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The Influence of the Spanish Legal System and Socialist Legal Systems on Cuban Civil Law

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THE INFLUENCE OF THE SPANISH LEGAL SYSTEM AND SOCIALIST LEGAL SYSTEMS ON CUBAN CIVIL LAW

María Elena Cobas Cobiella*

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“There is no use going back to yesterday, because then I was a
different person.”

– Lewis Carroll

I. STATE OF THE QUESTION

This essay, *The Influence of the Spanish Legal System and Socialist Legal Systems on Cuban Civil Law*, fulfills an old desire to analyze how the current Cuban civil law has been shaped. The analysis starts with the point that Cuba has a legal system that follows the country's dominant ideology.

Here it is worth making an observation that, although it may seem paradoxical, is inevitable, the nonexistence of rights as a conception or as fundamental rights, does not mean that there is not a Cuban law, a Cuban civil law, a Cuban criminal law, an administrative one, and so on. Thus, it could successively exhaust all the branches in which the law in general is structured. There are procedures, sources of law and a Cuban legal system, with its own legal categories and concepts.

A different issue is the political basis on which they are based, the lack of guarantees or protection in the exercise of them, and of individual freedoms, but evidently, from the moment we are born until we die, the law accompanies us, and fundamentally civil law protects us even before we are born. Obviously, any change that is warranted must start from a structural reform in the powers on which the State is based, but it is practically unfeasible in Cuba. Various reasons could be given for this, but one principal one is the

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nonexistence of independent powers: the legislative, judicial and executive, and the lack of guarantees, legal security and protection, which the proclamation of new laws cannot ensure

Cuba only has a centralized and single power, and although the Cuban Constitution provides in its Preamble that sovereignty lies in the people, the very nature of the Cuban Constitution prevents us from speaking of the tripartition of powers. All appear subsumed under the power of the people, and therefore thinking about a legislative power, an executive power or a judicial power within any analysis is impossible, much less the idea of independence of these powers.

This idea of macro power or magnificent, unique, omnipotent and omnipresent power influences all legal work, which is what, for the purposes of my intervention, I am interested in working on, without losing sight of why it would be naive on my part to think, much less say, that the law can be studied outside of an economic and social context, we must always start from a central idea: the recognition of the sources of law, which is what allows us to understand the development of institutions, their background and the spirit of the law¹

Economy and politics are linked to the development of law and vice versa. Law and politics are linked. However, I must point out that the path taken to build a Cuban civil law has been subject not only to politics, but also to the influence of various legislative systems, traditions, customs, and also economic reality. The reason is not too complex, although the application of the rules in this mass of foreign legislation is. Fundamentally, we take into account that the historical tradition and influence on Cuban law has come from other sources.

One of the main reasons is the validity and application in Cuba of the Spanish Civil Code of July 24, 1889, which was extended to the island of Cuba by Royal Decree of July 31, 1889, and which came into force on November 5 of that year.² This Code permeated, ordered, and configured the

¹ María Elena Cobas Cobiella, *La Evolución del Derecho Civil Cubano y la Ley de Inversión Extranjera en Cuba: Un Camino por Recorrer* [Evolution of Cuban Civil Law and Foreign Investment Law in Cuba: A Path to Travel], 24 CUBA IN TRANSITION 425, 426–27 (2014) (translated by the author).

² ÁNGEL C. BETANCOURT, CÓDIGO CIVIL [CIVIL CODE] 6 (1916) (Cuba). This work contains the text of the Spanish Code applied to Cuba by Cuban Royal decree on July 31, 1889, with modifications introduced therein by subsequent provisions, and amendments that the new political situation of the country had made practically necessary or by circumstances indirectly produced by laws of another order. The source contains explanatory notes and agreements with other current legal bodies, and was written by

teaching of law in Cuba, the development of jurisprudence, as well as a set of Romano-French institutions, many of which remain in force today. Formally, it was in force until 1987, when the Cuban Civil Code (“Code”) was promulgated and whose entry into force in 1988 produced an adjustment within Cuban reality, as will be said later, and was permeated by multiple special legislations that were approved to adapt the norms to a panorama different from that of the Cuban Civil Code that existed before the triumph of the Cuban Revolution in 1959. The Civil Code approved in 1987 was not so close to the traditional codification system. It was weak in terms of the construction and development of institutions and has coexisted with a special, improvised legislation, which was approved or repealed according to the politics of the moment.

Many of these figures—as will be explained later—went directly from the Spanish Civil Code to the Cuban Civil Code, some as a solution of continuity, and others were nourished by other systems such as that of the socialist countries, including the USSR, Czechoslovakia, GDR (Germany), etc. A set of figures was remodeled with their content, adapting them to the Cuban legal system and the 1976 Constitution, which was in force then.

According to a sector of the Cuban doctrine, we are in the presence of a Code in the style of Eastern European Codes. A model is imported, ignoring the legal history of the country, the traditions, and the fact that Cuba belongs to a system of Roman-French law.³ In this sense, I consider that the approval of the Code is not a mere reorganization, and we are not in the presence of an exact copy of the law of former socialist countries. What is identical is the formulation of the bases and principles inherited from the socialist system.

As for the Latin roots, the Code is not a faithful and absolute reflection either. It is a norm that maintains precepts that combine the Roman-French tradition of the Spanish Civil Code and precepts identical to those of the socialist codes. Other precepts are genuine, since it is a Cuban Civil Code, as one author says, “because we are facing the Civil Code of the Cuban Revolution,”⁴ marking in this way the birth of Cuban civil rights, the result of the interests of the State, the current political system, and, above all, taking into account the emotions of the Cuban people, which was based on ideology more than logic and reasoning. In many cases, the Code ignored the historical analysis and legal nature of the institutions in the heat of maintaining the

Ángel C. Betancourt, Magistrate of the Supreme Court and President of the Codes Commission of the House of Representatives of the Republic.

³ See generally Leonardo Bernardino Pérez Gallardo, *El Código Civil Cubano de 1987 y los tiempos actuales: ¿Es la hora de celebración o la del réquiem?* [The Cuban Civil Code of 1987 and the Present Times: Is It the Time for Celebration or That of the Requiem?], 50 REVISTA CUBANA DE DERECHO [R.C.D.] 5 (2017).

⁴ ÁNGEL CARRASCO PERERA, CÓDIGO CIVIL Y LEYES CIVILES CUBANAS [CUBAN CIVIL CODE AND CIVIL LAWS] 12 (2000).

current status quo.⁵ In other cases, the Code approached the trends and principles that inform modern and advanced legal systems, surpassing them in some cases, as is the case with the field of family law in Cuba and the Family Code.⁶

II. INFLUENCE OF FOREIGN LAW IN THE SHAPING OF CUBAN CIVIL LAW

Two systems have influenced the construction of Cuban civil law. First, the socialist system born with the Russian Revolution of 1917, and the subsequent formation of a legal regime adapted to the new economic, political, and social conditions. Second, the Spanish law that was in force, with the consequent modifications until 1987, when the Cuban Civil Code was approved.

