

# Religious Freedom, Brujería and Child Murder in Cuba, 1898-1933

Recibido: febrero de 2017 | Aprobado: Marzo 2017

## Abstract

This essay assesses whether the principle of religious freedom worked as a deterrent to state repression against practitioners of Afro-Cuban religions between 1898 and 1933. Focusing on the debates held at the constitutional convention, it argues that the drafters of the Constitution of 1901 proclaimed absolute freedom of religious conscience, but allowed for limitations to and for the criminalization of religious practices in the name of Christian morality and public order. The fact that the Penal Code of 1879 did not list a crime of brujería was not a legal obstacle to the prosecution of alleged brujos. Re-examining the criminal case against Domingo Bocourt, this essay argues that racist and religious stereotypes about brujería served to single out Afro-Cuban citizens as criminal suspects and to explain their alleged criminal motivations. However, brujería per se was an insufficient ground for a murder conviction. Absent evidence of an actual crime, courts acquitted brujos. Finally, this essay questions the typicality of Bocourt's case in the repression against brujos and argues that rather than seeking to

## Orlando Rivero-Valdés

Es candidato a Ph.D. y Master of Arts en Historia (2011) del Departamento de Historia de la Universidad de Pittsburgh. Posee también un pregrado en Derecho de la Universidad de la Habana (1993) y una Maestría en Derecho de University of Southern California (2008). Actualmente, a partir de los conflictos sobre las prácticas religiosas afrocubanas, viene adelantando una historia legal, social e intelectual en torno a la libertad religiosa en Cuba entre 1878 and 1958. Entre sus publicaciones se destacan, "La tutela jurisdiccional de los derechos reales inmobiliarios en Cuba: Discurso jurídico y reajuste socioeconómico", en: *Cuba in Transition* 16 (2006), 249-267.

## *Libertad Religiosa, Brujería y Asesinato de Niños en Cuba, 1898-1933*

## Resumen

Este ensayo evalúa si el principio de la libertad religiosa funcionó como elemento para impedir la represión estatal contra los practicantes de las religiones afro-cubanas entre 1898 y 1933. Centrándose en los debates de la Convención Constituyente, argumenta que los redactores de la Constitución de 1901, aunque proclamaron la libertad absoluta de conciencia religiosa, permitieron las limitaciones de las prácticas religiosas y su criminalización en nombre de la moral cristiana y el orden público. El hecho de que el Código Penal de 1879 no tipificara el delito de brujería, no era obstáculo legal para el enjuiciamiento de presuntos brujos. Reexaminando la causa criminal contra Domingo Bocourt, sostiene que los estereotipos racistas y religiosos sobre la brujería sirvieron para señalar a los ciudadanos afrocubanos como presuntos delincuentes y explicar sus supuestas motivaciones criminales. Sin embargo, la brujería per se no era un fundamento suficiente para sustentar una condena por asesinato. Ante la falta de pruebas de un crimen real, los tribunales absolvían a los brujos. Los reclamos de libertad religiosa prácticamente no

the validate of a pre-established prosecutorial model to convict so-called negros brujos for child murder, courts convicted religious practitioners when they found evidence of violent crimes. Although practitioners of Afro-Cuban and other popular religious practices often claimed protection for their religious and of associative rights in criminal cases, were acquitted, and therefore contributed effectively to the legal and social construction of those constitutional rights, similar claims had no impact on the defense of religious practitioners accused of murder and other violent crimes.

#### Keywords

Afro-Cuban religions, religious freedom, brujería, child murder, racism, Cuban Republic.

tuvieron impacto alguno en la defensa de los acusados como brujos. Por último, este ensayo cuestiona la tipicidad del caso de Bocourt en la represión contra los brujos, y sostiene que los tribunales, más que buscar la validación de un modelo acusatorio pre-establecido para condenar negros brujos por asesinatos de niños, castigaron a los creyentes cuando hallaron pruebas de crímenes violentos. Los practicantes de religiones afrocubanas y de otras religiones populares con frecuencia demandaron protección para sus derechos religiosos y asociativos en causas penales y lograron ser absueltos, contribuyendo de manera efectiva a la construcción legal y social de aquellos derechos constitucionales. Sin embargo, similares demandas no tuvieron impacto en la defensa de los creyentes acusados de asesinatos y otros crímenes violentos.

#### Palabras Clave

Religiones afro-cubanas, libertad religiosa, brujería, asesinato de niños, racismo, República Cubana.

