the base tribunals was replaced by a professional lawyer in the new Municipal Tribunals must have meant a further reduction in the ability of the neighbourhood residents to identify with these tribunals, particularly if we add to this the dominant position which the professional judge usually assumes within the bench. The ambition of providing work for all law students who finish their training has meant that a break has been made with the practice of only appointing as judges for the base tribunals those persons who were resident in the neighbourhood or district where they were to administer justice. By attending sittings of a number of Municipal Tribunals in Havana between 1980 and 1983 I concluded that, apart from the changes already referred to, the character of the daily practice of the basic administration of justice has been changed on a number of fundamental points. The public consisted mainly of relatives and friends and played no part whatsoever in the proceedings. The president of the court often subjected the accused to brief and summary questioning without going further into his or her personal background or showing any indication of knowing anything about it. Most cases were settled within five to ten minutes. It may be seen as a fairly traditional form of judicial administration, in which priority is given to the rapid, bureaucratic settlement of minor, relatively unimportant cases. Far less frequent use was made of the opportunity presented by

the trial to instruct the accused and the public in the values of a socialist society. It did occasionally happen, and when it did occur it was sometimes in the lively manner which recalls the picture of the base tribunals of the 1960s presented in the accounts of them. In most cases, however, there was simply an automatic transition to the imposition of a fine or short period of detention.¹⁶

Despite the clear reduction in the direct involvement of the people in the basic administration of justice as compared with the 1960s, the contemporary administration of justice still has a special character. The participation of lay judges at all levels is a unique aspect of Cuban legal tradition. The same is true of the formal ability of the assemblies of *Poder Popular* to supervise the judiciary. The most far-reaching intervention of the people in the administration of criminal justice at the moment is, I believe, the contribution of the CDRs to the prevention and detection of criminal and antisocial behaviour. The committees, which have a membership of 80% of the population, are extremely active in neighbourhood surveillance; they give the impression that this work is carried out more seriously and effectively than in the past.

The changes in the organisation of the basic administration of justice also affect the regulation of their functioning. Although the criminal procedure followed by the Municipal Tribunals is still relatively informal, it is more formal than that of the experimental neighbourhood tribunals. There is also a change in competence: while the base tribunals had tried misdemeanours, the Municipal Tribunals no longer do so since 1979. Their criminal law competence is confined to minor crime and the pre-criminal state of dangerous behaviour. Like the other present day tribunals, and unlike the earlier base tribunals, the Municipal Tribunals are strictly bound to the legal definitions and punishments contained in the Penal Code as regards punishable behaviour and penalties. In this respect the protective function of the principle of due process has been enhanced. However, the ideological basis of the new criminal law procedure and its organisation rejects the idea of a fundamentally contradiction of interests between the individual interests of the accused and the public interest defended by the State. While the new Law of Criminal Procedure follows old Spanish traditions in speaking of an accusatory public trial,¹⁷ the new organisation and definition of functions of the bar and the Public Prosecutor leaves little room for real polarisation. A number of examples showed that the court room has little or no room for a critical attitude by the accused and his or her defence counsel towards the existing political, legal and moral norms.¹⁸ Moreover, residues of the *Défense Sociale* movement which has been so influential in Cuba: the state of dangerous behaviour, both pre-criminal and post-criminal, offer ample possibilities for imposing criminal sanctions on persons accused of behaviour that can be defined as 'antisocial' and for keeping prisoners in detention longer than the period for which they were sentenced.¹⁹

The opportunities provided in the 1960s to compensate the lack of formal (protective) rules are less prominent in the present setting in which the Municipal Tribunals function. The neighbourhood tribunals of the 1960s were in much closer contact with everyday life within a closed neighbourhood network. The public and the judge knew the accused and the accuser. This is now no longer the case: there is more anonymity, and the presiding professional judge is not necessarily a member of the same district. The contemporary Municipal Tribunals lack the low level of social mobility and of anonymity which were the preconditions for their predecessors to be able to dispense with formal, universal rules. The advantages of a system of informal judicial administration, particularly the extra attention paid to

the personal background of the accused and the possibilities of re-education, are also less in evidence in the Municipal Tribunals than they were in the base tribunals.

The base tribunals were originally set up when Cuba was in the grip of a revolutionary élan. In the course of the 1970s they have acquired an essentially different character. A number of factors have affected this development, as this study has tried to show. I have not felt the need to 'pass judgement' on the base tribunals, nor on the Municipal Popular Tribunals which have been in operation since 1977 in Cuba: history has run its course in Cuba. The intention of this study was primarily to provide some insight into this. It is for the Cubans themselves to continue to create their own history, which has demonstrated so much spirit so far.