At this point it is worth distinguishing two stages, which mark the journey until the current moment.

First is what we could call the pre-revolutionary stage (before 1959). During this stage, the Spanish Civil Code was in force, extended to Cuba in 1889, with the pertinent reforms adapted to the time, and to the interests of the island.⁷ At this stage, there were parliamentary attempts to approve a Civil

⁵ MARÍA ELENA COBAS COBIELLA, *DERECHO DE SUCESIONES. BASES PARA UNA REFORMA* [RIGHT OF SUCCESSION: BASES FOR A REFORM] § 2.4 (Thomson Reuters ed., 2022) [hereinafter COBAS COBIELLA, *DERECHO DE SUCESIONES*] (“The treatment offered to succession in dictatorial regimes is limited and biased continuing with the common thread of what has been explained and constitutes a direct consequence of the existence of a dictatorial political system, hence the personal property over which inheritance rights gravitate is limited, as well as the value of the family, in the face of any manifestation of the will of the testator, thus Article 470 of the Cuban Civil Code prohibits inheritance for people who have permanently left the country, makes them incapable.”). For more information about this precept, see María Elena Cobas Cobiella et al., *Las incapacidades para suceder en la doctrina y en el derecho positivo* [The Disabilities to Happen in Doctrine and Positive Law], 7 R.C.D. 96, 108 (1992) [hereinafter Cobas Cobiella et al., *Las incapacidades*] (“[I]t would be pertinent to ask ourselves if the definitive abandonment of the country could really be considered as indignity because definitively abandoning the national territory does not constitute an offense to the person of the deceased, nor is it closely related to his morality or dignity. The main reason why these people cannot succeed is given to us by the precept itself, such as definitively leaving our country, for not being in agreement with the economic, political and social system, from which the political nuance that is derived is implied.”). In the same sense, see generally MARÍA ELENA COBAS COBIELLA ET AL., *LA APERTURA Y TRANSFORMACIÓN DEL RÉGIMEN JURÍDICO DE LA PROPIEDAD EN CUBA: NOTAS PARA UN ANÁLISIS* [THE OPENING AND TRANSFORMATION OF THE LEGAL REGIME OF PROPERTY IN CUBA: NOTES FOR AN ANALYSIS] (2017) [hereinafter COBAS COBIELLA ET AL., *LA APERTURA Y TRANSFORMACIÓN*].

⁶ Take into account the incorporation in the Cuban Family Code of figures such as assisted filiation and the so-called solidarity pregnancy. See CÓDIGO DE LAS FAMILIAS [FAMILY CODE] art. 117 (Cuba); see also CÓDIGO DE LAS FAMILIAS [FAMILY CODE] art. 130 (Cuba).

⁷ See the interesting work by Pérez Fuentes, where he exposes some of the laws that were dictated in this period of civil law. Gisela María Pérez Fuentes, *El Derecho Civil en Cuba durante los siglos XIX y XX. Valoración de la Parte General (Libro Primero) en el Código Civil de 1987* [Civil Law in Cuba

Code of the Republic and projects prepared by university professors of the time, such as Sánchez Bustamante. These projects did not see the light of day.⁸ This Code remained in force until 1987, when it was repealed. With the change of the regime, the first so-called revolutionary laws were issued and destroyed the existing Cuban legal system.⁹

With the triumph of the Cuban Revolution (“the Revolution”) in January 1959, there was an initial paralysis and repeal of the existing political and legal system. With a stroke of the pen, the existing laws were banished, and the then current legal system collapsed. This did not mean that it was replaced with the coherence and systematicity of another. This is demonstrated by the first revolutionary laws, which had the purpose of nullifying the previous political and legal system. In this sense, the laws and provisions relating to the judicial system, the university degree system, intrastate travel, among many others, stand out in this sense. However, the best-known and most significant measures were those related to confiscation, nationalization related to property rights, and constitutional and fundamental rights.¹⁰ Many of them had retroactive effects, given that they left consolidated rights void, the objective of which was to replace one regime with another, without the guarantees of a democratic system.¹¹ “In the midst of revolutionary disorder, traffic practically disappeared and production came to be cancelled.”¹² On October 14, 1960, the Urban Reform Law was enacted and declared as part of the Fundamental Law, thus granting it constitutional status. Some measures stand out, such as the transfer of the entire fund of rental housing of ownership to its corresponding inhabitants; the former owners were compensated by the State according to the year of construction and the amount of rent for the lost home. Furthermore, the elimination and prohibition of all mortgage liens on urban properties was decreed, the legal institution of rental housing was eliminated, and rentals between individuals were prohibited.

A few weeks after the triumph of the Revolution, the first important laws in the field of housing policy were enacted. These were laws on the cessation

During the 19th and 20th Centuries. Assessment of the General Part (First Book) in the Civil Code of 1987, 16 REVISTA JURÍDICA DEL NOTARIADO [R.J.N.] 377, 378 (1995) (Spain).

⁸ See Vicente Rapa Álvarez, *La codificación del Derecho civil* [The Codification of Civil Law], 11 REVISTA JURÍDICA 82, 82 (1986) (Cuba).

⁹ PROCLAMAS Y LEYES DEL GOBIERNO PROVISIONAL DE LA REVOLUCIÓN [PROCLAMATIONS AND LAWS OF THE PROVISIONAL GOVERNMENT OF THE REVOLUTION] (3d ed. 1959) (Cuba).

¹⁰ In the same sense as the former socialist countries.

¹¹ See PROCLAMAS Y LEYES, *supra* note 9.

¹² Although this author refers to the former USSR, the phrase is perfect for the first Cuban revolutionary stage. See Arturo Gallardo Rueda, *El pasado inmediato del Derecho civil* [The Immediate Past of Civil Law], 3 ANUARIO DE DERECHO CIVIL [A.D.C.] 657, 658 (1950) (Spain).

of eviction proceedings and eviction demands,¹³ on maximum prices and the forced sale of urban buildable land to combat speculation,¹⁴ and the long-awaited, though already announced in 1953, law on rent reductions, which reduced the rents of urban properties from thirty percent to fifty percent.¹⁵

This gives way to a period that is preceded by the promulgation of the 1976 Constitution—which in no way resembles the Cuban Constitution of 1940—accompanied by the legislative approval of laws such as the Law of the Organization of the Central Administration of the State, the Electoral Law, the Law of Civil Administrative and Labor Procedure, the Law of Criminal Procedure, and the Penal Code of 1979, following in the footsteps of the countries of Eastern Europe.¹⁶ The Cuban Constitution 1976 was more of a political program than a guiding norm. However, it served as a precedent for subsequent legislative development. In this sense, the evolution of socialist countries or socialism under construction continued, with the prevalence of state property,¹⁷ followed by the residual recognition of other forms of property.¹⁸ The 1992 Constitution that reformed the 1976

¹³ Ley No. 26, 1 Jan. 1959, P.L.G.P.R., 31 Jan. 1959 (Cuba).