---

## Introduction

On February 13, 1906, the Governor of Havana and General of the Liberation Army, Emilio Núñez, received an anonymous letter. Someone complained that in Guanabacoa, a town on the outskirts of the Cuban capital, *brujería* was progressing extraordinarily, and warned Núñez that in the house of María Julia Torres, a black woman and ‘the highest witch of that town,’ a two-year-old white girl would be sacrificed that afternoon.<sup>1</sup> According to the anonymous

---

<sup>1</sup> As it is widely documented in the scholarship, racial categories such as *moreno*, *pardo*, or *mestizo*, and expressions such as people of color and race of color in used in late colonial Cuba, persisted through the republican period. Newspapers and court records frequently categorized men and women of African descent in those terms. Except when citing sources that used those categories, I use the term Afro-Cubans to refer to the Cuban population of African descent.

message, the witch planned to use the girl’s blood for healing purposes. Dispatched by Governor Núñez, two agents of the Special Police showed up at María Julia’s residence. With her consent, they looked for the white girl. The agents found altars with images of Catholic saints, Spanish and Cuban flags, clay pots containing flowers and herbs, and ‘...roosters, black cats, turtles, and goats...’ The press identified these objects as ‘...those dedicated to the practices celebrated by *ñáñigos*...’ As they collected them, Lorenza

---

Occasionally, practitioners of Afro-Cuban religions self-identified in court cases, public documents, and newspapers as Lucumí, Congo, Arará, Gangá, or Carabalí. Those identifiers served to draw ethnic and religious boundaries among the Afro-Cuban population and to take distance from religious outsiders who considered all beliefs and ritual practices of African origin as primitive, backward, and indistinguishable. Whenever the believers, their critics, and prosecutors made ethnic or religious distinctions, I reflect them in this article.

Quintana and a white girl arrived. Questioned by the police, Quintana explained that the girl was an orphan whom she cared for and that they came to visit Torres to find a cure for an illness. The agents put Torres and Quintana under arrest.<sup>2</sup>

Municipal government officials publicly disputed the legality of the arrest. Newspaper *La Discusión* reported that the Special Police had faced the ‘passive but persistent and tenacious resistance’ of local authorities. The Chief of Police of Guanabacoa and some of his subordinates complained that Torres’s religious practices ‘should not be prohibited because each one participated in those beliefs of his own choice.’ Matters of jurisdictional authority complicated the arrest also. The Special Police requested numerous times that the Judge of Instruction, José María Vélez, who was required by law to oversee criminal cases in the area, appear at Julia’s house. Judge Vélez refused. Instead, he ordered that both detainees were brought before him for questioning and that all objects seized at Julia’s home were handed over to the Police of Guanabacoa.<sup>3</sup> *La Discusión* accused Guanabacoa municipal officials of connivance with ‘the savage practices engaged in by brujos in Cuba’ and demanded the intervention of the national government.<sup>4</sup> Arrests ensued in other areas of Havana following orders of the Secretary of Government. Like the authorities and residents

of Guanabacoa, several detainees protested that practicing ‘their African cult’ was no crime.<sup>5</sup>

María Julia Torres’s arrest occurred at a difficult juncture for practitioners of Afro-Cuban religions. In January 1906, two black men, Domingo Bocourt, who claimed to be a Lucumí born in Africa, and Víctor Molina, a Cuban, were executed for allegedly having murdered a white girl for *brujería* rituals.<sup>6</sup> Torres stood criminal trial for the unlicensed practice of a profession such as medicine and for attempted rape of a minor. She faced prison sentences of up to seventeen years.<sup>7</sup> Torres admitted to worshipping ‘the saints of the Lucumí nation,’ claimed that her practices were not *brujería*, and argued that she was not a professional healer. Despite the potentially detrimental impact that the case of Domingo Bocourt and the wave of racist accusations against practitioners of Afro-Cuban religions could have had in Torres’s case, the trial court acquitted her.<sup>8</sup>

Criminal cases like María Julia Torres’s constitute the core evidence in a narrative of criminalization and persecution of Afro-Cuban religious believers that has emerged from studies

2 “La brujería en acción. Punible abandono de las autoridades.” *La Discusión*, February 14, 1906, 3. For another versión of this incident see, Rafael Roche Monteagudo, *La Policía y sus misterios en Cuba*, 3ª Edición, Habana, La Moderna Poesía, 1925, pp.186-189.

3 “La brujería en acción. Punible abandono de las autoridades.” *La Discusión*, February 14, 1906, 3.

4 “Los brujos en acción. Por decoro nacional.” *La Discusión*, February 16, 1906, 10.

5 “La brujería en el Cerro. Buen servicio de la Policía Secreta.” *La Discusión*, February 23, 1906, 1; “Brujería, ñañiguismo y conspiración en Guanabacoa.” *La Discusión*, March 23, 1906, 1.

6 “Reos de Muerte. Los brujos en capilla.” *La Lucha*, January 5, 1906, 2.

7 Penal Code, Arts.339 and 453. Alejo García Moreno y José Rosado Aybar, *Código penal vigente en la República de Cuba completado, anotado y de Cuba*, Madrid/Habana, Revista de Legislación Universal y Jurisprudencia Española/Casa Editora, Librería e Imprenta “La Moderna Poesía”, 1906, pp.151-152, 196, 287, 296.

