

The consequences of constitutional illegalities and the commitment with the law, or, we got what we asked for.

The first thing that needs to be done in a transition from totalitarianism to democracy is to establish a state based on human rights, where the constitution and the laws govern.¹

Many Cubans participated in the revolutionary process. One could suggest that it was the majority. We do not say this in the spirit of offending the minorities, since sometimes one should govern with the minority, as when it is a question of correcting an injustice. Or, when individual human rights established in the constitution (social, economic and political) are violated.

When we say that many participated in the process, we mean that many consequential, worthy, and decent Cubans, were opposed to Batista's take over of power by force on March 10, 1952. Many took to the task of combating him from the very beginning of what was clearly a dictatorship.

There was something elegant and consequential in that fight against a dictatorship. It showed political savvy, but more importantly, it demonstrated the intuition and political will of many Cubans to continue the process of constitutional legality begun in 1940, and this strange phenomenon in Latin America in those years, took place in Cuba right after the coup d'état. Some expressed their opposition directly to Batista, who did not want to listen.

It does not matter how right Batista's political plans were. The arrogance of his imposition by force and his contempt of the laws that conform government and public debate, were the worse political crimes that any citizen could carry out against constitutional legality. And many saw it for what it was.

Batista's first mistake was to topple a democratically elected president. In addition, and making it somewhat worse, he carried out his actions against the President a short time before the elections in which he was a candidate took place. But, what is more significant even, and worse for his political future, the polls showed he was losing.

We do not go into these details as an apology or justification, but to show how his ambition for power was stronger than his political conscience or civic duty. It is true, however, that many of Batista's friends saw it for what it was and told him so: Fulgencio Batista's coup in 1952 broke the constitutional process that had been initiated in Cuba in 1940. Once the constitutional process was interrupted, a legal vacuum was created which opened up the political process, more than to debate and to reason; to violence, to opportunism and to demagoguery.

The restitution of the 1940 Constitution and the re directing of the political process back on the road to legality was so important to Cubans, that Fidel Castro perfidiously included it as a main topic in his 1953 speech on his own defense, [History will acquit me], "La historia me absolverá", where he spelled out his political program. He was liberated after the attack he staged against the Moncada Barracks and against Batista, July

26, 1953. Ironically, he was exonerated because the 1940 Constitution allowed such actions against an illegally established government.

The 1940 Constitution was never repealed, but as a fatal consequence of a coup that aborted the constitutional process, it was cynically replaced by Fidel Castro years later. In 1976 his government decreed a socialist constitution, after sweeping away the established institutions of the republic, and establishing a ruthless Marxist-Leninist dictatorship.

¹ Quote by Professor Emeritus Vojtech Cegl, Judge of the Constitutional Court of the Czech Republic at the Institute for Cuban and Cuban-American Studies, University of Miami, October 18, 2005.

Luis Conte Agüero. *Los dos rostros de Fidel Castro*. [The two faces of Fidel Castro], Mexico, 1960.

Mario Gómez-Zimmerman. *Power to the West, a Study in Nomocracy*. 1997.

Hugh Thomas. *Cuba, The Pursuit of Freedom*, 1971.