¹⁴ Ley No. 218, 7 Apr. 1959, LEYES DEL GOBIERNO PROVISIONAL DE LA REVOLUCIÓN, [L.G.P.R.], tit. VI, 30 Apr. 1959 (Cuba); Ley No. 691, 23 Dec. 1959, L.G.P.R., tit. XV, 31 Dec. 1959 (Cuba); Ley No. 892, 14 Oct. 1960, L.G.P.R., tit. XXV, 31 Oct. 1960 (Cuba).

¹⁵ Ley No. 135, 10 Mar. 1959, L.G.P.R., tit. V, 31 Mar. 1959 (Cuba).

¹⁶ Gisela María Pérez Fuentes, *Instituciones del Derecho Civil Cubano. Antecedentes y actualidad. Un punto de partida para el comienzo del siglo* [Institutions of Cuban Civil Law. Background and Current Events. A Starting Point for the Beginning of the Century], 655 REVISTA CRÍTICA DE DERECHO INMOBILIARIO 2335 (1999) (Spain).

¹⁷ See CONSTITUCIÓN CUBANO [CUBAN CONST.] (1976) art. 14 (“In the Republic of Cuba, the system of economy based on socialist ownership of the means of production by all the people prevails, and the suppression of exploitation of man by man. Also in effect is the principle of socialist distribution: ‘from each according to his ability, to each according to his needs.’ The law stipulates the regulations which guarantee the effective fulfillment of this principle.”).

¹⁸ See *id.* art. 19 (“The State recognizes the ownership by small farmers of land that legally belongs to them, and of any other real estate, landed property and moveable properties that they may need for the operation in which they are engaged, in conformity with what the law establishes. . . . It is prohibited to engage in leasing, sharecropping, mortgage loans, and any act entailing a lien or assignment to private persons of the rights emanating from the small farmers’ ownership of their land. The State supports the individual production of small farmers who contribute to the national economy.”); *id.* art. 20 (“Small farmers have the right to become associated with one another, in the manner and with the requirements that the law establishes, both for purposes of agricultural-livestock production and for the procurement of State loans and services.”); *id.* art. 21 (“Personal ownership of the income and savings derived from one’s own work, of the housing that is possessed with a fair ownership title, and of other assets and objects that serve to satisfy the material and cultural needs of the person is guaranteed. Also guaranteed is ownership of the means and instruments of personal or familial work, which may not be used to procure income derived from exploitation of the work of others. The law establishes the amounts of personally owned assets that are seizable.”); *id.* art. 22 (“The State recognizes the ownership by political, mass, and social organizations of the assets allocated to fulfill their objectives.”); *id.* art. 23 (“The State recognizes the ownership of mixed companies, companies and economic associations that are established in accordance with the law.”); *id.* art. 20 (“The organization of agricultural-livestock production cooperatives is authorized in the cases and in the manner established by law. This cooperative ownership is recognized

Constitution also maintained the same line of action, with some reservations.¹⁹ To this, we must add the promulgation of legislation on Urban Reform, and subsequently, almost twenty years later, two General Housing Laws: the first approved in 1984,²⁰ and the second in 1988.²¹ The laws were decreed with little separation in time, and later accompanied by innumerable resolutions, circulars, and lower-ranking regulations that qualified real estate policy and property in Cuba.

In this future, the challenge of designing a Civil Code is not easy. Coding in any case is never easy. In my opinion, the dilemma is centered either on the protection of the person as the center of civil law, as occurs in any merely sensible legal system, or on protecting the rights of the State and all the prerogatives acquired by force and institutionalization. As for the Cuban Constitution of 1976, it marked the subsequent legislative work as a program rather than as a norm of norms. However, the country could not wait any longer, nor could it continue to function in practice or theory, with a foreign Civil Code; it was necessary to approve regulations that were more in line with the system.

Ideology finally won, closing, as Pérez Fuentes points out, a cycle of institutionalization that began in 1976.²² The first draft of the Code was presented in 1979 and subsequently nine more drafts were presented. The final draft was presented in 1986, which was preceded by the reports from the corresponding entities and from the Department of Civil Law of the Law School of the University of Havana. It was finally approved with some modifications, specifically the issue of the inability to succeed by definitive abandonment of the country, which was incorporated despite the reluctance of some Cuban leaders. The Code was approved on July 16, 1987, as Law 59, and came into force 180 days following its publication, specifically on April 13, 1988.

by the State and constitutes an advanced and efficient form of socialist production. Agricultural production cooperatives manage, own, use and dispose of the assets they own, in accordance with the provisions of the law in their regulations.

The land of the cooperatives may not be seized or taxed, and its ownership may be transferred to other cooperatives or to the State, for the reasons and according to the procedure established by law.”).

¹⁹ See CONSTITUCIÓN CUBANO [CUBAN CONST.] (1992) art. 19 (recognizing the property of small farmers, adding that they can only incorporate their lands into agricultural production cooperatives, with prior authorization from the competent state agency and compliance with the legal requirements). This Constitution, proclaimed on February 24, 1976, contains the reforms approved by the National Assembly of People’s Power in the XI Ordinary Period of Sessions of the III legislature held on July 10, 11 and 12, 1992.

²⁰ Ley No. 48, 27 Dec. 1984, Ley General de la Vivienda [General Housing Law], GACETA OFICIAL EXTRAORDINARIA, 24 July 2017 (Cuba).

²¹ Ley No. 65, 23 Dec. 1988, Ley General de la Vivienda [General Housing Law], GACETA OFICIAL EXTRAORDINARIA, 24 July 2017 (Cuba).

²² Fuentes, *supra* note 16, at 2338.

Therefore, we are in the presence of a resurgence of Cuban law.²³ The design of the bases of the Civil Code was based on politics, rather than on legal technique, with a component of the prevailing ideology in Cuba and in the countries of Eastern Europe, from which they took the model both constitutionally²⁴ and in private law,²⁵ creating a private law close to administrative law.²⁶ The Cuban model has used identical categories and principles of socialist law, such as the construction of the theory of legal acts, the expropriation of former owners under revolutionary law, or the limitation of rights for both legal and testamentary heirs regarding the hereditary wealth that could be inherited.²⁷ The regulation of protection for people incapable of working or the indigent (a nomenclature used in the law) stands out, since being in charge of the deceased is possible.²⁸ We could find in this precept a precedent for the figure of specially protected heirs regulated in the Cuban Civil Code.

