

Castro's Island of Freedom

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The big debate among academic legal scholars concerning Marxist legal systems is whether socialist law is anything different from the English common law or the Roman civil law template. This debate used to be rather robust during the days when there were so many members of the Marxist family of legal systems. The Marxist socialists always insisted on the superiority of their model to provide economic growth and development.

What used to be a big family that was fathered by Josef Stalin in the embers of World War II is now mostly extinct with the European branch having completely died off. There are only a few orphaned socialist legal systems with sharply divergent personalities left in the world, including misanthropic, isolated North Korea, free-booting China and the combative old Spanish colony of Cuba under socialism's feudal overlord, Fidel Castro.

This is the legal system I recently went to study with my local U.S. county bar association, as part of a delegation of lawyers qualifying for an exemption from the U.S. travel restrictions in place as part of the U.S. embargo. We met with professors, attorneys, judges and some other government officials in Havana for a week. Each session included a speaker holding

and waving a copy of Cuba's constitution, a talismanic touchstone for them in any discussion or answer to questions on various topics of constitutional law, economic reforms, commercial law, family law, penal law and election law.

Cuba's constitution provides the framework for complete state primacy over Cubans' personal life and work. It also provides for the unquestioned supremacy of the country's Communist Party.

With some tentative and increasing exceptions, the state owns and runs the whole economy, dictating certain prices and performing commercial transactions; but the state preserves complete sovereign immunity from any debt or legal action, very close to pre-Magna Carta England.

Despite Article 57 protecting the confidentiality of mail and telephone communications, the Cuban defense lawyer for imprisoned U.S. businessman Alan Gross admitted to us that this textual constitutional protection has not been applied to protect data contained on a computer, or a flash drive confiscated without due process and without a documented chain of custody, because this is a "political case."

Fidel Castro and his brother are the permanent overlords of Cuba, with 97 percent of everyone else "voting" in meaningless elections just to make them feel involved.

One of the basics of developed Western civilization is a constitutional system allowing a structured opposition to formally challenge any current ruling group, so that any errors made by those in place may be defined and challenged by those contending to rule in their stead. Various degrees of democracy implement this tradition in countries with parliamentary systems like Canada, Britain and the United States.

Cuba lacks this open feature of society, despite protests by several of our Cuban colleagues that their administered, one-party form of elections are far more efficient than U.S. elections. They also feel that the Cuban system is better than what they refer to as "confederacies" caused by divergent plans for the future on display in current U.S. politics. They use Abraham Lincoln as a point of reference to say that just as Lincoln fought a confederacy threatening to split the United States, the Castro regime must do the same thing to prevent any organized political opposition.

Cuba has no judicial review of government actions and no right of habeas corpus. Visiting Cuba is like going back in time to a lost legal world. This gives advisory urgency to the admonition heard around the patio lounge of our beautiful 1930s vintage hotel in Havana: What happens in Cuba stays in Cuba.

The government's pervasive hold on Cuban society was manifest to us during our stay, perhaps best exemplified by the housing stock and commercial buildings confiscated by Castro a few years into his revolution. Almost all of these structures are falling apart in a display of ruination calling to mind a Hollywood apocalypse movie, just like parts of Moscow in the 1980s: without windows; trees growing out of roofs; metal bars splayed over doors.

Cuba's fading socialism illustrates U.S. economist Milton Friedman's warning that controlling an economy with your insider friends ends up stifling the liberty of everyone else.

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