

TRANSPLANTS FROM DIFFERENT LEGAL FAMILIES IN COMPARATIVE LAW: THE CASE OF THE INCORPORATION OF US COMMON LAW INSTITUTIONS INTO CUBA FOR STATE-BUILDING PURPOSES (1898-1902)

JOHANNES SAN MIGUEL GIRALT
University of Helsinki

Abstract

This article aims to provide a detailed account of receptions and transplants from the United States (US) into Cuban domestic law within the period of military occupation (1898-1902). The underlying assumption points to the particular history of the rough exposition of Cuban continental-style law to the overwhelming influence of US common law at the beginning of the twentieth century. There is scant evidence of this phenomenon in the Hispanic-American area. However, the particularities of Cuban law provide almost laboratory conditions for the insightful study and analysis of dynamic complex interactions between legal families through transplants and receptions.

Keywords: comparative law; legal transplants; legal families; Cuban law; US common law.

[A] INTRODUCTORY REMARKS

From a visual standpoint, Cuba is inextricably linked to the image of paradisaical beaches, Spanish colonial architecture, 1940s and 1950s American-brand classic cars, 1970s and 1980s Soviet out-of-style vehicles and modern 1990s European automobiles. This mottled and varied scenery creates an ensemble showing how different traditions and ways of living from various historical moments and ideological or geographical origins can coexist and relate to each other. This very same scenario can be observed *mutatis mutandis* in the current Cuban domestic law as different legal categories and institutions are heavily influenced or directly imported from United States (US) common law, Soviet socialist law, and the *lex mercatoria*; all of these are fully blended into a Hispanic-continental legal traditional base. The cars described above run together, side by side, very carefully along the same bumpy streets and roads to avoid the slightest collision. However, this is not the case with the law;

courts, notaries and parties must navigate imported legal categories as they draw up contracts, put them to use in arbitration centres, and even conduct foreign litigation involving more than two million Cubans migrating overseas.¹ Many factors determine the current configuration of a significant part of Cuban law, among them the complex interaction process between domestic and foreign law, which has been exhibited through different legal families throughout history.²

Legal transplants are a central topic in comparative legal history. Authors and scholars have dedicated a lot of thought to the specifics of the loans and reception of foreign legal categories and institutions, stressing that the transplantation process does not provide an exact replica. This is particularly true for receptions between different legal traditions. In addition, the transplantation process is deeply influenced by legal history and many other factors involved like geography, path dependence, culture and so forth.³

As a case study, insufficient research has been conducted about the interactions between different legal families within the Cuban domestic legal context. The main contributions are formalist references to comparative law and certain papers that analyse some specific points of the US occupation in Cuba. Diego Vicente Tejera's early descriptive contribution to the foreign legal influences on Cuba must be mentioned in this research context. His scholarly work was duly praised and acclaimed in Spain (Vicente Tejera 1925). Likewise, the compilatory contribution of Milo Adrián Borges (1935) should also be mentioned as particularly insightful (although I do not share some of the conclusions) and the contribution of Vicente Julio Arranz Castellero with regard to incorporating US-style witness protection arrangements (Arranz Castellero 2011).

¹ An additional forthcoming paper will delve into the feasibility of control groups in comparative legal history, using Puerto Rico as a test case to draw the line of legal history developments in Cuba. Another forthcoming paper will address legal transplants from the US during the military occupation, emphasizing private law.

² This is probably a case study of "transfer of normativity" in legal history, following the guidelines set forth by Thomas Duve and most legal historians in Europe (Duve 2014: 4). However, this article deals with the complexities of interrupted transfer due to cultural rejection, resulting in a mixed hybridization process of the legal categories involved leading to transculturation.

³ The adoption of foreign law in the form of the wording from statutory provisions, whole pieces of legislation, codification bodies, *regulae iuris*, doctrinal categories, institutions, legal principles, judicial reasoning, or the entire rule of law conception is rooted in history (Cairns 2013; Graziadei 2019). The effectiveness of such a transplantation process depends upon many variables, one of the most complex being path dependence, related to institutional behavior of inertia and resistance to change (Husa 2018). In any case, transplants are a cost-saving tool to build, rebuild, or modify domestic legislation, as Smits put clearly in the example of the wide adoption of Western countries' occupational safety legal criteria by other countries (Smits 2006).

Also very relevant for the current analysis are the works of the early twentieth-century Cuban historians Ramiro Guerra and Rafael Martínez Ortiz, who boldly dedicated themselves to digging into the entanglement of facts, characters, global context and the overall intricacies of the construction of the new Republic of Cuba. From their perspective as historians, their conclusions on the legal implications stemming from the political processes experienced at the time are greatly appreciated (Martínez Ortiz 1929; Guerra 1952a; 1952b).

[B] MAIN ACTORS INVOLVED IN THE SOURCES: LATE NINETEENTH-CENTURY US COMMON LAW, THE MCKINLEY ADMINISTRATION, THE MILITARY GOVERNORS AND THE CUBAN CIVIL ADMINISTRATION

The twentieth century in Cuba starts with the end of the Spanish–American War, the cessation of 400 years of Spanish sovereignty over the island, and the tireless efforts by both the Americans and the Cubans to give birth to the penultimate Hispanic-American republic in 1902 (Panama, the last one, came later in 1903). Following state-building purposes, President William McKinley engaged in the endeavour to bring a new independent republic to life, and, as soon as the Paris Treaty was signed, the US Army was instructed to change its mission: from war operations to leading a civil government plus implementing a new constitutional framework (Guillard 2020: 26). That is how the executive branch of government, the military governors and the appointed civil administration became the most prominent actors involved in legal transplantation from US common law into Cuban domestic law.

Expressions like “actors” or “legal actors” convey the idea of a human element which took part in the processes of transplantation (eg the persons, organizations and informal associations with some degree of organic cohesion), giving way to adhesions, resistances and hybridization in the legal structures under transplant. However, it is the formal actors, namely, the sovereign authorities in Cuba, that are the most important due to the Paris Treaty which ended the Spanish-American War. Likewise, informal actors must be included in the narrative as those holding adequate power to bargain and strike deals concerning the construction of the new Cuban domestic law. Formal and informal actors must be analysed according to a twofold consideration of comparative law: the

formalistic perspective focused on the strictly literal wording of written rules, and the social context comprising the different dynamic forces and mainstream trends significantly affecting regulations in force.

With regard to the sources, formal and informal actors can participate in the global circulation stream of legal ideas by providing the categories, conceptions, theories and doctrines to be incorporated into domestic law by the recipient jurisdiction. Transmission of legal ideas for transplants and receptions may take two different forms. First, an actively coercive and repressive form through the imposition of a new law under social, political and military violence or the threat of violence to crush any hint of domestic resistance. Second, the non-violent form may include coercive pressure without detracting from the receiver's willingness to adopt new laws and plan consensus as the receivers actively incorporate foreign legal instruments and measures into their domestic law. American authorities displayed a dual approach for their legal state-building task in Cuba: the non-violent use of some coercive pressure and the passive Cuban consensual adoption of legal ideas under scrutiny.

Overall, the most relevant actors from the donor's side were the officers on the ground: the military governors and their Cuban civil administration. Leonard Wood, who succeeded Major General John Brooke, was an important roleplaying character as he dealt with the Cubans, mostly with intermediation. He was the high-ranking military authority appointed by the executive branch to enforce legislation, presidential proclamations and secretary instructions *in situ*. President McKinley, his administration, and the Senate may have been the framers, but it was up to Wood to decide how it should play out in Cuba: the stick, the carrot, or a combination of both. Moreover, he was skilful in deploying his diplomatic touch, competence, abilities and knowledge of human character as an army man. He was also handy when it came to picking the Cubans and the Americans to work with.