Likewise, it has developed family law independent of civil law, under the feminist ideal, the assimilation of natural kinship to the legitimate one, the transformation of parental authority giving way to the domain of the family, establishing a body for the protection of minors and the interest of the incapable, limiting activities to the control of the courts.²⁹ Cuban family law also took inspiration from the constitutional protection of the family as “the basic cell of society.”³⁰ Regarding the issue, Mesa Castillo says “that the legislator of the Family Code intended to sweep away the family legal norms of the past, contrary to the principle of equality of both spouses and children born out of wedlock, and replace them with the consistent principles and objectives of our society.”³¹ In this sense, the Civil Code is concise in the

²³ Cobas Cobiella, *supra* note 1, at 428.

²⁴ Keep in mind that in all the former socialist countries, various constitutions were approved, but all based on strengthening power for the people and the centralized economy. *Cf.* KONSTITUTSIJA SSSR (1936) [KONST. SSSR] [USSR CONSTITUTION] (Russ.).

²⁵ Pérez Gallardo, *supra* note 3, at 24.

²⁶ See JULES PATOUILLET ET AL., LES CODES DE LA RUSSIE SOVIÉTIQUE [CODES OF SOVIET RUSSIA] 16 (Jules Patouillet & Raoul Dufour trans., P. Giard ed., 1925) (Fr.).

²⁷ See art. 59 of the Code of Soviet Russia of 1922; see also art. 417 et seq. of the aforementioned normative body.

²⁸ See GRAZHDANSKIY KODEKS RSFSR [GK RSFSR] [Civil Code of the Russian Soviet Federation] art. 418 (USSR).

²⁹ See PATOUILLET, *supra* note 26, at 14. *But see* GK RSFSR art. 26 et seq. (USSR).

³⁰ Thus, the Constitution of the Soviet Union of 1936, under article fourteen, granted the right to determine the principles of legislation concerning marriage and family, a power that these authorities did not previously have. KONST. SSSR art 14; see also Ludwik Kos-Rabcewicz Zubkowski, *El Derecho de Familia en la Unión Soviética* [Family Law in the Soviet Union], 20 DERECHO PUCP 97, 99 (1961), <https://revistas.pucp.edu.pe/index.php/derechopucp/article/view/12979/13577>.

³¹ OLGA MESA CASTILLO, DERECHO DE FAMILIA. MÓDULO 1 [FAMILY LAW. MODULE 1] (1st ed. 1992).

development of the institutions, curtailed by a preponderant administrative law by the existence of a set of special laws that emptied the Civil Code of its content, leaving it as a supplementary norm. Other institutions such as the mortgage fell into disuse, as did the relevance of the Property Registry.³² The precarious freedom over property was a condition for the paralysis of registry registrations, which were only revived due to the need to promote foreign investment. The *mortis causa* succession was practically emptied of content and limited.³³ The censuses and contractual modalities fell into oblivion compared to the relevance of economic law and economic contracting—which was one of the pillars of socialism inherited from the former socialist systems. Therefore, the idea of economic law was predominant against the much more modest and secondary civil law.³⁴ Economic law was therefore considered an autonomous branch of law in some socialist systems, for example in the German Democratic Republic,³⁵ or in the case of Cuba, it is formed as an independent branch of law. The Cuban Civil Code is a replica of the historical moments in which it was promulgated. From the analysis of the preliminary draft of February 1979, it is clear that the entire organization and system is permeated and dominated by the fundamental social principle of harmony between the interests of the community and the interests of the individuals, included in the Constitution of the Republic.³⁶ The inspiration in drafting the articles is found in the community of socialist countries as indicated in the Exposition of the Preliminary Draft of the Cuban Civil Code, among which are the Civil Codes of the former socialist countries of the People's Republic of Poland of 1964, the Czechoslovak Republic of 1964,³⁷ the German Democratic Republic of 1975, the Hungarian People's Republic

³² See Orlando Rivero Valdés, *La tutela jurisdiccional de los derechos reales inmobiliarios en Cuba: discurso jurídico y reajuste socioeconómico* [The Jurisdictional Protection of Real Estate Rights in Cuba: Legal Discourse and Socioeconomic Readjustment], 16 ASCE 249, 249 (2006); Orlando Rivero Valdés & María Elena Cobas Cobiella, *Mundos paralelos: el Registro de la Propiedad de Cuba tras Diez años de experimentos*, in PONENCIAS Y COMUNICACIONES PRESENTADAS AL XVI CONGRESO INTERNACIONAL DE DERECHO REGISTRAL [Parallel Worlds: The Cuban Property Registry After Ten Years of Experiments, in PRESENTATIONS AND COMMUNICATIONS PRESENTED TO THE XVI INTERNATIONAL CONGRESS OF REGISTRATION LAW] 75 (2010) (Spain).

³³ See COBAS COBIELLA, DERECHO DE SUCESIONES, *supra* note 5, at 39.

³⁴ See Gallardo Rueda, *supra* note 12, at 661.

³⁵ The question of the separation of economic law from civil law has not been peaceful. See Manuel B. García Álvarez, *Propiedad individual y "socialismo real"* [Individual Property and "Real Socialism"], 19 REVISTA DE ESTUDIOS POLITICOS 81, 83–84 (1981) (Cuba).

³⁶ Blas Roca Calderío, *Características generales del Anteproyecto de Código Civil* [General Characteristics of the Draft Civil Code], R.C.D., Jan.–Apr. 1982, at 5, 5.

³⁷ On the Civil Code of the Czech Republic, the work of Petr Belovsky is recommended. See Petr Belovsky, *El derecho de propiedad en los Códigos civiles socialistas de Checoslovaquia* [The Right of Property in the Socialist Civil Codes of Czechoslovakia], 22 ANUARIO DE LA FACULTAD DE DERECHO 475, 486 (2004) (Spain) (stating that the Socialist property was maintained in the Civil Code until the democratic reform of the Code after the 1989 revolution).

of 1959, and the Code of the RSFSR of 1964.³⁸ The principles on which the draft is based are based on two main pillars: “those contained in our socialist Constitution, which establishes social ownership over the means and instruments of production and the centralized planning of the National Economy.”³⁹ Principles that have informed the drafting of the Cuban Civil Code of 1987 are maintained in the current reform of the Civil Code.⁴⁰ However, it should be noted that not all the Constitutions of the former socialist countries expressly speak of personal property. Some mention it, and in others there is no distinction between private property and personal property.⁴¹ While the different civil codes, instead of stating the content of personal property, have chosen to mention a series of non-exhaustive assets and use expressions that, according to the doctrine, are elastic enough to provide coverage in the future to other assets,⁴² the contours of personal property in this context were not defined. Furthermore, it must be taken into account that certain goods in the socialist context do not fall within the scope of personal property—such as the ownership of land—in many cases because it is socialized and, in some cases, because it is intended for those who work it.⁴³ In any case, the differences are subtle and do not affect the basis of

³⁸ CÓDIGO CIVIL [CIVIL CODE] (Preliminary Draft Aug. 27, 1979) (Cuba).