8 For further information about María Julia Torres’s testimony and the court’s decision see, Aline Helg, *Our Rightful Share: The Afro-Cuban Struggle for Equality, 1886-1912*, Chapel Hill: The University of North Carolina Press, 1995, 131-132, 285, endnote 50.

of inequality, citizenship, social sciences, and racism in early twentieth-century Cuba.<sup>9</sup> Scholars argue that the categorization of Afro-Cuban religions as '*brujería*' and of their practitioners as *brujos* responded to the anxieties provoked by black mobilization, conflicts over citizenship, and the proclamation of universal male suffrage and legal equality in the Constitution of 1901. The social and political scenario in liberal republican Cuba drove journalists, criminologists, and state officials to demand the suppression of *brujería* and harsh repression against *brujos* as discursive devices to disenfranchise the relatively empowered population of Afro-Cuban citizens.<sup>10</sup> State authorities, journalists, scientists and intellectuals associated *brujería* with criminal endeavors of '...deep African religious origins ... if not quite conterminous with, African-derived religions...' Such perception was not only imposed from above. Folk healers and some practitioners of Afro-Cuban religions also contributed to the construction of *brujería* as a criminal practice.<sup>11</sup>

9 Ernesto Chávez Álvarez, *El crimen de la niña Cecilia. La brujería en Cuba como fenómeno social (1902-1925)*, La Habana: Editorial de Ciencias Sociales, 1991; Aline Helg, *Our Rightful Share: The Afro-Cuban Struggle for Equality, 1886-1912*, Chapel Hill: The University of North Carolina Press, 1995; Stephan Palmié, *Wizards and Scientists: Explorations in Afro-Cuban Modernity and Tradition*, Durham: Duke University Press, 2002; Alejandra Bronfman, *Measures of Equality: Social Science, Citizenship, and Race in Cuba, 1902-1940*, Chapel Hill: The University of North Carolina Press, 2004; Reinaldo L. Román, *Governing Spirits: Religion, Miracles and Spectacles in Cuba and Puerto Rico, 1898-1956*, Chapel Hill: The University of North Carolina Press, 2007.

10 E. Chávez Álvarez, *El crimen de la niña Cecilia*, pp. 26-29, 37; A. Helg, *Our Rightful Share*, pp. 131-132.

11 A. Helg, *Our Rightful Share*, pp. 28, 257 endnote 28; S. Palmié, *Wizards and Scientists*, pp. 29-31; A. Bronfman, *Measures of Equality*, p. 21; R. L. Román, *Governing Spirits*, pp. 40, 85-86; Stephan Palmié, "From Enchantment by Science to Socialist Sorcery: The Cuban Republic and Its Savage Slot." In *Sorcery in the Black Atlantic. Edited by Luis Nicolau Parés and Roger Sansi*, Chicago and London, The University of Chicago Press, 2011, p.126.

Scholars argue that the convictions of Domingo Bocourt and six other Afro-Cubans was determined from the outset by the pervasive stereotyping of Afro-Cuban religions as *brujería* and by racist theorizations about the inherent criminality of Afro-Cuban *brujos*. Scholars also claim that Bocourt's case became the prosecutorial model to convict Afro-Cuban religious practitioners. However, cases like María Julia Torres's suggest that repression of *brujería* itself was a socially and legally contentious matter. Hundreds of religious believers were arrested and tried in court between the 1900s and the 1920s, but many of them ended up clear of all charges. By early 1930s, the eradication of the Afro-Cuban religions had not been achieved.<sup>12</sup> To explain these results, scholars emphasize that the rhetoric of a racially harmonious and inclusive nation helped Afro-Cubans to mitigate the effects of the repression. They also argue that freedom of religion and the rule of law thwarted state efforts to uproot Afro-Cuban religious practices. From their point of view, the persecution of *negros brujos* was illegal because, unlike Abakuá believers or *ñañigos* whose practices were explicitly criminalized since 1876, Cuba's Penal Code did not mention *brujería*. Thus, state authorities had to contort the Constitution and the laws to quash Afro-Cuban religions.<sup>13</sup>

12 E. Chávez Álvarez, *El crimen de la niña Cecilia*, pp. 26, 29, 34-35, 37; A. Helg, *Our Rightful Share*, pp. 109-111, 113-114, 131-132, 242; S. Palmié, *Wizards and Scientists*, pp. 210-211, 217; A. Bronfman, *Measures of Equality*, pp. 37-38, 64-65; and R. L. Román, *Governing Spirits*, pp. 87-90, 92-100.

13 S. Palmié, *Wizards and Scientists*, pp. 225-228, 243; Stephan Palmié, "The Cuban Republic and its wizards," In *Permutations of order: religion and law as contested sovereignties*, ed. Thomas G. Kirsch and Bertram Turner, Burlington: Ashgate Publishing Company, 2008, pp. 70-71; A. Bronfman, *Measures of Equality*, 3, 21, 23-24; R. L. Román, *Governing Spirits*, pp. 7-8, 11, 42.