Wood is undoubtedly the most impactful in the cast of characters at the time because he firmly imprinted his own idiosyncrasies and personal background onto the whole transplantation process. He can be characterized as having both a moral and physical side to his personality, being fond of outdoor activities and actively engaging with friends and acquaintances; he was quite an odd mix but a typical self-righteous, intensely moral New Englander Yankee. He was of a very democratic standing, but his moral self-righteousness also drove him toward contradictory—and yet necessary, given the circumstances—outbursts of authoritarian, arbitrary decision-making. It is known that his initial bent

for the decentralization of power from Brooke's Havana to the regional military commanders while he was assigned to Santiago (the easternmost province in Cuba where the US Army landings took place), but as soon as he was appointed as the military commander of the Division of Cuba, he reversed his position, dropping his plea for decentralization, and started to push for recentralization of command.⁴

The highest ranked of all the actors was undoubtedly President McKinley, even though he did not take part in the actual process of building the new legal system. He was sworn in and took office in March 1897, was re-elected in 1900, and was killed by a gunshot on 6 September 1901. He was succeeded by the wilder character of Theodore (Teddy) Roosevelt, who, however, did not play a significant role in this process despite his wartime experience in Cuba. The President of the United States was (and still is) a key personality in constructing the new Cuban state because he vetted and appointed the talent directly charged with carrying out the main tasks.

Lane has stressed that the friendship between McKinley and Wood developed earlier, when the latter became the first lady's attending physician, and was a firm foundation for the former's military career path. Also, his circle of conservative politician friends and acquaintances helped a lot to secure Wood's appointment as the Commander of the Division of Cuba on 13 December 1899, among them was Senator Henry Cabot Lodge (Republican, Massachusetts), Governor Teddy Roosevelt (New York), Secretary of State John Hay, and some others. For his legal work, Wood brought to Cuba his long-time San Francisco friend James Runcie to be part of his team as a volunteer legal advisor and as support to an injured, retired official, however, he had to let him leave after an old press article raising criticism about the previous Brooke administration triggered an outcry in Washington on how the Cubans' affairs were being handled (Lane 1978).

As for the civil administration, it was formed by Cuban veterans and intellectuals appointed as a mirror image of a cabinet, with secretaries to

⁴ Wood's opinions on centralization and decentralization filtered into the constitutional debates later in 1901 and even gave motives for a heated internal battle against Major General Brooke, sending shockwaves throughout the press and to the Army bureaucracy in Washington DC, as a testament of the ambitions and career-focused mindset which the general showed from the start.

In his letters to his all-time friend Teddy Roosevelt, he showed acrimony against Major General Brooke because the latter decided to restore Spanish law and the judiciary, making it impossible—in Wood's view—to achieve a liberal system of government while allowing Cubans in the civilian cabinet to undermine state-building efforts in a country that needed “decent, candid, courageous government; good courts, good schools, and all the public work we can pay for, and a businesslike way of doing things” (Lane 1978; Peters & Ors 1900).

carry out the duties and provide solutions for the supply of basic living conditions and the appropriate legislation for a transitional stage to the new Republic of Cuba.⁵ Without the civil administration, the American authorities would have found it impossible to modernize the new Cuban domestic legal system to ready the country for trade, investment and modern financial exchange according to US standards. Some particularly effective members are worth mentioning, such as Dr Miguel Gener, who oversaw the complicated and controversial justice reforms—later in disgrace as mayor of Havana.

[C] MAIN ACTORS INVOLVED IN THE PROJECT: THE CUBAN CONSTITUENT ASSEMBLY, WAR VETERANS, THE PRESS AND THE PROFESSIONAL COMMUNITY OF ATTORNEYS

Many Cubans were involved in the state-building project. They were a crucial part of receiving legal transplants into the target domestic legal system through direct transposition or hybridization. The most active Cuban institutional actor involved was the Constituent Assembly, which engaged in resistance mode against legal transplants for two reasons: firstly, because the US Government wanted a privileged relationship and, secondly, because the common law was deemed culturally incompatible with the Hispanic-continental legal tradition of civil law (Martínez Ortiz 1929: 194; Martínez Martínez 2005: 206). The Assembly was formed by elected Cubans from many different backgrounds with the massive task of drafting a constitution from scratch.

From an individual point of view, Generalissimo Máximo Gómez, the only founding father who survived to enjoy independence, was the most important but also the most low-key of all. Admired by the people throughout the country and with a solid moral authority among the veterans, insurgency officials, members of the Constituent Assembly and the local press, he was well aware of how impactful his words would be for the military occupation. From the beginning, American military authorities tried to woo, flatter and please the old general. Despite his widely recognized and well-deserved *auctoritas* over the Cubans, Máximo Gómez decided not to take an active role in constructing the new state.

⁵ This mirror-image approach largely laid the foundations for the structure of the new executive branch of government in the new 1901 Constitution, and therefore for the upcoming republican institutional framework following the path-dependence constraints.

From a collective standpoint, the most potent yet ill-advised force comprised the Cuban insurgency veterans. Some veterans, specifically from the Ten Years' War, were also attorneys; most were exiled to the US. Other veterans became agents for reception because they had participated in the constitutional and legislative efforts to organize a republic in arms during the wars. This experience was helpful in listening to, discussing and creating favourable public opinion such that some of them were voted in as delegates to the Constituent Assembly. Some of them sympathized with the French Revolution; concerning the law, their role model was France, the mother of the Spanish codified continental tradition.

Cuban newspapers were also instrumental and an obstacle to the military occupation, given their influence over public opinion. For example, they loudly voiced their rejection of the use of violence and forced Secretary Elihu Root to change the tone of the military occupation. Given this criticism, General James Wilson and Wood were called to Washington to receive new instructions, and, as a result, there was a transition of power with Military Governor Brooke handing over to Wood (Martínez Ortiz 1929: 100). On many occasions, the press dedicated a lot of effort to the strict surveillance of American military activities, thus promoting the hyperventilation of intellectuals and public opinion. Likewise, on other occasions, the press attacked the legal influence of the US in Cuban affairs, as with the *Aduanas* case (unreported) in which Wood removed the Cuban Solicitor General (*Fiscal del Tribunal Supremo*). Historian Martínez Ortiz also considered that the press's voicing of the concerns of Cuban war veterans and the rejection of those concerns were decisive in bringing about a lighter touch from Washington (1929).

Finally, yet importantly, Cuban attorneys were essential in legal transplants and receptions. This professional group of attorneys won either the medal or bore the guilt, depending on the standpoint, of being the main characters in conserving continental law on the island despite US influence. Ricardo Pelegrín Taboada broadly argued the importance of attorneys as a social and professional group in Cuban independence and for the subsequent construction of the new republican institutionality (Pelegrín Taboada 2018). However, the leading cause for the common law ideas spreading through the island in the nineteenth century lay with the gradually increasing process of economic, commercial and investment interests between the vigorous industrial American power and the fertile conditions for the sugar agro-industrial business. In addition, Cubans' small but steady migratory movement to and from the US considerably helped some attorneys embrace the full adoption of US common law. In the mid-nineteenth century, large Cuban communities in Tampa, Key

West, New Orleans, Philadelphia and New York were formed by political exiles and tobacco-makers (*tabaqueros*). This economic reality translated into annexionist political ideas spreading all over the island at that time.