³⁹ *Id.*

⁴⁰ Take into account the fundamental features of a socialist society, among which the economic plan, the character of work and the principle of distribution, the class structure in a socialist society, the function and mission of the State, the new socialist culture stand out, and the driving forces of the system, based on the socialist social order. *See* GUSTAVE A. WETTER & WOLFGANG LEONHARD, L'IDÉOLOGIE SOVIÉTIQUE CONTEMPORAINE [CONTEMPORARY SOVIET IDEOLOGY] 528–29 (1965).

⁴¹ Thus, for example, the Bulgarian Constitution of 1947, under article ten, refers to the side of private property, to property acquired through work, whose owners are not only workers and working peasants, but also small businessmen and whose object was constituted not only by goods for personal use but also by certain means of production. KONSTITUTSIYA NA REPUBLIKA BŪLGARIYA [CONSTITUTION OF THE REPUBLIC OF BULGARIA] art. 10. Article thirteen of the Hungarian Constitution of 1949, and article forty-four of the Romanian Constitution of 1948 are written in similar terms. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY, art. 13; CONSTITUȚIA ROMÂNIEI [ROMANIAN CONSTITUTION] (1948), art. 44.

⁴² For example, article ten of the Constitution of the USSR of 1936 regulates that the law protects “[t]he right of citizens to personal ownership of their incomes from work and of their savings, of their dwelling houses and subsidiary household economy, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens.” KONST. SSSR art. 9. According to article 127 of the Czechoslovak Civil Code, the object of personal property is, first of all, income and savings from work and social security, family homes and houses intended for recreation and rest. García Álvarez, *supra* note 35, at 90. PAOLO BISCARETTI DI RUFFIA & GABRIELE CRESPI REGHIZZI, LA COSTITUZIONE SOVIETICA DEL 1977 [THE SOVIET CONSTITUTION OF 1977] (1979).

⁴³ Thus, in some socialist Constitutions, the concept of private property appears. In the Soviet Constitution of 1936, article nine states that along with the socialist economic system—the dominant form in the country’s economy—the law allows small private farms, individual peasants, and artisans. KONST. SSSR art. 9. In article eleven of the Albanian Constitution, it was maintained by saying that the State guarantees property and private initiative. KUSHTETUTA E REPUBLIKËS SË SHQIPËRIË [CONSTITUTION OF THE REPUBLIC OF ALBANIA] art. 11. In the same sense, article ten of the Bulgarian Constitution and Article

ownership and the common regulatory framework. Following Figueroa Yavar, the socialist property system points out, from the approaches of the founders of socialist thought, two fundamental aspects: (1) the collective ownership of the means of production, and (2) the individual ownership of all other movable or immovable property, which are goods for use and consumption. The first is the main and dominant form of property; the second is only secondary in extent and importance.⁴⁴ In this way it has been reflected, I would say, exactly in the text of the Cuban Civil Code. Articles that were immovable in the first version of the Cuban Civil Code of 1987 have remained in the reform of the Civil Code of 2022.

The Civil Code of 1987 established in Article 156 states that “personal property includes goods intended to satisfy the material and spiritual needs of its owner.”⁴⁵ For its part, Article 157 generically establishes the content of personal property, understanding as such income and savings from one’s own work; the home, rest house, vacant lots and other property acquired by any legal title; and the means and instruments of personal or family work.⁴⁶

Article 158 of the Civil Code limits the use of personal property by establishing that they cannot be used to obtain income from the exploitation of another’s work.⁴⁷ These assets can be seized in the amount established by law.

The reformed Civil Code maintains personal property and the identical regulation, except for some nuances, which do not affect the legal nature of the institutions.

Home ownership and succession *mortis causa* have not escaped the influence of socialist legislation either. Housing is understood as a good of necessity and not of profit, hence the property can only be held over two homes, one permanent and the other for summer. The succession *mortis*

eighteen of the Yugoslav Constitution permit the same. KONSTITUTSIYA NA REPUBLIKA BŬLGARIYA [CONSTITUTION OF THE REPUBLIC OF BULGARIA] art 10; USTAV FEDERATIVNE NARODNE REPUBLIKE JUGOSLAVIJE [CONSTITUTION OF THE FEDERATIVE PEOPLE’S REPUBLIC OF YUGOSLAVIA] art. 18; García Álvarez, *supra* note 35, at 95. Cuban law also followed this trend. When the First Agrarian Reform Law was passed, which was signed on May 17, 1959, the Agrarian Above Reform Law confiscated all properties of more than 400 hectares in area and handed over the land to numerous peasants. Later, the Second Law of Agrarian Reform of Cuba, issued in 1963, completed the cycle of land confiscation in Cuba.

⁴⁴ Aida Figueroa Yavar, *El Régimen de Propiedad en la Unión de Repúblicas Socialistas Soviéticas (Última Parte)* [*The Property Regime in the Union of Soviet Socialist Republics (Final Part)*], 3 REVISTA DE DERECHO PÚBLICO 27 (1965) (Chile). Thus, article four of the Soviet Constitution of 1936 establishes that the economic basis of the USSR is, “[T]he socialist system of economy and the socialist ownership of the means and instruments of production, firmly established as a result of the abolition of the capitalist system of economy, the abrogation of private ownership of the means and instruments of production and the abolition of the exploitation of man by man. . . .”

⁴⁵ CÓDIGO CIVIL [Civil Code] art. 156 (1987) (Cuba).

⁴⁶ *Id.* art. 157.

⁴⁷ *Id.* art. 158.

causa limited for almost five decades, in favor of the occupants against the heirs. This, of course, is the inheritance not only of the former socialist countries, but also a fruit of the ideas that inspired the Cuban Revolution, immovable and perpetual.⁴⁸

The reform of the Civil Code has maintained the forms of ownership regulated in Article 136 and follows the Civil Code, in accordance with the provisions of the 1987 Civil Code.⁴⁹ However, the 2019 Cuban Constitution incorporated private property within the forms of property in Article 22, stating that it is that which is exercised over certain means of production by Cuban, foreign natural, or legal persons, with a complementary role in the economy.⁵⁰ Regarding personal property, it is maintained as that which is exercised over goods that, without constituting means of production, contribute to the satisfaction of the material and spiritual needs of their owner.⁵¹ With regard to the closest source of influence in the current construction of Cuban civil law, which is Spanish civil law, and before delving into similarities or differences, it is important to point out as a starting point that the Cuban Civil Code was born under the influence of a Marxist and socialist ideology, but with the influence of two, very opposite, legal systems. On this basis, the systematics of Cuban civil law can be reconstructed in a certain way.