This essays will demonstrate that to assess whether practitioners of Afro-Cuban religious deterred state repression by invoking religious freedom, it is important to examine how was such right constructed and whether it had any legal weight in criminal cases concerning *brujería* and child murder. In the first section of this article, I argue that the drafters of the Constitution of 1901 conceived a secular republic in which all individuals would enjoy absolute freedom of religious conscience. However, freedom of conscience did not translate into absolute freedom to practice what religious beliefs dictated. State authorities could legitimately construe constitutional notions of Christian morality and public order, and more broadly interpret the laws, to limit, prohibit and criminalize specific religious practices.

Second, since scholars have identified the case against Domingo Bocourt and other Afro-Cubans as the archetypal example of the republican narrative about *negros brujos* slaying white children for ritual purposes, I focus on it in the second section of this article. Based on my reevaluation of that case, I argue that claims of religious freedom had practically no impact on the defense of *brujos* accused of child murder and other crimes and that, conversely, police agents, prosecutors, and judicial authorities could have plausibly relied on constitutional and legal interpretations of the provisions on religious freedom to investigate, prosecute, and convict alleged *brujos* for certain violent crimes if and when considered sufficiently proven at trial. Racist narratives of *brujería* and child murder provided journalists, politicians, scientists, police

officers, judges of instruction, prosecutors, and common citizens with theories to transform practitioners of Afro-Cuban religions into criminals that needed to be punished because of their beliefs. However, *brujería* per se proved insufficient as a theory to ground the conviction of alleged violent *brujos*.

Finally, I question the typicality of Bocourt's case in the social and legal history of the criminal *brujería* and religious freedom in republican Cuba. Examining the case of Guillermo Álvarez and other Afro-Cubans, in the third section of this essay I argue that the prosecution of *brujos* for alleged violent crimes not always followed the model of *negros brujos* slaying white children for blood rituals that surrounded Bocourt's case. In some cases, journalists and judicial authorities categorized white men and women as *brujos*. In newspapers and court records, terms such as *brujería*, *curanderismo*, *espiritismo* or *supertición* identified beliefs and practices that were not associated with Afro-Cuban religions. In some cases, the victims were Afro-Cuban children or adults of all races rather than white minors only. These cases could suggest that courts were concerned with the merits and evidence of each accusation rather than with the validation of a prosecutorial model to convict *negros brujos*.

### **Religious Rights and Brujería during the American Occupation, 1898-1902**

Religious freedom was one of the long-standing goals of the independence movement. Since 1869 Cuban insurgent leaders had included freedom of worship among the inalienable rights

of the people proclaimed in the Constitution of Guáimaro. After more than a decade of gradual political and legal reforms, deeply frustrated with colonial rule Cuban revolutionaries went to war seeking to achieve independence and to create a republic that expanded individual rights. By October 1897, revolutionary leaders drafted a new provisional republican constitution that recognized the right of Cubans and foreigners to express their religious opinions and to practice their cults, provided that these were not contrary to public morality.<sup>14</sup> When the war ended, Cuba was under the effective control of the United States. National independence was still uncertain. Religious freedom was, however, one of the revolutionary goals that seemed to be coming to fruition.

On January 1<sup>st</sup>, 1899, General John R. Brooke officially took charge as Military Governor of Cuba and announced that the government of the United States would 'afford full protection in the exercise of all civil and religious rights' to the inhabitants of the island.<sup>15</sup> Governor Brooke, his successor, Leonard Wood, and their Cuban collaborators concurred that the full protection of religious rights required freeing the state from the influence of the Roman Catholic Church. Although many sectors of Cuban society favored religious freedom and separation of church and state, that position was far from majoritarian.

---

14 Constitution of Guáimaro, Art.28; Constitution of La Yaya, Art.6. In José Ignacio Rodríguez, *Estudio histórico sobre el origen, desenvolvimiento y manifestaciones prácticas de la idea de la anexión de la Isla de Cuba a los Estados Unidos*, Habana, Imprenta La Propaganda Literaria, 1900, pp. 456, 473.

15 John R. Brooke, *Civil Report of Major-General John R. Brooke, U. S. Army, Military Governor, Island of Cuba*, Washington, Government Printing Office, 1900, p. 7.