A last-minute character in this drama—the marriage formed by geography and meteorology—played an indisputable role in the history of the US–Cuba bilateral relationship. In the 1840s, increased hurricanes, both in number and strength, devastated the island, leaving destruction and havoc behind. The geographical distance between Cuba and Spain made it very hard to send provisions such as food and medicine from the Peninsula when they were most needed to relieve the population. There were dire living conditions as the hurricane seasons were harder than expected. As an emergency measure, Captain General O'Donnell allowed a powerful American merchant fleet to dock in Cuban harbours to bring food for the people who were near (Pérez 2001: 131-138). This was the start of a rising intimate trade and investment relationship that would turn, in time, into a stormy, melodramatic love–hate political relationship lasting to the present day. More than a hundred years later, despite the Cactus Curtain, emergency relief due to natural disaster keeps flowing from the US to the island.

[D] SPECIFIC TRANSPLANTS INTO CUBAN DOMESTIC LAW FROM US COMMON LAW

It is essential to clearly set out the need for the conceptual distinction between authentic *per se* legal transplants and different management decisions by the military occupation which did not rank as legal transplants. The state-building project, as envisioned and performed by the US establishment in Cuba, involved not one but many legal incorporations. In this context, US authorities engaged in a piece-by-piece approach, choosing which were the most important and necessary incorporations into domestic law and which to bargain for, according to the Cubans' hesitation, reluctance, or resistance.

For explanatory purposes, there follows a classificatory list of findings: transplants not made effective due to self-abstention by the US authorities; those not made effective due to outright rejection by the Cubans; those made effective despite local rejection of them as legal irritants; those made effective with strong resistance but finally accepted by the Cubans; those made effective with moderate resistance or with reluctance; those made effective with hybridization as a strategy to avoid rejection; and those made effective without any resistance but willingly accepted by the Cubans.

Legal transplants not made effective due to US abstention to push them through

Receptions from foreign law usually require the willing disposition of the domestic legal establishment, namely, legislators, academia, practising attorneys and judges. In the circumstances of forced, semi-forced, or co-sponsored legal transplants in the case of state-building efforts as in a protectorate, there is an additional requirement: the willing disposition by the protecting state engaged in constructing the new law. Contrary to the general view, Americans did not land in Cuba to burn down the old legal structures to create a scorched-earth legal landscape. On the contrary, the military occupation made statements for self-restriction: public assertions containing the negative self-imposed duty not to bring some legal institutions or measures into domestic law. There were many reasons for this: to calm the waters and reduce local public inflammation towards the occupation, to show tolerance for the domestic culture and traditions vis-à-vis the international community, to avoid unnecessary friction with established local elites, and the like. This may be the first time a US occupation force had appealed to the local *mores* as a limit to their governing activities in occupied land.

In the Cuban case, unexpected self-restriction statements were very relevant and full of symbolism. These announcements ranged from retaining Spanish law in force to tolerate some petty offences; in these instances, the military occupation was very careful. First, the US authorities proclaimed the continued legal effectiveness of substantive criminal law and the law of persons. Following the Paris Treaty, the military intervention stated the continued legal effectiveness of the Spanish Criminal Code 1870 and the Spanish Civil Code 1889 (Guerra 1952a: 461; Parise 2014: 319). During his tenure as provincial governor, Wood was among the first commanders to align with this approach in his early provisional constitution. Authorities also proclaimed the continued legal effect of pending court decisions, proceedings and procedural law. The 1898 Paris Treaty was clear on the temporary validity of law and court proceedings. According to the provisions included in the final draft by the American delegation, the US confirmed the continued legal effect of court decisions, proceedings already in place and Spanish substantive law.

In this context, it is worth noting that the US military occupation had a hard time dealing with religion, and it soon retreated from the entanglement of ancient statutory provisions and customary rules by proclaiming self-restriction. In this regard, the military occupation

preferred the dereliction of the duty to appoint prelates of the Catholic Church and abstained from dispute resolution in ecclesiastical claims; it proclaimed the continued effect of all ecclesiastical law and practices. According to the ancient institution of royal patronage (*regio patronato*), the Pope formally vested the Spanish Crown with the right to appoint diocesan authorities in Hispanic America. This high-royal attribution was always coupled with state sovereignty, which Spain lost as the viceroyalties became independent republics from 1810 to 1825. The new American states retained their prerogative to negotiate new deals with other countries, including concordats and *modus vivendi* with the Vatican. However, Cuba and Puerto Rico remained sovereign Spanish territory, with the *regio patronato* in force until 1898.

Legal transplants not made effective due to outright rejection by the Cubans

Alongside the US authorities' abstentions, the Cubans quickly and bluntly rejected many legal transplants. The most relevant was the municipal autonomy framework following New York State law. The issue of municipal self-management could not wait for the enactment of the new Constitution so the *ad hoc* commission on legal reform rapidly dealt with it.⁶ Businesses needed clear rules for procurement contracts at the municipal level for urban renovation, hygiene campaigns, sanitization, promotion of public services, street layout and so on. Wood included municipal autonomy in the 10th Provision in his Provisional Constitution for Santiago de Cuba on 20 October 1898.

These liberties were provided to the municipalities to replace old rules and limitations inherited from Spanish law. In one particular case, the military governor of Matanzas proposed adopting the New York State municipal legal framework, characterized by the classification of towns and settlements according to their population. Coincidentally, around 66 years later, the Soviet socialist-inspired municipal legal framework was also first implemented as an experiment in the province of Matanzas in 1974.

This system was similar to the Spanish charters (*fueros*) but not the same. First, Iberian town charters (*cartas puebla*) had similar content to each other, but they were granted to specific towns, villages, or major

⁶ It is important to distinguish early efforts to re-establish municipal authorities and the late project to build a long-lasting municipal legal framework. Reference on the subject as a legal transplant is made to the latter but the diligence shown by the military authorities to provide for local order and rules should not be diminished (Wood 1903: 154).

cities. This differed from the New York municipal structure as these were granted powers and prerogatives according to a previous state law classification. Second, *fueros* did not reach the island because the first villages were built and founded in Cuba after charters were granted. Third, as said before, Cuba was not a regular province but a General Captaincy with a military nature comprising a wide range of powers, so municipal autonomy was restricted.⁷ These were the main reasons American authorities considered that replacing the municipal legal framework in Cuba was essential (Wilson 1899).

Legal transplants made effective despite rejection of them as legal irritants

Some other transplants were successfully incorporated but soon ejected from the legal system for cultural reasons, among them trial by jury and the prohibitions against gambling and other dubious moral behaviours. Along with state witnesses, correctional justice and *habeas corpus*, trial by jury was one of the four criminal law institutions under transplant from the US common law into Cuban domestic law. Of these, trial by jury

⁷ There is still a debate among historians across the Atlantic Ocean on the nature of the Spanish rule in the Americas including Cuba. Most Spanish and Cuban exiled authors argue that Cuba was never a colony but a Spanish province as an equal and integral part of the peninsular territory. This is a current hot issue since Spanish intellectuals are now arguing against the so-called black legend (*leyenda negra*) with the publication in 2016 of Roca Barea's *Imperiofobia y leyenda negra: Roma, Rusia, Estados Unidos y el Imperio español*.