It must be noted that there are important differences between Cuban legal constructions and those of other Latin American countries because, although they have all drawn from the sources of Spanish law, for historical reasons, if we study Cuban civil law in depth both in terms of the Civil Code as well as in the special laws that surround it, this statement cannot fail to be appreciated. This is why legal categories such as the right to use a roof terrace, to exchange donations, and to work for oneself appear in the Cuban conceptual and legislative framework— they are essential goods for the continuation of domestic life, a frozen zone among many rights that have been forged in the heat of the needs of an underground economy and a peculiar social situation. Figures that are typical of Cuban legal practice, and elevated to legal categories, are incorporated into the norm.⁵²

It is not possible to ignore the existence of a popular right (born of necessity) versus a right of jurists; the problem is the reconciliation between the growing need for the democratization of law and the need to maintain legal rules with precision. Reality and custom make everyday events the

⁴⁸ Cobas Cobiella, *supra* note 1, at 430–32.

⁴⁹ See CÓDIGO CIVIL [Civil Code] art. 142 (1987) (Cuba).

⁵⁰ CONSTITUCIÓN CUBANO [CUBAN CONST.] (2019) art 22.

⁵¹ See CÓDIGO CIVIL [CIVIL CODE] art. 22(g) (2019) (Cuba).

⁵² See Cobas Cobiella, *supra* note 1, at 430–32.

norm. The challenge is to transform them into legal categories.⁵³ Now, analyzing the work of some author, it can be said “that there is a family resemblance between Western law and Latin American law.”⁵⁴ Keep in mind that in general, the Latin American civil codes are ordered and structured following, in many cases, what is provided for in the Spanish Civil Code, not only in terms of the disciplines that make it up but also in the institutions and their constructions, as well. The same rules are observed, including the basic principles that govern civil law in general, such as good faith, the prohibition of abuse of rights, unjust enrichment, or the doctrine of proper acts. Likewise, we work with the legal relationship, the theory of the act and the legal business and subjective rights, as well as prescription and expiration, among others.

However, it should be pointed out that despite the direct influence of Spanish law and the law of the former socialist countries, the Cuban Civil Code, as well as the Family Code, responds to a reality entirely different from the Spanish reality, despite the attempts of the current Cuban School of Law to bring the Code in line with Spanish civil law. I could even venture to point out that in the treatment of some institutions, as well as the regulation, it is much more advanced than others regulated in Spanish law and in Latin American law, more contemporary as is the case, for example, with the figure of heirs specially protected under inheritance law. As has been said previously, the systematics of the Civil Code—whose organized structure is in four books like the Savigny Plan—is much more accurate.⁵⁵ However, in the desire to bring Cuban law closer to other figures, there is an insistence on dealing with institutions from the Spanish or Italian perspective,⁵⁶ ignoring the fact that Cuba has its own traditions, experiences, shortcomings, and needs.

The similarity that exists between many of the institutions is, in many cases, more of form or nomenclature than of content, because they respond to a diametrically opposed system and a different ideology. In addition, there is the situation of survival, which sometimes contradicts not only the legal nature of the institutions, but also the traditional system of categories. The issues that affect many of its institutions are brief, others have been suppressed, and the special laws have revealed the supplementary nature of

⁵³ See PATOUILLET ET AL., *supra* note 26, at 9–10.

⁵⁴ JORGE L. ESQUIROL, UNIVERSIDAD DE LOS ANDES-FACULTAD DE DERECHO, LAS FICCIONES DEL DERECHO LATINOAMERICANO [The Fictions of Latin American Law] 39 (Siglo del Hombre Editores ed., 2014).

⁵⁵ See COBAS COBIELLA, DERECHO DE SUCESIONES, *supra* note 5, at 116.

⁵⁶ Some authors speak of continuity. See, e.g., Gabriel García Cantero, *Significado del Código Civil Cubano de 1987 en el Proceso de Codificación* [Meaning of the Cuban Civil Code of 1987 in the Codification Process], 26 R.C.D. 195 (1998). Debatable approach, despite the fact that Spanish law is widespread and rooted within Cuban civil law, but more out of passion than reason.

the Civil Code, which has been taken advantage of in order to resolve the practical difficulties of the exercise of law and the political ups and downs.

That said, and notwithstanding the preceding assessments, there is a close connection between both legal systems under the premise of substantive differences. However, if we analyze the Cuban Civil Code, we find that some precepts have been reproduced from Spanish law and others have been born from the construction of their own law.

Pointing out the issue, Professor García Cantero—who is one of the few foreign voices who has written about the Cuban Civil Code—tells us: “[g]iven its Hispanic imprint, it constitutes an unprecedented example of a Hispano-Marxist Civil Code[,]” which preserves quite an important number of rules from the Spanish Civil Code, through which it continues to maintain a relationship with the Latin codes, with respect to which it has not definitively broken all ties.⁵⁷

There are several reasons, and although it is a compelling reason that the Spanish Civil Code was in force in Cuba until 1987, as has been pointed out, it is also the fact that both belong to the civil law system, as systems of codified laws, which find their origin in Roman law, whose significance in the origin of institutions is still present.

With regard to some distinctions that must be observed, there is a first and essential one, that we are in the presence of a Marxist Code,⁵⁸ as stated in Article 2 of the Civil Code where it regulates that “the provisions of this Code are interpreted and apply in accordance with the political, social and economic foundations of the Cuban State expressed in the Constitution of the Republic.”⁵⁹

Therefore, the difference between Cuban civil law and Spanish civil law could be summarized by pointing out that they are distinguished by ideology. But this would be a biased analysis without delving into some issues which deserve to be pointed out.

The essential distinction is the system that covers them. Spain is a democratic state, governed by law and welfare, with a market economy, whose political form is a parliamentary monarchy. The government system is based on national sovereignty, the division of powers and a parliamentary system, and whose national sovereignty corresponds to the Spanish people, that is, all citizens are holders of public power and from it derive legislative, executive, and judicial power. The Spanish Constitution of 1978⁶⁰ is the norm

⁵⁷ *Id.* at 203.

⁵⁸ *See id.* at 195.

⁵⁹ CÓDIGO CIVIL [Civil Code] art. 2 (1987) (Cuba).

⁶⁰ CONSTITUCIÓN ESPAÑOLA [C.E.] [SPANISH CONSTITUTION], B.O.E. n. 311, Dec. 29, 1978 (Spain).

of norms, which establishes the institutional organization of Spain and heads the legal system.