Conflicts broke out over new legislation on religious marriages, the validity of civil contracts that benefitted the Catholic Church, the secularization of cemeteries, or the celebration of Catholic processions in public spaces. Journalists, clergy, and different popular sectors mobilized with opposed ideas about religious rights, state powers, and separation of church and state.<sup>16</sup>

Contentions over the balance between the proclamation of individual rights and the regulatory power of government authorities over religious practices involved more than Catholics. City councils, integrated by Cubans appointed by American authorities, renewed colonial bans on African drumming and dances. Whether popularly known as *tangos*, *bembés*, *santos* or *Santa Bárbara* parties, government officials considered those practices as evidence of barbarism. In some cities, African cabildos and Afro-Cuban mutual aid associations petitioned to the General Governor against such measures and invoked their right to practice 'their African customs' but with limited success.<sup>17</sup> As done

---

16 Manuel P. Maza Miquel, S.J., *Entre la ideología y la compasión: Guerra y Paz en Cuba, 1895-1903. Testimonios de los Archivos Vaticanos*, Santo Domingo, Instituto Pedro Francisco Bono, 1997, pp. 368-372, 385-398, 405-412; L. Guerra, *The Myth of Jose Martí*, pp. 93-94; Enid Lynette Logan, "The 1899 Cuban Marriage Law Controversy: Church, State, and Empire in the Crucible of Nation." *Journal of Social History* (Winter 2008): 469-490.

17 U.S. NARA, RG 140, Entry 3, Letters Received, Box 120, #6725 ½, African Dances, Cabildo Africano Lucumí al Gobernador Militar de Cuba, 30 de diciembre de 1900; RG 140, Entry 3, Letters Received, Box 144, #640, African Dances, Alejandro Rodríguez to Adjutant General, January 30, 1901; Robin D. Moore, *Música y mestizaje. Revolución artística y cambio social en La Habana. 1920-1940*, Madrid: Editorial Colibrí, 2002, pp. 110-111, 292; Marial Iglesias Utset, *Metáforas del cambio en la vida cotidiana: Cuba 1898-1902*, La Habana, Ediciones UNEAC, 2003, pp. 99-100; Carolyn E. Watson, *Citizenship, Religion and Revolution in Cuba. Ph.D. Dissertation* (Albuquerque: The University of New Mexico, December 2009), 52-54.

against Catholic processions, city councils invoked reasons of public order and morality to pass those regulations, implicitly subordinating religious rights to secular public interests.

Despite some disputes about those legislative measures, through their daily practices American and Cuban officials set some central points in matters of religious freedom. First, they supported freedom of conscience as Cuban revolutionaries had demanded at least since 1869. Second, in principle, government officials placed all religious groups on equal footing before the law, ending the privileged status of the Roman Catholic Church up to 1898. For American and Cuban authorities the full protection for civic and religious rights proclaimed by Governor Brooke in January 1899 did not prevent the government from regulating and prohibiting religious practices whenever public secular interests so demanded. One of those public interests included the investigation of crimes and misdemeanors, the prosecution of alleged criminals and the enforcement of the laws.

The criminal statutes in force in Cuba on January 1<sup>st</sup>, 1899 did not list the crime of *brujería*. Spain had abolished that crime in 1848, although for Cuba it remained in the books until the Penal Code of 1879.<sup>18</sup> For Spanish legal reformers, the modern criminal law was not concerned with imaginary crimes such as closing a deal with the devil, communicating with the dead, forecasting

18 Tomás María de Vizmanos y Cirilo Álvarez y Martínez, *Comentarios al Nuevo Código Penal*, Madrid: Establecimiento Tipográfico de J. González y A. Vicente, 1848, p. 16; R. Piña, "Adivino." In Félix Erenchún, *Anales de la Isla de Cuba. Diccionario administrativo, económico, estadístico y legislativo. Año de 1856*, Habana, Imprenta La Habanera, 1857 (Tomo II), pp. 43-46.

the future, or casting a spell against cattle, crop or people. However, Spanish legislators were concerned with the economic, physical or psychological harm that some of those practices could cause. Liberal politician and criminal reformer Joaquín Francisco Pacheco warned in the early 1840s that ‘...there are some who passing as wizards and sorcerers seek to swindle money from others abusing their simplicity, and perhaps they even give cause for much more transcendent disgraces. The legislation cannot be careless about these cases...’<sup>19</sup> Echoing such concerns and seeking to protect property, public health and public order, the Penal Code of Cuba and Puerto Rico enacted in 1879 criminalized divination for profit and unlicensed healing practices.<sup>20</sup> Since the 1880s, Cuban newspapers reported on the arrest and occasional criminal prosecution of Afro-Cuban, Spanish and white Cuban alleged *brujos*, *espiritistas*, and *curanderos*, whether they cured with holy water in the name of Jesus Christ, read fortunes with tarot cards, or claimed to manufacture charms and destroy spells invoking African deities.<sup>21</sup> In Spain, courts

19 Joaquín Francisco Pacheco, *El Código Penal concordado y comentado. 6ª edición corregida y aumentada*, Madrid, Imprenta y Fundación de Manuel Tello, 1880 (Tomo II), p. 55.

