

Justice & Criminal Law

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Much has been written about human rights in Cuba, but less about the way in which the criminal law system operates. Comparisons with the British penal system are not helpful, as it is important to understand that, despite the presence of America in their country in the first half of last century, the Cuban penal tradition owes more to the Spanish civil law approach than the common law system in the UK.

A good place to start is Debra Evenson's book *Revolution in the Balance*. Despite raising potential contradictions between the collective principles of a political system based upon socialism and the rights of individuals within that society, Evenson explains that Cuban law provides the right to due process, which has, generally, been observed.

For some twenty years after the revolution, criminal law in Cuba was, somewhat surprisingly, based on the pre-revolutionary Social Defence Code (CDS) adopted in 1936. Not until 1979 did Cuba develop a new penal code which better reflected the idea that the eradication of exploitation and oppression would also eliminate crime. Under this Code however, social delinquents were regarded as people unable to conform to the values of the new society. The 1979 Code provided for severe sentences for criminal behaviour, leaving judges little latitude to ameliorate its effects in the case of first offenders, for example.

It wasn't long before Cubans realised that a new Code was needed. A commission was organised to analyse the 1979 Code and propose reforms. One of the aims of the Commission was to reduce the prison population in Cuba. A Decree passed in 1985 gave the Supreme Court the power to review cases decided under the 1979 Code to see if sentences were too severe. As a result, Evenson reports, some 15,000 prisoners were released early between 1985 and 1988. In 1987 Carlos Amat, Vice Minister of Justice at the time, described the 1979 Code as having been 'very severe'.

Following a consultation process involving politicians, jurists and popular organisations, a new Penal Code was enacted in 1987, which remains in force to this day. The

new Code eliminated some crimes, and reduced sentences for others. For example the 1979 Code provided for between 10 and 20 years' imprisonment for robbery (with the death penalty in certain aggravating circumstances), but the 1987 Code eliminated the death penalty for robbery and reduced prison terms for this offence to between 4 to 10 years. The 1979 Code had treated the theft of state property as an aggravating factor which attracted exemplary punishment, but the 1987 Code removed the distinction between the theft of state property and the theft of private property.

The new Code downgraded some offences, like traffic violations, from crimes to administrative offences. Some forms of misfeasance were downgraded too, including charges against managers whose failure to meet legal obligations harmed a state enterprise; or for producing substandard goods.

These changes represented a new approach to crime. As Amat put it in 1987 '*... severe treatment has not eliminated criminals. New forms of crime developed, and harsh sanctions did not serve as the slightest deterrent to crime.*'

Nevertheless these changes were not universally welcomed. Some politicians thought that the changes were introduced too soon after implementation of the 1979 Code. Evenson quotes some Party officials and jurists reporting that their neighbours were worried about this perceived softening of the Penal Code, fearing that the Cuban government was bowing to international pressure to weaken its laws. While researching her book in the early 1990s, Evenson heard complaints that the new Code would lead to Havana resembling crime ridden New York!

The current Code contains laws protecting the security of the state, both internally and externally, as well as the national economy and Cuban culture. It contains laws against offences against the person, theft and perjury, for example. The maximum prison sentence in Cuba for non capital cases, is set at 20 years.

One of the more controversial provisions in the Cuban Penal Code is '*Social Dangerousness.*' The 1936 Code

allowed an individual to be detained if they were deemed likely to commit a crime whether they had done so or not. By the time of the revolution, the Code contained thirteen categories of behaviour that fitted this definition. The 1979 Code reduced these to seven before the 1987 Code whittled them down to three – habitual drunkenness, drug addiction and antisocial behaviour.

The 1987 Code retains the death penalty. The sentence can be applied in cases of murder, aggravated rape, terrorism, hijacking, piracy, drug trafficking and manufacturing, espionage and treason, but is only applied in the most exceptional cases and gravest circumstances. A death sentence cannot be applied to anyone under the age of 20 at the time the crime was committed, or to women who are pregnant at the time the crime was committed, or at sentencing. Any death sentence is subject to mandatory review to ensure that it has not been applied arbitrarily. In practice this means that a death penalty imposed by a trial court is automatically referred to the Supreme Court, which reviews all of the evidence in what effectively becomes a new trial. The Supreme Court has the power to commute a death sentence to one of 30 years. Where the Supreme Court upholds a death sentence, the case is then referred to the Council of State, the highest executive body in Cuba, for review. Evenson found that death sentences were rarely carried out. The process known as '*moratoria*' ensured that death sentences were commuted, usually to terms of imprisonment.

The last death sentences to be carried out in Cuba were imposed in 2003 after an attempted hijacking, and justified by the authorities on the basis of national security. This provoked criticism from abroad. In 2010 all remaining death sentences in Cuba were commuted. Since then, the Cuban courts have not handed down any further death sentences.

Soon after the 1987 Code was introduced, Cuban jurists and officials turned their attention to criminal procedure. In 1990 Procurator General Ramon de la Cruz expressed the desire to '*revolutionize*' the penal process in Cuba '*...to construct the proper balance between individual guarantees and the guarantee of the security of society and between the need for swiftness and the need for quality.*'

Cuban criminal procedure has long been based on the inquisitorial tradition derived from Spain and practiced in parts of mainland Europe. Unlike the adversarial approach in Britain and the USA, the Cuban prosecutor must investigate all of the evidence, for and against the accused, with the ultimate aim of establishing the truth. Nevertheless, some rights of the defendant are guaranteed in a manner typical of an adversarial system. The Cuban Constitution provides the right to a defence, the right not to testify, and the requirement that confessions must be voluntary. Admissions that are not freely given, are invalid. The Cuban Constitution provides protection against unauthorised searches and seizures.

Cuba expressly maintains the presumption of innocence until proved guilty. The accused cannot be convicted on a confession alone, nor solely on the basis of statements from close relatives. This puts the onus on the prosecution to produce evidence to prove an individual's guilt. In common with other inquisitorial systems, there is no such thing as a guilty plea in Cuba, which effectively means that there is none of the plea bargaining found in adversarial systems.

While the Cuban penal system does not provide for jury trial, there is a system of lay judges who are equal in status with their professional counterparts with whom they decide cases. Lay judges, drawn from workplaces, are appointed for a month at a time. Decisions of the Cuban criminal courts can be appealed to the Supreme Court which, Evenson reports, has overturned convictions, particularly those based solely upon a confession.

Criminal law, in all countries, operates at the point where the state tries to moderate and, at times, restrict the behaviour of individuals. Cubans are acutely aware that their system is under close scrutiny from abroad. It would be misleading to compare Cuba's penal code and procedure with its counterpart in Britain as both spring from different legal traditions and reflect contrasting economic, social and political circumstances. Evenson concluded by saying that, although there was room for improvement, few Latin American countries had a system of criminal law and procedure as fair and efficient as Cuba's penal system.