The research on which this study is based concerned the development of the basic administration of justice in revolutionary Cuba up to 1983. Since then Cuban history has not stood still and new developments have taken place in the field of law too. Since December 1983 serious attempts have been made to improve the quality of legal aid through a raising of lawyers' salaries and of the standards required of them during their training.²⁰ There have also been initiatives in recent years in the direction of decriminalisation.²¹ Víctor L. Kautzman Jorres, member of a Commission for Decriminalisation of the Ministry of Justice, announced new legislation in this sphere in December 1986. A new draft law had been prepared by which a variety of offences were to be transferred from the criminal sphere to legislation dealing with administrative law, he said. The draft law also proposed to increase the use of fines as alternatives to the prison sentences laid down in the Penal Code. The minimum and maximum periods of detention for various offences were also to be reduced. The sanction 'reprimand' was to be given greater importance as well as a number of accessory penalties such as the restriction of social rights and the prohibition on visiting certain places. According to Kautzman Jorres, it was possible that this law would come into force in 1987.²²

These plans are interesting in the light of this study, particularly when seen within the context of recent general political changes in Cuba, such as the process of rectification initiated at the Third Party Congress on 4th February 1986.²³ In the context of this rectification process, the Cubans speak of a new period in the revolution in which errors made in the 1970s must be corrected and set right.²⁴ Although these developments could not be incorporated in the present study, they are an indication of the fact that in contemporary Cuba the discussion on law and society is by no means over.

NOTES TO CHAPTER TEN

1. See e.g. Mariano Rodríguez Solveira, 'Cien Años de Derecho en Cuba (1868-1968)', *Revista Cubana de Derecho*, Year 1, Jan. 1972, No. 1, pp. 85-86; Aldo Prieto Morales, *Derecho Procesal Penal*, Tomo I, 1976, Editorial Orbe, Havana, p. 18; Filippo Gramatica, 'Grundlagen der Défense Sociale', *Kriminologische Schriftenreihe*, Band 18, Kriminalistik Verlag Hamburg, Teil I, 1965, pp. 42 and 43. Gramatica refers to Cuba as one of those Latin American countries, besides Venezuela and Costa Rica, where the 'Difese Sociale' movement of Italian origin (Enrico Ferri) influenced both the legislation and the practice of criminal law. See too F.J.M. Feldbrugge, 'Das Kubanische Strafgesetzbuch, Die Kubanische Strafprozessordnung', *Review of Socialist Law*, Vol. 10, 1984, No. 2, pp. 156-157.
2. Hans Magnus Enzensberger, 'Portrait of a Party, Prehistory, Structure and Ideology of the P.C.C.', *The New Cuba, Paradoxes and Potentials*, ed. Ronald Radosh, Morrow Paperback editions, New York, 1976, pp. 116-117; Richard R. Fagen, 'The Cuban Revolution: Enemies and Friends', *Enemies in Politics*, ed. David J. Finlay et al., Rand McNally & Co., Chicago Ill., 1967, p. 217.
3. I would add: every socialist and communist system, following André Gunder Frank, *Crisis in the World Economy*, Heinemann, London, 1980.
4. Lelio Basso, 'De rol van het Recht in de Overgangsfase naar het Socialisme', *Te Elfder Ure*, 13, 1973, Year 20, No. 3, p. 773.
We can detect a similar process in a country such as Nicaragua. The situation and the period are different from the early years of the Cuban revolution, however, and for the time being it has not been desirable or necessary to make such radical or definitive choices as Cuba had to make.
5. José A. Moreno, 'From Traditional to Modern Values', *Revolutionary Change in Cuba*, ed. Carmelo Mesa-Lago, University of Pittsburgh Press, Pittsburgh, 1974, pp. 471ff.
6. Kenneth L. Karst & Keith S. Rosenn, *Law and Development in Latin America*, University of California Press, Berkeley, 1975, p. 674, who refer to L. Freidman, 'Legal Culture and Social Development', *Law and the Behavioral Sciences*, L. Friedman & S. Macaulay, 1969, pp. 1000, 1014-1015.
7. *Ibid.*, p. 668.
8. Interview 22.3.1983 with Ismaël Séfer Zárate.
9. *From Max Weber. Essays in Sociology*, eds. H.H. Gerth & C.W. Mills, Oxford University Press, New York, 1946, pp. 220-221.

In the first years of the Cuban revolution experimental tribunals were set up in the countryside, and later in the big cities, in which justice was administered by lay judges chosen by and from the people. At first the procedure followed by these so-called base tribunals was very informal. Its key points were direct and active involvement by the neighbourhood, simplicity and comprehensibility.

In the course of the 1970s these base tribunals were integrated within a new system of judicial organisation. The emphasis was now on professionalism and efficiency, by which the basic administration of justice acquired a fundamentally different character. In this study the genesis and structure of the base tribunals are set within the wider context of political developments within the Cuban revolution. The objective is to examine the extent to which the profound transformations which Cuba underwent after 1959 in its international relations, economic organisation and politico-cultural traditions have been reflected in new developments in the basic administration of justice.

The Interuniversity Centre for Latin American Research and Documentation (CEDLA) conducts and coordinates social science research on Latin America, publishes and distributes the results of such research, and assembles and makes accessible documentary and scholarly materials for the study of the region.

Adèle G. van der Plas has lectured in criminal law at the State University Utrecht and has visited Cuba on several occasions. She now practises as a lawyer in Amsterdam.



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