20 Código Penal, arts. 339 and 614. In P. Balbé y Huguet, *Códigos de Cuba*, 4ª Edición, La Habana, Imprenta “Benavent” 1925, pp. 1176, 1221. Similar statutes against divination and unlicensed healing practitioners were common also in Latin America and the Caribbean. See, Kate Ramsey, “Legislating “Civilization” in Postrevolutionary Haiti.” In *Race, Nation, and Religion in the Americas*, ed. Henry Goldschmidt and Elizabeth McAlister (Oxford & New York: Oxford University Press, 2004), 231-258; Paul Christopher Johnson, “Law, Religion, and “Public Health” in the Republic of Brazil.” *Law & Social Inquiry*, vol. 26, No.1 (winter, 2001): 18-19; Diana Paton, “Obeah Acts: Producing and Policing the Boundaries of Religion in the Caribbean.” *Small Axe: A Caribbean Journal of Criticism*, 28 (March 2009): 1-16.

21 Juan Fernández, “Un brujo.” *La Lucha*, April 17, 1886, 2; “El negro brujo.” *La Lucha*, May 31, 1886, 2; “Escándalo: Los brujos.”

persecuted similar practices and convicted their practitioners too.<sup>22</sup>

Individuals, press reporters, and police agents continued denouncing and bringing alleged *brujos* before criminal courts after 1898. It was already clear that judicial authorities could apply the Penal Code in those cases, even when it was hard to predict whether *brujos* would be convicted. For example, in July 1899 police agents brought several Afro-Cubans before William Pitcher, Judge of the Havana Police Court, on charges of practicing *brujería*. The detainees explained that their meetings were ‘inspired by a religious sentiment which, while it may be more or less comprehensible and educated, is always respectable.’ Judge Pitcher acquitted them all. *La Discusión* praised Mr. Pitcher and further commented that the detainees were ‘... descendants of Africans, [who] profess their forbearers’ religion... Their worship is based on the existence of a sole Divinity, and its symbols are images.’<sup>23</sup> However, in December of 1900, a judge in Matanzas imposed a fine and five days

---

*La Discusión*, December 5, 1889, 2; “Plagas sociales. Las brujas.” *La Discusión*, July 30, 1890, 2; “Captura de un brujo.” *La Discusión*, December 29, 1891, 2; “Brujería. Herido grave.” *La Discusión*, May 16, 1892, 2; “La brujería de Colón.” *La Discusión*, June 16, 1893, 2; “Los brujos de Zanja.” *La Discusión*, May 29, 1896, 3.

22 Dirección de la Revista General de la Legislación y Jurisprudencia, *Jurisprudencia Criminal. Colección completa de las Sentencias dictadas por el Tribunal Supremo en los recursos de casación y competencias en material criminal desde la instalación de sus salas segunda y tercera en 1870*, Madrid, Imprenta de la Revista de Legislación, 1887-1898, Vol. 34, 521-523; Vol.36, 781-782; Vol.46, 474-477, Vol.50, pp. 639-640.

See also, Enrique Perdiguero, “Magical Healing in Spain (1875-1936): medical pluralism and the search for hegemony.” In *Witchcraft Continued: Popular Magic in Modern Europe*. Edited by Willem de Blécourt and Owen Davies, Manchester and New York: Manchester University Press, 2004, pp. 136-137.

23 “No hay tal brujería”, *La Discusión*, July 18, 1899, p. 2.

of forced labor on forty-five white and Afro-Cuban men. Apparently, their crime consisted in dancing and drumming in honor of Santa Bárbara in a rural estate in Alacranes. Twenty-five Afro-Cuban women arrested for partaking in that same ceremonies were acquitted though. In 1902, Teresa López Vega, whom the press identified as a gypsy and a *bruja*, was convicted for larceny and sentenced to six months of prison. López Vega took ninety *pesetas* from María Peláez promising to multiply the money by means of some “blessings.”<sup>24</sup>

These cases suggest that journalistic and popular notions of *brujería* encompassed healing, supernatural or religious practices that were not exclusively associated with the Afro-Cuban population or with some actual or imagined African origin. Although *brujería* was nominally absent from the Penal Code of 1879, alleged *brujos* could still be lawfully prosecuted. The race or gender of the *brujos*, the kind of practices they engaged in, or broad accusations of some injury or disturbance of public order were not predictors of a criminal conviction. On the other hand, these cases also indicate that for those religious practitioners called *brujos*, Governor Brooke’s promise of ‘full protection’ for religious rights was limited and uncertain. Such was the ambiguous scenario of religious rights when the convention called to draft the future constitution of Cuba began its works. Constitutional delegates had

---

24 “Brujería en Cuba ¡70 individuos bailando el santo!” *La Discusión*, December 7, 1900, 1. For similar cases in Cienfuegos and Havana, “¿Crímenes en la sombra? Colonia misteriosa.” *La Discusión*, October 3, 1900, p. 2; “Brujos.” *La Discusión*, January 21, 1901, 3; “Una bruja, condenada. Seis meses de prisión.” *La Discusión*, May 1, 1902, 3; “Contra una gitana por estafa.” *La Discusión*, March 31, 1902, p. 6.



an opportunity to clarify the scope of religious freedom and to draw clearer lines between legitimate religious practices and those that could be banned or criminalized.