I respectfully disagree. Certainly, the political status of the island had evolved towards equality with the metropolitan peninsular provinces, but Cuba had not reached equal status at all—the confusion stems from the lack of a legal perspective. First, the liberal Cadiz Constitution enacted in 1812 granted Cuba the status of a province with the right to elect and send representatives to the Spanish legislative body, *Cortes*; this provincial prerogative disappeared in 1836. Second, section 89 of the 1876 Spanish Constitution granted devolution of provincial status to Cuba and Puerto Rico, also with the prerogative to elect and send representatives to the *Cortes*; still, the provision made very clear that both were just “overseas provinces” (*provincias de Ultramar*) under special legislation. Third, unlike the peninsular provinces in mainland Spain, government secretaries were in charge of the provinces of Cuba and Puerto Rico. They often changed names but the political intent to submit both islands to special reinforced treatment never went away: State Secretary and Desk of Overseas Commerce and Government (*Secretaría de Estado y Despacho de Comercio y Gobernación de Ultramar*, 1836-1847), General Director of Overseas Government under different ministries (*Dirección General de Gobierno de Ultramar*, 1847-1863) and Overseas Ministry (*Ministerio de Ultramar*, 1863-1898). Fourth, ordinary legislation and codification enacted in Madrid never reached direct *ipso iure* validity in the island; the Overseas Minister would be required to stamp and proclaim the extension of validity to Cuba. For instance, the Royal Decree of 6 October 1888 enacted the former Civil Code for all of Spain but, for Cuba, with the requirement of the Royal Decree of 31 July 1889, to extend the scope of application to include the island. Fifth, all liberal Spanish constitutions in the nineteenth century provided for and confirmed that Spanish territory overseas would be militarily managed through general captaincies with a concentration of executive and judiciary powers, unlike mainland continental provinces. Last, but not least, the hot issue of slavery in the overseas province of Cuba cannot be understood from a legal standpoint without considering the island as what it was: not a province but a colonial territory under a specific constitutional framework of rights different from mainland Spain where slavery was prohibited.

was the most performative, appealing and representative of the Anglo-Saxon approach to justice.

First, it must be noted that criminal institutions were the most critical transplants in relation to local public opinion because they dealt with order, crime, petty offences and the perception of safe streets (Arranz Castellero 2011: 191). The military occupation quickly grasped the fact that the successful transplant of the jury trial needed the acquiescence of the Constituent Assembly as it was not appropriate to shove it down the throats of all Cubans without their consent, at least in part. Historian Martínez Ortiz (1929) reported that Cuban courts did summon people for jury duty in several cases, but things quickly got out of hand. Given this setback, the military occupation turned for help to the Constituent Assembly, but only met reluctance and rejection (Martínez Ortiz 1929: 177; Guerra 1952b: 84).

Second, the jury trial triggered much controversy. The main objections, at least in Cuba, lay with the negative perceptions that society shared about the average individual's ability to resist becoming embroiled in schemes, indecent propositions, political pressure, extortion and the like. Governor Wood insisted that the main hurdles were twofold: first, the gap between law and morality, given that regular citizens were not willing to act as jury members in cases involving prosecution against gambling practices and cockfights, which were very much part of popular traditions in the island; and, second, illiteracy rates (Wood 1903: 160). These objections deserve context: Cuba was drowning in exhaustion and stagnation after 30 years of war with a tense, dramatic, peaceful interregnum. All of this was fuel for the weakening of public moral convictions.

Speaking of moral issues, Wood attempted to put together rules for decent public behaviour, namely the prohibition of gambling and cockfights. In most cases, sudden sovereignty shifts also bring cultural shock to an occupied land. Cuba was no exception because there was a cultural overlap in daily life between Cubans, military staffers and soldiers. Cubans, particularly Havana residents, discovered baseball, canned food, shiny white dentures, wool cloth uniforms, Christian prayers without heavy liturgy or image worship, English vowels, phonetics and refreshing beverages like iced tea or Coca-Cola. In return, some American soldiers had their first experience of high-degree-spirited rum and hard liquor made from sugar cane, the habit of taking an afternoon nap or having a

deep smoke from cigars (endearing for Winston Churchill, who learned about this during his wartime stay in Cuba), and, of course, cockfights.⁸

Until 1898, cockfights were not only allowed but also taxed by the municipalities. However, the authorities were pressured to eradicate them by public opinion concerned with morals and appropriate behaviour to preserve family life and set an example for young people. With the ban, a legal translation problem arose: Brooke's legal staff made the final draft in English, providing for the ban on the construction of new fighting grounds, and the press had a Spanish version containing a total ban. As this language difference was discovered, many people expressed their concerns. In the end, General Wood dealt with the issue by enacting the total ban as requested by public opinion, but the tradition was heavily rooted in rural areas (Martínez Ortiz 1929: 131). Cockfighting, as immoral as some people may consider it, is still a deeply rooted rural tradition in Cuba.⁹

Legal transplants made effective with strong resistance but subsequently accepted by the Cubans

Probably the most critical incorporation which caused great public controversy was the right to vote with restrictions. As surprising as it may be, there was no right to vote under Spanish sovereignty in Cuba. On the contrary, the Captain General, sent from Madrid with concentrated military powers, handled all political authority on the island. As mentioned, the island had the right to send representatives to the Spanish *Cortes* for a very short period, but universal suffrage was not the norm. The *ad hoc* commission dealt with the right to vote through Military Order in April 1900 following a restrictive interpretation as it ruled for the exclusion of illiterate people, women, and also men unless they could prove personal savings higher than 250 pesos or had taken arms in the insurgency fighting for Cuban independence (Martínez Ortiz 1929: 130). The restricted criteria set forth are a reflection of the morally rigid feature in Wood's personality as he took a negative ethical position towards those

⁸ Some popular culture innovations from this period are known worldwide, such as mixing local and imported drinks like *Cuba Libre* and *Daiquiri*.

⁹ Probably one of the first instances of vast distance between the law in books and the law in action during the military occupation. As deeply rooted popular traditions are hard to prevent or discourage through law, Wood knew his limits very well in providing new morals through legislation. As striking as it may appear to the regular US citizen, cockfights, as with many other traditions related to gambling, did not have the stain of anti-values in the Spanish possessions in the Caribbean but played an important role as an amalgamating phenomenon in rural areas (Wood 1903; Woolsey 1899).

men unable to have savings or willing to work, which he associated with laziness or an irresponsible lifestyle.¹⁰

Again, these rules triggered action by the veterans even before the call for the Constituent Assembly, particularly General Bartolomé Masó and General José Miró Argenter. This debate needs context. Delegates Berriel and Alemán raised the controversy on the constitutional nature of the right to vote. General Julio Sanguily, one of the delegates who caused the most bother for Governor Wood, voiced his concern that the Assembly was feeling the pressure of public opinion. However, delegates also wanted the Americans' approval (Guerra 1952b: 90). In addition to this, it is essential to note the reception of elements of British domestic law into the new electoral system proceedings and scrutiny of votes. Historian Guerra reported how the military occupation transplanted electoral practices and regulations from the political reforms supported by William Edward Forster, a Member of the British Parliament (Guerra 1952b: 123).

Interestingly, state witnesses were a key legal transplant from the US which was initially met with particular trepidation but slowly gained traction among Cubans. Military Order 24 1900 provided for state witnesses upon judicial declaration. Additionally, Military Order 24 referred to the Spanish Criminal Code 1870, sections 398 and 400, then in force, releasing from punitive criminal consequences all public officials committing bribery as long as they made the authorities aware of such facts and supplied all pertaining information.