Cuban civil law is based on a different ideology based on socialism and, according to the Constitution in Article 1, it is a socialist State of workers, independent and sovereign, organized with everyone and for the good of all, as a unitary and democratic republic for the enjoyment of political freedom, social justice, individual and collective well-being, and human solidarity.⁶¹ Article 3, for its part, places sovereignty in the people, from whom all the power of the State emanates.⁶² This power is exercised directly or through the Assemblies of Popular Power and other State bodies derived from them, in the manner and according to the norms established by the Constitution and the laws, characterized as noted above by the existence of a single and centralized power.

This is the reason why—under the belief that commerce is not necessary in socialism, a right that is too prolific—various institutions and figures of civil law disappeared from the norm. A right too capitalist for the State and not suitable for a model of economy based on state planning in a centralized market, where private enterprise at a greater or lesser level was confiscated, expropriated, and nationalized starting in 1959 and the following years.⁶³

Commercial traffic, legal traffic, and figures—such as mortgage, bankruptcy, and all those that represented commercial law and civil law—were put aside, and the development of private initiative, real rights, and the action of hiring remained minimally regulated. Subsequently, new spaces have been developed in order to contract, the Property Registry and commercial law.⁶⁴ Keep in mind that the Cuban Revolution had to survive and to do so, it had to adapt.

The autonomy of the will, as a guiding principle of civil law, became a myth for decades until the approval of an important reform that made possible the exercise of certain rights that were not only prohibited, but also persecuted, such as the right to buy and sell real estate. Likewise, the transfer of ownership of motor vehicles by sale and donation between natural persons was reformed.⁶⁵

⁶¹ *Id.* art. 1.

⁶² *Id.*

⁶³ See Rolando Anillo, *Reclamaciones por Propiedades Expropiadas en Cuba: Informe de Recomendaciones Legales* [Claims for Expropriated Properties in Cuba: Legal Recommendations Report], 24 CUBA TRANSITION 103, 103 (2014).

⁶⁴ See Cobas Cobiella, *supra* note 1, at 431–32, 436.

⁶⁵ Decreto-Ley Número 288 is an unprecedented and radical legislative change in housing that repealed, with a single stroke, the main limitations on property law in relation to personal property. See Decreto Ministerio de Justicia, Consejo de Estado: Decreto-Ley No. 288 [State Counsel: Decree Law Number 288], 35 GACETA OFICIAL EXTRAORDINARIA 359, 359 (2011) (Cuba). Regarding vehicles, see Ministerio de Justicia, *Consejo de Ministros: Decreto No. 292* [Minister Counsel: Decree No. 292], 31

The structure of the Cuban Civil Code differs from the organization and systematics of Spanish civil law. Keep in mind that Spanish civil law follows the Roman-French Plan, while the Cuban Civil Code follows the footsteps of the Savigny Plan, hence it is structured in four books.⁶⁶

Initially, the Cuban Civil Code contained a Preliminary Title that reproduced to a certain extent the one that, with the same name, was included in the repealed Spanish Civil Code. This title refers to the legal norms, their validity, and the essential principles of Private International Law.⁶⁷

The First Book is dedicated to the legal relationship. “The structure of the new Code allows us to study, on the basis of that essential category, the entire content of civil law.”⁶⁸ The Second Book is dedicated to property law and other rights over property. The Third Book itself is dedicated to the law of obligations and contracts, and the Fourth Book deals with the law of inheritance. It consists of special provisions, transitional provisions, and final provisions.⁶⁹

It is notable that inheritance law occupies the Fourth Book of the Civil Code, it is independent from family law, which is a constant cry from scholars of the subject.⁷⁰ Differentiating itself from Spanish civil law, since the Spanish Civil Code regulates successions within Book III, under the heading “On the Different Ways of Acquiring Ownership,” it follows the Roman-French Plan or the traditional plan where the succession *mortis causa* is collected in the ways of acquiring property, in accordance with Article 609.⁷¹

An important element to highlight that differentiates both legal systems is the question of nationality. In Spanish law, it is considered a civil status and is regulated within the Spanish Civil Code.⁷² However, in the Cuban Civil Code, nationality and the different acquisition systems are not regulated

GACETA OFICIAL EXTRAORDINARIA, 331 (2011) (Cuba); and María Elena Cobas Cobiella, *Cuba y el marco regulatorio actual de la propiedad inmobiliaria. Ideas básicas* [Cuba and the Current Regulatory Framework of Real Estate Property Basic Ideas], 2 ACTUALIDAD JURÍDICA IBEROAMERICANA 587, 587 (2015).

⁶⁶ CÓDIGO CIVIL [Civil Code] (1987) (Cuba).

⁶⁷ See Vicente Rapa Álvarez, *La Relación Jurídica. Categoría Esencial en el Nuevo Código Civil* [The Legal Relationship. Essential Category in the New Civil Code], 19 LEGAL MAG. DEP'T DISSEMINATION MINISTRY JUST. REPUBLIC CUBA 112 (1988).

⁶⁸ See *id.*

⁶⁹ CÓDIGO CIVIL [Civil Code] (1987) (Cuba).

⁷⁰ Keep in mind that in the German or Savigny Plan, inheritance law is a subject of the four major treaties that make up the subject and is located as the last subject because succession relations “are the most complex of all civil relations, and the Law of succession presupposes knowledge of Property Law and Family Law, on which it is based and which serves as a complement, or in the immediate place of Personal and Family Law, preceding Property and Obligations.” See JUAN JOSÉ RIVAS MARTINEZ, 1 INHERITANCE LAW, COMMON AND FORAL 14–15 (Dykinson ed., 4th ed. 2009).

⁷¹ See CÓDIGO CIVIL [Civil Code] art. 609 (Spain).

⁷² *Id.* art. 17.

within the regulatory text, but the Cuban Constitution of 2019, unlike the previous ones (i.e., 1992, 1976), has admitted dual citizenship, which was not possible before.⁷³

Added to this is that, following the path of socialist countries, family law has been separated from the Civil Code and the family legal relationship has been codified.⁷⁴

The influence has not only been limited to the field of civil law but also to family law, especially following the enactment of the Family Code in Cuba. In this sense, it can be observed that some norms have followed the current Spanish family law, such as marriage between persons of the same sex.⁷⁵

Other countries have also recognized this right, both Latin American and European countries.⁷⁶

Other issues that cannot be overlooked in light of the publication of the Cuban Family Code and that indicate the influence of the most advanced Spanish regulations are found in the recognition of support measures for people with disabilities, which, with certain variations, have been taken from Law 8/2021, of June 2 (which reforms civil and procedural legislation to support people with disabilities in the exercise of their legal capacity). It is one of the most groundbreaking legislative novelties in recent years in Spain,

⁷³ See CONSTITUCIÓN CUBANO [CUBAN CONST.] (2019) art. 33 (translated by Maria del Carmen Gress).