### **The Constitutional Convention of 1901: Freedom of religion and its limits**

The Constitutional Convention of the Island of Cuba started its sessions in Havana on November 5, 1900. Of the thirty-one delegates elected through limited male suffrage, more than two-thirds were veterans of the Liberation Army. Many occupied public office since 1899 as municipal councilmen and mayors, provincial governors, secretaries of the Cabinet, or Supreme Court Justices. Several delegates had significant legal expertise as lawyers, law professors, and former deputies to the Spanish Cortes. Through years of travels and exile, thanks to newspapers and books circulating in the island, delegates were informed about political and constitutional debates in Europe, Latin America, and the United States. They were prepared to write a modern republican constitution that responded to socio-economic and political problems of Cuba.

Only two delegates of African descent, Martín Morúa Delgado and Juan Gualberto Gómez Ferrer, participated in the convention. Their contributions to the mobilization for racial equality, civil rights, and Cuban independence had earned Morúa and Gómez Ferrer positions of leadership among Afro-Cubans since the 1880s.<sup>25</sup> Although Morúa and Gómez had invited

Cubans of African descent to abandon drums, dances and religious customs of their African forbearers, like other politicians they could not ignore their constituencies. They owed part of their political power to Afro-Cuban cabildos and associations that kept alive those very customs.<sup>26</sup> As in many occasions during their political lives, at the convention Morúa and Gómez's positions on religious freedom differed.

Delegates submitted thirteen total or partial drafts for a future constitution that were later consolidated into the official constitutional project. Only four of those drafts included rules regarding religion and religious freedom.<sup>27</sup> Gonzalo de Quesada y Aróstegui was the only one who invoked 'the favor of God's Almighty' for the future republic. Like Quesada, José B. Alemán listed in his project several provisions to strengthen the secular state.<sup>28</sup> None of the four drafts defined religion or the specific rights that religious freedom entailed. They simply stated that such freedom existed. Two of them placed no constitutional limitation on such freedom, while

---

*Our Rightful Share*, pp. 39-42, 126-127, 153-154; A. Bronfman, *Measures of Equality*, p. 70.

26 *Diario de Sesiones de la Convención Constituyente de la Isla de Cuba* [hereafter, DSCCIC], January 26, 1901, 163, 215; Julián González, *Martín Morúa Delgado. Impresiones de su última novela y su gestión en la Constituyente de Cuba*, Habana, Imprenta de Rambla y Bouza, 1902, p. 43; Michael Zeuske, "Estructuras, movilización afrocubana y clientelas en un hinterland cubano: Cienfuegos, 1895-1906" *Tiempos de América*, No.2 (1998): 111-112; A. Ferrer, *Insurgent Cuba*, pp. 124-125 145; Lillian Guerra, *The Myth of José Martí: Conflicting Nationalisms in Early Twentieth-Century Cuba*, Chapel Hill, The University of North Carolina Press, 2005, pp. 34-35.

27 *DSCCIC*, January 21, 1901, Appendix, i-xxxi.

28 Proyecto del Delegado Sr. Gonzalo de Quesada, Arts.18.5-18.7; Proyecto del Delegado Sr. José B. Alemán, 7 de Diciembre de 1900, Art.10.8. In: *DSCCIC*, January 21, 1901, Appendix, vi, ix, xiii.

25 Alejandro de la Fuente, *A Nation for All: Race, Inequality, and Politics in Twentieth-Century Cuba*, Chapel Hill & London, The University of North Carolina Press, 2001, pp. 37-38; A. Helg,

other delegates thought differently. For Quesada, the practice of religion had to be bound by public morality and by the laws. For Leopoldo Berriel, a law professor and Chancellor of the University of Havana, religions would be protected only when practiced inside the temples and only if they would not be incompatible with peace and public order.<sup>29</sup> Quesada and Berriel did not mention Christian morality. All four proposals conveyed shared concerns about the consolidation of the secular character of the future republic as well as considerable divergences as to the appropriate scope of religious freedom.