From a strictly dogmatic standpoint, state witnesses were barely compatible with the Spanish criminal law then in force. It has been argued that the "protected" status of the witness related to their "repentance" of a legal nature which fell somewhere between substantive and procedural criminal law, consistent with the theory of ulterior circumstances cancelling out punishment. The state witness still ranks as a dogmatic category associated with the opportunity principle, an instrument to simplify criminal justice by improving both persecution and prosecution of complex criminal schemes needing help from the offender's side. Arranz Castellero (2011) argued that the lack of such an institutional instrument in continental-related domestic law required a functional equivalent approach for its incorporation. This transplant was purported to slot into Cuban criminal law categories so that it could fully deploy

¹⁰ It has been argued that the main reason Wood decided for the minority report on electoral legislation was that this report contained a restricted version of the right to vote, excluding the "illiterate Cuban mass" from relevant decisions and, thus, avoiding radical factions rising to political power (Lane 1978: 94, 95). In such context, Wood chose the path of limited enfranchisement.

aims and effectiveness as in its original legal source, under an approach called “presumptive similarity of solutions” (*presunción de similitud de soluciones*). According to this approach, if the state witness played a vital role in the persecution and prosecution of certain crimes in US common law, *a fortiori* they would play a vital role in the persecution of certain crimes in the less complex Cuban criminal environment. This legal institution was intended to help prosecutors in bribery cases, allowing the recruitment of criminals with the purpose of destroying corruption rings (Arranz Castellero 2011: 211).

The generalized corruption in the Customs Department was the main reason the military occupation had to pull the rabbit out of a hat and bring state witnesses into the mix. Additionally, Spanish criminal reforms at the time allegedly raised the sanctions for customs fraud crimes as provided by the Royal Decree of 20 June 1852. However, this reform was not in force in Cuba. Accordingly, the Cuban “province” was distinguished from the continental provinces of Spain in customs infractions because it gave out reduced punishments and impunity despite the Customs Ordinance of 17 December 1880.

In a broader sense, some authors argue that the purpose of this transplant was the “Americanization” of justice and not a legitimate measure to cut out the cancer of colonial corruption (Arranz Castellero 2011: 192). But, on the contrary, the state witness was not transplanted to add a new element to the “Americanization” of justice, despite the widespread perception of constitutional superiority and efficient public management that Americans enjoyed on the island. There were no reasons to doubt Wood’s intentions: corrupt practices inherited from colonial authorities were simply considered malignant, that was it. This was a double rejection since the US was still going through the healing process of the Reconstruction through the Gilded Age. Moreover, the military personnel sent to Cuba from the US were war veterans and officials with high professional standards. Ultimately, the state witness scheme became rooted in Cuban law and academia as the institution was further developed and codified in Decree Act 628 on 26 October 1934.

Contrastingly, one of the most praised legal receptions by the Cuban people (being tagged with a widespread popular nickname as a show of appreciation or mockery) was correctional justice. Military Order 213 1900 created a small court for Havana under Captain Pritcher to prosecute petty offences and misdemeanours (in Spanish legal language: minor crimes, administrative infractions). The correctional court delivered great results in a short time, including the persecution of infractions against

public hygiene, urban mobility, immoral behaviour and the protection of women's decorum, so it was popular with ordinary people.

This court was initially very controversial because American officials ran it. Although good and bad behaviour is the same everywhere, Havana had some regular, widely tolerated characters dedicated to licentious, promiscuous, libertine lifestyles with a rampant problem of male and female prostitution—a normal day at the office in Caribbean harbourside cities. However, the situation was exacerbated by the increasing migration of poor workers from abroad and war-struck rural areas; the social post-trauma impact of war without independence leading many veterans to alcohol addictions and poverty; and family break-ups due to Spanish officials' withdrawal to Europe. Many minor offences were persecuted and eradicated, such as popular market and street vendors' "bad habit" of going shirtless in front of ladies and housemaids buying fruit several times a day; and the unhygienic habit of milking cows early in the morning on streets to directly sell fresh milk to neighbours, among many others activities. This court served the purpose of bringing decency to urban life. The correctional court went on to clean up the cities even when this meant an invasion of privacy, forcing the installation of essential sanitation services in all houses and office buildings. This was an abrupt but temporary suspension of privacy rights in a justified context.

Legal transplants made effective with moderate resistance or with reluctance

In the scale of resistance intensity felt by Cubans opposed to attempts to transplant new measures from US common law, a special mention should be dedicated to those that faced moderate resistance. First, the introduction of civil marriage from America was probably the most people-friendly US transplant. As paradoxical as it may seem, the US and the Soviet Union were the primary sources of civil marriage in Cuba as a result of the Christian-tolerant American mindset during the military occupation and the decisive influence of moral Soviet socialist conceptions on working-class values coupled with religious abolitionism.

Ab initio, the military occupation proclaimed the exclusiveness of civil marriage, forcing all young brides and grooms to head to the civil register offices days after the Catholic wedding. However, US authorities rapidly corrected things on 8 August 1900, through a military order, proclaiming equal status and validity for civil and religious marriage (Guerra 1952b: 34). Despite the good intentions Americans had, in the beginning civil marriage did not take hold. We should consider that

the US was characterized by Christian diversity, and American people professed several different denominations. Hence, the legally binding civil contract was instrumental in enforcing compulsory duties between spouses throughout the nation, no matter the religious denomination of the married couple. On the other hand, at the moment of the military occupation, the Cuban people were predominantly Catholic for historical reasons: the Royal Patronage for the Indies (*regio patronato indiano*), the lack of US religious penetration in the island, the overwhelming role played by the parochial priests in articulating community life in towns and cities, and so forth. All these differences meant that Cubans were not in a hurry to embrace civil marriage in the first republican years.

This context gave birth to a Catholic culture and prevalent religious feelings, no matter the actual religious beliefs. Back then, women in families had domestic housekeeping roles, and their free time was dedicated to reading social notes in the newspapers and celebrity magazines portraying young ladies being presented in society at a very common, traditional social event on their 15th birthday, getting engaged to be married and later getting married. Ceremonies of baptism, confirmation and sacerdotal ordination of relevant high-class family members were followed through the newspapers. Demographically speaking, the first years of the Republic found the island scarce in males due to the long-lasting war (this was subsequently corrected by the Cuban public policy to bring more than 100,000 men from Spain, mainly from Galicia and Asturias, to “whiten the island” (*blanquear la isla*) adding new white males to the working-class population). Daughters were under tremendous pressure to get engaged and married, and these marriages were celebrated as great social events, and families invited many guests to emulate higher-class engagements. Family members’ faith practice was irrelevant, and the social rite was more important than the liturgical; however, Catholic consecration became a rite of passage, at least for baptisms, weddings and burials. This is still part of popular Cuban culture; for obvious economic reasons, it is more frequent in the emigré population than at home.

The crime of perjury was also one of the legal transplants accepted with moderate resistance. Spanish criminal law in Cuba included the crime of false statement but with many differences to the crime of perjury as provided for in US law. Military Order 116 1900 amended the Criminal Code, turning upside down the legal wording on the crime of false statements. This was one of the first results delivered by the *ad hoc* commission formed by Wood to upgrade Cuban law. There was an initial reluctance, but it was rapidly superseded.

Legal transplants made effective with hybridization: the Supreme Court

Innovation came via the Supreme Court, the best example of hybridization among the legal transplants from US common law. The military occupation was concerned about the need for a court to rule on last-resort appeals. As Spanish sovereignty ceased with the Paris Treaty, the procedural line for cassation to Madrid was severed, and the country needed a new court to play this role. Military Order 41 1899, brought in by General Brooke, following a proposal made by the civil administration in the person of the Cuban Secretary of Justice and Public Instruction, provided for a Cuban Supreme Court: it was made up of a Chief Justice, seven associate justices, a Solicitor General, two deputy solicitors general, a clerk and two additional attorneys.¹¹

In most countries from the continental family, the highest court is characterized by access through a particular, technically complicated proceeding (*le recours en cassation, el recurso de casación, il ricorso per cassazione*) which admitted cases for review by different chambers instead of the entire court *en banc*. The new Supreme Court of Cuba was structured without chambers, resembling the American common law setting with the *writ of certiorari* instead of cassation proceedings. In addition, the leading state attorneys for criminal and civil cases, such as the US Solicitor General, were also included in the mix.