⁷⁴ See CÓDIGO DE LAS FAMILIAS [FAMILY CODE] (1975) (Cuba); Ley No. 156/2022, 8 Aug. 2022, GACETA OFICIAL ORDINARIA [G.O.O.], tit. CXX, 17 Aug. 2022 (Cuba).

⁷⁵ Law 13/2005 (B.O.E. 2005, 157) (Spain).

⁷⁶ In the Spanish-speaking world, several countries have followed Spain's actions. In 2010, the Argentine Republic legalized weddings between people of the same sex. Matrimonio Civil [Civil Marriage], Law No. 26618, July 21, 2010 (Arg.) (modifying the Argentine Civil Code). Uruguay approved an identical measure in 2013, called Matrimonio Igualitario, which modified several articles of the Civil Code. Matrimonio Igualitario [Equal Marriage], Law No. 19075, May 9, 2013 (Uru.). Furthermore, in Ecuador, marriage between people of the same sex is legal and it was recognized through constitutional control on June 12, 2019, by ruling of the Constitutional Court. Corte Constitucional [Constitutional Court], June 12, 2019, Sentencia No. 11-18-CN (Ecuador). Like Ecuador, Colombia achieved legalization based on a judicial decision in June 2013, where same-sex couples in Colombia were empowered by a ruling of the Constitutional Court. Corte Constitucional [C.C.] [Constitutional Court], 2011, Sentencia C-577/11, GACETA DE LA CORTE CONSTITUCIONAL [G.C.C.] (Colom.). Some European countries have also followed this trend, thus in 2010, Portugal legalized same-sex marriage, making it the eighth country in the world to approve equal marriage. Lei n. 9/2010 de 31 de maio [Act no. 9/2010 of May 31], art. 1 (Port.) (establishing that the law allows same-sex marriage). France is the ninth country on the European continent to recognize homosexual marriage. Loi 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe [Law 2013-404 of May 17, 2013 opening marriage to same-sex couples], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], May 17, 2013. Article one of the Law opening marriage to same-sex couples modifies Article 143 of the Civil Code to establish that marriage is available to same-sex couples. The law also applies in the overseas territories of French Polynesia, Guadeloupe, and Martinique. Esther S. Sieteiglesias, *¿En qué países está legalizado el matrimonio homosexual?* [In Which Countries is Gay Marriage Legalized?], LA RAZÓN, Aug. 21, 2020.

and constitutes a challenge regarding the most classic categories of civil law. With an adaptation to the view of the rights of people with disabilities, classic categories of civil law have been suppressed and passed from a system of protecting the person to a system of autonomy of the person with disabilities in their decision making.⁷⁷

The Cuban Civil Code modified Article 29.1, establishing that every natural person has the legal capacity to enjoy and exercise their right, except for the exceptions established by law. Article 29.2 establishes that people with disabilities have the capacity to exercise under equal conditions in all aspects of life, just as an example.

Various examples of the influence of Spanish law on Cuban civil law can also be found in other norms of the Family Code and have changed the classic paradigm of the Family Code of February 14, 1975,⁷⁸ such as the inclusion of the regime of separation of property, compared to the only regime recognized by the previous Family Code, which was community of property.⁷⁹

Likewise, the possibility of choosing the order of surnames, which is recognized by the Family Code,⁸⁰ finds a precedent in the provisions of Articles 49 et seq. of Law 20/2011, of July 21, on the Spanish Civil Registry.⁸¹

The rights of adopted persons include the right to know their biological identity and their origin in accordance with Article 91 of the Family Code. It is a legislative novelty that has a precedent in Spanish law.⁸²

III. FINAL CONSIDERATIONS

The existence of a Cuban civil law is not questionable from my point of view. We are in the presence of an indigenous, national legal system. The construction of the Cuban Civil Code is based first on its categories born of

⁷⁷ Law 8/2021 (B.O.E. 2021, 132) (Spain). The new regulations, as the doctrine explains, not only exclude the possibility of limiting the capacity of people, but above all, it clarifies that the protection measures are intended to allow the development of personality, respect, and dignity of the person and take into account compliance with certain principles: necessity and proportionality. See Vincenzo Barba, *Capacidad para otorgar testamento, legitimarios y protección de la persona con discapacidad* [Ability to Grant a Will, Legitimacies and Protection of the Person with a Disability] 31 DERECHO DE FAMILIA 1, 3–4 (2021).

⁷⁸ CÓDIGO DE LAS FAMILIAS [FAMILY CODE] (1975) (Cuba).

⁷⁹ See *id.* art. 29; *id.* art. 263 (2022) (Cuba) (regulating the property separation regime); *id.* art. 267 (regulating the so-called mixed regime, which allows combining both types of marital regime, that of community marriage and separation).

⁸⁰ See *id.* art. 51 (2022) (Cuba).

⁸¹ See Law 20/2011 (B.O.E. 2011, 175) (Spain).

⁸² See CÓDIGO CIVIL [CIVIL CODE] art. 180(5) (Spain).

the Cuban national reality and the socialist principles that inform the Republic of Cuba. Second, it is based on a set of figures inherited from the civil law of the former socialist countries and from the Spanish civil law, either from the Civil Code extended to Cuba in 1889 or from the current Spanish civil law, which is more European due to the integration of Spain into the European Union. All of this has formed an amalgam of institutions that, in addition to the influence of foreign systems, also have figures of a Roman nature and others of a German nature, in the same way that happens in Spanish civil law.

The absence of legal certainty should not be confused with the lack of a legal system that has been outlined and built with its own categories, which respond to a political, social, and economic environment different from the preceding systems, with certain influence and closeness, certainly, but more out of affection than reason and legal logic in some cases. Other norms, for their part, adapt to the principles and new constructions that inform a more modern society, with a touch of contemporaneity, such as the best interest of the minor, or the treatment of families versus the family.

But it is clear, and it is convenient to point out that legal certainty is one of the bastions of a rule of law, a principle that is not the strong point of Cuban law in general.

The Cuban Civil Code does not constitute a legislative and technical model. The value lies in the fact that it systematizes the principles that inform Cuban legal relations in civil law, at a given stage. Special legislations have been relevant because they have had to deal with developing the norm and its application since the content of the general laws or codes is insufficient for the construction of the categories of civil law that are usually complex. On the other hand, the country's own dynamics place the Cuban legal system at the antipodes of other systems, which is why, when I analyze issues related to Cuban law, I insist that it is very complex to understand, analyze, and interpret outside the context of Cuba.

In any case and in reference to Cuban law, "The Ides of March have already arrived," to which the seer compassionately replied: "Yes, but they are not finished yet." Later Shakespeare himself would make famous the phrase, "Beware of the Ides of March!"