The Supreme Court's reception was successful as, although it was founded under the American structure, it was subsequently reformed through the years to become closer to the continental style with separated chambers, access through cassation proceedings, adding a chamber on constitutional rights, and such like, but it remained with the Solicitor

¹¹ It is important to distinguish the Supreme Court established by Military Order 41/1899 and the Supreme Court established by the 1901 Constitution; both showed traces of mixture and hybridization because they produced rulings *en banc* or in plenary as the US Supreme Court, but according to the procedural standards of cassation, totally different to the US appeal and *certiorari* proceedings. The Military Order 41 Supreme Court lacked attributions for judicial review as its many tasks involved, among others, appellate review from the lower courts (*audiencias*) on the grounds of error of law and legal doctrine (*vitium in iudicando*), or defects in procedure (*vitium in procedendo*) (Mirow 2010): additional reference in Military Order 41, 14 April 1899 ("Civil Report of Major General John Brooke US Army" 1900: 34); subsequently amended by Military Order III, 24 April 1901.

On the other hand, the Supreme Court established by the 1901 Constitution had been categorically empowered with judicial review attributions in section 83, subsection 4, and the Act on the Constitutionality of Acts enacted on 31 March 1903, annotated and commented on by Betancourt. However, the most important doctrinal references to judicial review in this period belong to the constitutional jurisprudence referred to by the same author (Betancourt 1915: 5).

General to handle, manage and plea bargain all the cases in the name of the Republic.

Legal transplants made effective without any resistance

To understand how legal transplantation occurs without resistance—or rather zero-friction transplants—from two different economic, political, social and cultural backgrounds, it is essential to get a whiff of the context. In the 1890s, the US was immersed in the so-called Gilded Age, characterized by a weird mixture comprising rampant free-will industrial impetus towards monopoly protected by tariffs combined with the intention to fix the social consequences of this through liberal progressive initiatives from charitable Christian organizations and civil society. One of the consequences of this domestic mix was a foreign policy characterized by an extra-continental expansionist Grand Strategy pinpointing the Caribbean, Hawaii and the Panama Canal, coupled with a heavy drive to provide these territories with good government, democratic values and the benefits of civilization pouring in from the progressive views at that time.¹²

Two main aspects of US law were observed with great interest by the Cuban delegates to the Constituent Assembly: constitutional rights within the framework of the presidential system of government and business law. The Constituent Assembly aimed to install a US mirror-image government system following the acclaimed civic virtues of the northern republic. Likewise, business people started to land in Havana looking for new opportunities, adding to the already existing large US business community, and they all required a legal framework for trade.

This section of the article addresses legal transplants in public law with a particular reference to constitutional law. The latter were the most important for both the US establishment and Cuban veterans, so it was an easy ride for Wood in this context. As mentioned before, for the McKinley

¹² Industrial impetus and liberal progressive views in social affairs as the main features of domestic policies and debate in the Gilded Age of the US have received a lot of previous attention. This mix is probably the origin of the US Army's double purpose to conquer and bring the conquered into civilization. Unlike conquering adventures, US Army efforts overseas during the Gilded Age brought cataclysmic consequences at home and abroad. First, the birth of not only an empire but "the Empire", the new hegemony in substitution for the seagoing British metropolitan power with a new Alfred Mahan naval supremacy in the Atlantic and Pacific oceans. Second, new domestic opportunities for the release of the industrial and banking power under a previous unwavering and increasing build-up but also raising concerns about the set of values the US should promote around the world, not only focused on raw materials and secured markets but also to promote progressive social views (Jackson 2022).

administration, legal transplants from US constitutional law were the main aim because this policy matched the expansionist purpose of bringing a constitutional republic to life and the successful starting point in the US coming-of-age as a major player in geopolitics with respect to European powers. In addition, the replication of a constitutional republic in the island of Cuba also matched the progressive views of bringing a humanistic touch to “downtrodden people” around the world by the impetus and powerful influence of the Christian charitable efforts of the new imperial country. For Cubans, constitutional transplantation meant fulfilling the long-held dream of self-determination by the most prominent Cuban minds of the nineteenth century, led by José Martí.

Habeas corpus, the public defender and other constitutional rights

The concept of *habeas corpus* was praised and welcomed in Cuba. Wood enacted *habeas corpus* and the entire Bill of Rights through a transposition into the Provisional Constitution for Santiago de Cuba as early as 20 October 1898. Later, he enacted Military Order 427 1900, providing the procedure to grant *habeas corpus*. Here, it is worth noting, however, that the military occupation could still avoid enacting constitutional rights and other American legal protections and seize opportunities to act freely via the old Spanish wartime legislation remaining in force to crush newspapers’ criticism. Despite the apparent political and economic interests involved, there is no doubt that President McKinley, Secretary Root and the military staff in Cuba were engaged in giving birth to a republic very similar to their own; they did not hesitate to extend to all Cubans the legal protections for personal integrity, property and freedom that Americans enjoyed at home under their constitutional protections.¹³

The liberal spirit that had developed in Spain since 1812 with enactment of the Cadiz Constitution also included *habeas corpus* protection. However, the constant boiling political and insurgency state on the island made an exception to the full force and extent of these legal protections as the Captain General saw fit. On the other hand, the primary source for this institution was the English Bill of Rights 1689; hence, the US constitutional provisions, case law and understanding of *habeas corpus*

¹³ A free press, among many other constitutional rights, was particularly controversial as it was the main focus of the clash between both personalities in Wood: the straight moralist and the authoritarian as the affair Castellanos proved very well. The publication of a cartoon vignette, a very strong tradition in the Cuban press and opinion making, on Good Friday 1901 provoked Wood’s irritation. It caused the newspaper *La Discusión* to be subject to censorship and the author to a one-day detention (Del Risco 2023).

were closer to this source than any Spanish constitutional provision at the time.

Following the introduction of *habeas corpus*, the second most important constitutional right brought in by the US authorities was the role of public defender. The primary purpose of this institution, incorporated by Military Order 500 1900, was to grant people the right and financial resources to access a public defender according to the wording and meaning of the US Bill of Rights. However, Spanish law had not one but two institutions with the same purposes: the attorney for poor people (*abogado de pobres*) and the municipal attorney (*procurador síndico*). The attorney for poor people was similar to the US public defender in providing defence for those who could not afford an attorney of their own, but they had some relevant differences: the US public defender was hired by the state; in contrast, the *abogado de pobres* was not hired but randomly selected from the roster of the municipal bar association, and he had to deliver his services without a salary as mandatory *pro bono* work (Wood 1903: 159; Pelegrín Taboada 2018: 129).

As a contribution to the controversy related to the functional equivalence between both categories, it should be mentioned that the Spanish version, *abogado de pobres*, was not nearly as effective as the US public defender; again bringing into play the empirical versus the literal meaning, the law in books versus the law in action. As this was an assignment from the bar association (definitely not a full-time job), there was neither the opportunity for state surveillance of compliance with the duties of representation nor clarity on the subject. In other cases, the attorneys appointed for the task, intriguingly, were not even living in the local town at that time. The second alleged functional equivalent was the municipality attorney, hired full-time to offer legal assistance to the local council, dating back to the nineteenth century. As time went by, some new attributions were added to the job, including the defence and protection of enslaved and emancipated people, similar to the protector of Indians (*protector de indios*) whom the viceroyalties had appointed in Hispanic-American continental land (Pelegrín Taboada 2018: 59). The municipal attorney was initially conceived as the full-time legal counsel for the town council, which was formed from local people. Gradually, through legal reform from Madrid, additional responsibilities were added, but, in the end, municipal attorneys dedicated themselves to dealing with mistreatment claims brought by slaves against their owners. In this role, the municipal attorney was also charged with the duties of *coartación de esclavos*, a customary procedure in which a particular slave notified the attorney of their will to gain freedom, expressing their will to pay

a lump sum as retribution, grounded in excessive mistreatment by the slaveowner. The procedure included appointing a third-party assessor by the municipal attorney and another by the slaveowner to reach an agreed amount to be paid so that the applicant could become a former slave individual (*liberto*) (De La Fuente 2007).

Concerning the functional equivalence between the public defender and the municipal attorney, there are some arguments against this contention. First, both categories differ in formality and purpose because the municipal attorney was mainly for town business, while the public defender aimed specifically for trial defence. Second, the public defender was meant to represent full citizens with all their constitutional rights in trial. In contrast, the *procurador síndico* did not represent slaves as he was meant to protect slaves in the name of the Crown but only if requirements were met, namely that the lump sum be paid. If a slave raised a claim against his slaveowner without proper provision of funds, another slaveowner or regular citizen could buy out the slave, and this meant the original slaveowner was compelled to deliver the slave according to the mandatory *traditio*. Additionally, the evidence material in procedures of *coartación* held by the *procurador síndico* was the market-value assessment delivered by an expert. On the other hand, the public defender had the opportunity to show all sorts of evidence admitted by law in the client's interest. Lastly, *coartación* procedures were customary, without initial explicit legislative references, and served to perpetuate slavery because the most common outcome from these claims was the alternate buy-out. This was different from the public defender responsibilities as put in place by the US military occupation in Cuba (De La Fuente 2007).

Concerning other constitutional rights that were transplanted into Cuban law—such as prohibiting cruel and unusual punishment—torture-like punishment had been explicitly allowed by Spanish authorities on the island under the pretext of civil war, so like many other proclamations of transplants from the Bill of Rights, the prohibition of torture was well received by the people. Cuban academia and practising attorneys also welcomed the right to confront the accuser as a testament to the high consideration and esteem Cubans finally had for the US as an organized model of society with full respect for the rights of the individuals.

Constitutional checks and balances

The US constitutional system of checks and balances was probably the most revered, praised and welcomed of all receptions by journalists, politicians and lawyers. This was not a unique incorporation into Cuban

law, as similar experiences had occurred in other Hispanic republics during their foundational periods. However, it was not merely a transition, but the establishment of a new constitutional framework. What, then, was Cuba's distinctive feature? Among all Hispanic American states, Cuba was the only one where the transposition of the US constitutional framework took place under their sovereign authority on the island, with the acquiescence of the locals. This is not a simple transition into a specific legal discipline; this was the entire configuration of the constitutional framework in each one of the Hispanic republics while they kept the French continental legal tradition in place. Given this common element with the rest of the sister republics in Hispanic-America (Brazil included), what is Cuba's distinctive feature? Of all American states, Cuba was the only one where the Americans carried out the vast transposition of the US constitutional framework under their sovereign rule in Cuba, with the acquiescence of the locals.

Concerning the form of government, delegates to the Constituent Assembly had the European parliamentary form available from the nineteenth-century Spanish experience. However, Cubans rightfully adopted the American presidential system. Most of the debates focused on the balance of powers between the executive and legislative branches of government due to the domestic plague of *caudillos* (charismatic authoritarian political leader in Iberoamerica). In this context, the US presidential system's legal paradigm took root and was fully adopted in the new Constitution.

Similarly, impeachment was also considered for incorporation into the new constitutional arrangements, and, without further debate and with minor considerations, delegates agreed it was appropriate to incorporate impeachment to hold the president accountable for high crimes to the legislature, with the House as the accuser, the Senate as the jury, and the Chief Justice leading the proceedings. Delegates expressed a strong rejection of trial by jury; however, they welcomed with open arms the prospect of the president's trial by a legislative jury (Guerra 1952b: 87).

The total transposition of the US branches of government into Cuban domestic law necessarily meant the adoption of the bicameral legislative initiative and the presidential veto. Broadly speaking, the delegates were almost unanimous about the reception of these arrangements. The idea of the presidential initiative to bring bills to the floor gained momentum. However, this amendment was rejected in order to keep draft bills within the chambers and leave presidents with only the remaining veto power. In this way, governments would always need political representation in

Congress to approve their agenda. In this context, presidential elections raised many doubts, concerns, propositions and counterpropositions from the delegates. On the other hand, the four-year term proposal was quickly accepted. However, regarding direct/indirect elections, the Assembly decided on the US legal practice of indirect elections through the College of Compromisaries. The test would be the first presidential election, and the system worked well.

As part of the Cuban state mimetic construction following the US structure, delegates to the Constituent Assembly also debated and agreed upon the reception of the presidential annual message to Congress on the state of the republic. This was considered a matter of high importance despite its apparent formal nature, as it did not compel the chambers to follow the executive's initiatives. According to the new Constitution, the president did not have the authority to send a bill of his own but only through his partymen in the chambers. Again, like the rest of the US constitutional provisions to uphold checks and balances of power, the president's appointment of the justices of the Supreme Court was also proposed, considered, debated and finally approved by the delegates. Their main concerns were whether it was appropriate to include the requirement of confirmation hearings by a Senate committee on the judiciary.

[F] FINAL REMARKS

The importance of comparative law is on the rise amid the current environment of high global connectivity, the ecstasy of cultural communication, free access to sources of information, and intense human interaction worldwide. Legal transplants are a particularly controversial subject due to the current technology allowing quick access to information on not only foreign law but also foreign legal practices and culture, giving way to new data and discoveries. In addition, to reach valid conclusions or inferences in legal transplantation, it is important to achieve a high threshold of cases under analysis, clearing the path for assessing regularities through a wide set of samples.

The description and analysis of the Cuban case of legal transplants from US law at a particular moment in history is relevant because they shed light on the dynamics and interactions between individual and institutional actors involved in the process. In addition, many complexities should be considered, namely that the target and the source legal systems belong to different legal families, and the transplantation process was conducted with a particular state-building purpose. The aforementioned

and many other features make the Cuban scenario a great laboratory test case on the subject.

Out of many findings, the most relevant indicate that state-building efforts engaged in by the McKinley administration in Cuba involved transplants in public and private law, as the new republic needed basic modern legal rules for business (particularly American business) as much as a constitutional framework. Additionally, most transplants involving family traditions, private behaviour and core personal beliefs met some resistance, an important difference from transplants involving only abstract conceptual categories.

About the author

Johannes San Miguel Giralt is a Doctoral Researcher, University of Helsinki Faculty of Law. He was EDUFI Fellow 2024-2025. He received his doctoral degree from the University of Havana, 2012, and his Master of Laws in Trial Advocacy from the California Western School of Law, 2022. He also has law degrees from the Catholic University of Santiago de Guayaquil, 2021, and the University of Havana, 2004. He has also been a Senior Researcher, SENESCYT (Ecuador); European Parliament-certified legal expert in comparative law, 2018-2021; Expert in Legal French, *Chambre de commerce et d'industrie de Paris*, 2005-2007; Independent Counsel in World Trade Organization disputes DS 458, DS 467 Australia – Tobacco Plain Packaging; Legal Expert in Private International Law, Council of the Judiciary, Ecuador, 2018-2020. He is an author and scholarly researcher on comparative law, international arbitration, consumer protection and antitrust and an open-access editorial reviewer and graduate course third-party reviewer.

Email: johannes.sanmiguelgiralt@helsinki.fi.

References

Adrián Borges, Milo. *Compilación ordenada y completa de la legislación cubana (1899-1934)* [Complete and Orderly Compilation of the Cuban Legislation (1899-1934)]. La Habana: Cultural, SA, 1935.

Arranz Castillero, Vicente Julio. “La aparición del ‘testigo de Estado’ en Cuba: americanización vs modernización de la justicia penal (en la lucha contra la corrupción)” [The Sudden Appearance of the State Witness in Cuba: Americanization vs Modernization of Criminal Justice (amid the War against Corruption)]. In *El Derecho como saber cultural: Homenaje al Dr Delio Carreras Cuevas*, edited by Andri Matilla Correa, 187-219. La Habana: Editorial UH, 2011.

- Betancourt, Ángel C. *Recurso de Inconstitucionalidad [The Appeal of Unconstitutionality]*. Havana: Imprenta y Papelería de Rambla, Bouza y Cía, 1915.
- Cairns, John W. "Watson, Walton and the History of Legal Transplants." *Georgia Journal of International and Comparative Law* 41 (2013): 637-696
- "Civil Report of Major General John Brooke US Army." Washington DC, 1900.
- De La Fuente, Alejandro. "Slaves and the Creation of legal Rights in Cuba: Coartación and Papel." *Hispanic American Historical Review* 87(4) (2007): 659-692.
- Del Risco, Enrique. "Castellanos y La Manigua Que Nadie Quiere Ver (Prólogo)" [Castellanos and the Jungle Nobody Wants to See (Prologue)]. In *La Manigua Sentimental*, edited by Jesús Castellanos. Barcelona: Exodus, 2023.
- Duve, Thomas. "Entanglements in Legal History: Introductory Remarks." In *Entanglements in Legal History: Conceptual Approaches*, edited by Thomas Duve, chapter 1, 3-25. Frankfurt am Main: Max Planck Institute for European Legal History, 2014.
- Graziadei, Michele. "Comparative Law, Transplants, and Receptions." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann & Reinhard Zimmermann, 441-473. Oxford: Oxford University Press, 2019.
- Guerra, Ramiro. *Historia de la nación cubana [History of the Cuban Nation]* volume 6. La Habana: Editorial Historia de la Nación Cubana, SA, 1952a.
- Guerra, Ramiro. *Historia de la nación cubana [History of the Cuban Nation]* volume 7. La Habana: Editorial Historia de la Nación Cubana, SA, 1952b.
- Guillard, James. *The United States and Cuba: A Study of the US First Military Occupation and State Building Efforts*. Master of Arts in History Thesis, East Tennessee State University, 2020.
- Husa, Jaakko. "Developing Legal Systems, Legal Transplants, and Path Dependence: Reflections on the Rule of Law." *Chinese Journal of Comparative Law* 6(2) (2018): 129-150.

- Jackson, Justin F. "An Empire of Reconstructions: Cuba and the Transformation of American Military Occupation." In *Reconstruction and Empire: The Legacies of Abolition and Union Victory for an Imperial Age*, edited by David Prior, 297-317. New York: Fordham University Press, 2022.
- Lane, Jack C. *Armed Progressive: General Leonard Wood*. Lincoln NE: Bison Books, 1978.
- Martínez Martínez, Faustino. "Sátira contra la predilección del Derecho Romano: una crítica decimonónica a un orden jurídico todavía no fenecido" [Satire against the Predilection for Roman law: A Nineteenth-Century Critique Piece against a Still-dying Order]. *Cuadernos de Historia del Derecho* 12 (2005): 179-228.
- Martínez Ortiz, Rafael. *Cuba: Los primeros años de independencia* [Cuba: *The First Years of Independence*] 3 volume 1. Paris: Le Livre Libre, 1929.
- Mirow, Matthew C. "Military Orders as Foreign Law in the Cuban Supreme Court 1899-1900." *Ratio Decidendi: Guiding Principles of Judicial Decisions* 2 (2010): 217-229.
- Parise, Agustín. "Libraries of Civil Codes as Mirrors of Normative Transfers from Europe to the Americas: The Experiences of Lorimier in Québec (1871-1890) and Varela in Argentina (1873-1875)." In *Entanglements in Legal History: Conceptual Approaches*, edited by Thomas Duve, 315-384. Frankfurt am Main: Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie, 2014.
- Pelegrín Taboada, Ricardo. "Shades of Liberalism: Lawyers and Social, Political and Legal Transformations in XIX Century Cuba." Doctoral dissertation in History, History Department, Florida International University, Miami FL, 2018.
- Pérez, Louis A. *Winds of Change: Hurricanes and the Transformation of Nineteenth-century Cuba*. Chapell Hill NC: University of North Carolina Press, 2001.
- Peters, Gerhard & John T Woolley. *Republican Party Platform of 1900*. Philadelphia PA: The American Presidency Project, 1900.
- Roca Barea, Emilia. *Imperiofobia y Leyenda Negra. Roma, Rusia, Estados Unidos y el Imperio Español* [Imperiophobia and the Black Legend: Rome, Russia, the United States, and the Spanish Empire]. Madrid: Siruela, 2016.

Smits, Jan M. "Comparative Law and its Influence on National Legal Systems." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann & Reinhard Zimmermann, 512-538. Oxford: Oxford University Press, 2006.

Vicente Tejera, Diego. *Estado de la legislación cubana y de la influencia que ejerzan en ella la de España y la de otros países* [The Current State of Cuban Legislation and the Influence of Spain and Other Countries]. Madrid: Reus, 1925.

Wilson, James H. *Annual Report of Brigadier General James H Wilson, USV, commanding the Department of Matanzas and Santa Clara to which is Appended Special Report on the Industrial, Economic and Social Conditions Existing in the Department at the Date of American occ.* Headquarters Department of Matanzas and Santa Clara, US Army, Matanzas: US Army, 1899.

Wood, Leonard. "The Military Government of Cuba." *Annals of the American Academy of Political and Social Science* 21 (March 1903): 153-181.

Woolsey, Theodore S & Ors. "The Foreign Policy of the United States: Political and Commercial." *Annals of the American Academy of Political and Social Science* 13 (1899): 1-216.

Legislation, Regulations and Rules

Act on the Constitutionality of Acts 1903 (Cuba)

Bill of Rights 1689 (England)

Bill of Rights 1789 (United States)

Cadiz Constitution 1812 (Spain)

Civil Code 1889 (Spain)

Constitution of Cuba 1901

Constitution of Spain 1876

Criminal Code (Cuba)

Criminal Code 1870 (Spain)

Customs Ordinance 17 December 1880

Decree Act 628 26 October 1934

Military Order 41 1899

Military Order 24 1900

Military Order 116 1900

Military Order 213 1900

Military Order 427 1900

Military Order 500 1900

Military Order 111 1901

Paris Treaty 1898

Provisional Constitution for Santiago de Cuba 1898

Royal Decree of 20 June 1852 (Spain)

Royal Decree of 6 October 1888 (Spain)

Royal Decree of 31 July 1889 (Cuba)