### On the Invocation of God's Favor

The debates of the official constitutional draft started in January 1901 with the invocation of God's favor contained in the preamble. Salvador Cisneros Betancourt, who at some point self-identified as an Atheist, demanded its suppression and so did Martín Morúa Delgado. In their views, such invocation placed the republic in a position that favored religion to the detriment of those who did not have religious beliefs or who thought that religion was a private matter. Pedro González Llorente, an Associate Justice of the Supreme Court, defended the invocation. González Llorente affirmed that the delegates ought to interpret the spirit of the Cuban people: '...we are not the representatives of an Atheist people...those who are Atheists do not have the right to demand that their vote prevails over the

majority.' González Llorente appealed to what he called the authority of the *consensus mundi*. In his opinion, the example of the United States and various European and Latin American countries proved that mentioning God and religion in a constitution did not make a nation less free, enlightened or independent.<sup>30</sup> In dispute were not only the need of such invocation in the constitution of a secular state but also whether the Cuban people could be characterized as predominantly religious and still politically modern. Furthermore, delegates could have wondered which God and religious tradition was the invocation referring to and whether citizens who espoused other conceptions of the divinity could feel excluded from the constitution.

Manuel Sanguily, whose credentials as a liberal, revolutionary and freethinker were as solid as Cisneros or Morúa's, attempted to win them over arguing that God was a symbol. Sanguily said that being the idea of God a symbol,

...all aspirations, all opinions, those of the Atheist, those of the believer, as well as those historical manifestations of all beliefs, fit into it ... [God] is the indefinite and undetermined word ... If God is the symbol of the supreme, from that merely abstract point of view, I cannot understand that it could be humiliating or indecorous for anyone that we raise our hand and ask him for protection.<sup>31</sup>

Returning to González Llorente's argument about the spirit of the Cuban people, Juan

---

29 Proyecto del Delegado Sr. Juan Rius Rivera, 3 de diciembre de 1900, [Artículo] XXIV; Proyecto del Delegado Sr. Gonzalo de Quesada, Arts.18.6; Proyecto del Delegado Sr. José B. Alemán, 7 de Diciembre de 1900, Arts.10.3; Proyecto del Delegado Sr. Leopoldo Berriel, 11 de Diciembre de 1900, Art.19. In: *DSCCIC*, January 21, 1901, Appendix, ii, vi, xiii, xviii.

---

30 *DSCCIC*, January 24, 1901, 160-161.

31 *DSCCIC*, January 24, 1901, 162-164.

Gualberto Gómez insisted that the delegates should not hurt the religious feelings of the majority of the population by rejecting that invocation. At the end of the debate, twenty-five delegates approved the invocation. Six delegates rejected it.<sup>32</sup> González Llorente, Sanguily and Gómez seemed more attuned to the opinions of the majority in and out the Convention than Cisneros and Morúa. Days later, during the debate on religious freedom, it became clearer that if Sanguily's God could be an inclusive abstraction at a rhetoric level on the floor of the Convention, in daily life particular religious' practices could still be excluded from constitutional protection in the name of morality, public order and the law.

### **On Christian Morality and Public Order**

Article 13 succinctly stated the main points of the initial four constitutional proposals on religious freedom and separation of church and state: 'The profession of all religions and the exercise of all cults shall be free, with no limitation other than the due respect to Christian morality. The Church is separated from the State.' It caused controversy nonetheless. Delegate Rafael Betancourt Manduley submitted an amendment replacing Christian morality by public morality. Juan Ríos Rivera, Pedro González Llorente and Juan Gualberto Gómez jointly requested the suppression of the separation clause. Cisneros Betancourt sought to excise the word religion from the Constitution.<sup>33</sup>

---

32 *DSCCIC*, January 24, 1901, 164-166.

33 *DSCCIC*, January 26, 1901, 208-209.

Debating article 13 and related amendments, Pedro González Llorente accused Cisneros Betancourt of forcing "the tyranny of his liberal opinion" on the Convention and Cuban society by trying to take religion out of the constitutional project. According to González Llorente, Christian morality was not an obstacle to religious freedom because the precepts of Christian morality encompassed everything that was morally accepted in the civilized world. For González Llorente what should matter was that no one could be persecuted for his religious beliefs; that people could be prosecuted for their conduct only.<sup>34</sup> These were not novel theories in Cuba. At least since 1857, Antonio Bachiller y Morales, who sustained that religious freedom was one of the primary principles of law and human liberty, opined that Christian morality contained all moral precepts accepted by civilized mankind.<sup>35</sup> The Spanish Constitution of 1876 distinguished between religious beliefs, which could not be legally restrained, and the practices related to those beliefs, which could be regulated, prohibited or criminalized.<sup>36</sup> To

---

34 *DSCCIC*, January 26, 1901, 209-210

35 Antonio Bachiller y Morales, *Elementos de Filosofía del Derecho, o Curso de Derecho Natural*, Habana: Imprenta del Tiempo, 1857, pp. 28, 32.

36 Vicente Santamaría de Paredes, *Curso de Derecho Político según la filosofía política moderna, la historia general de España y la legislación vigente*. Cuarta edición, Madrid, Establecimiento Tipográfico de Ricardo Fé, 1890, pp. 187-188. See also, Spanish Supreme Court, Second Chamber, Decision #233 of March 20, 1891, for abuse of public credulity; Decision #118, of March 2, 1895, for swindling. In Dirección de la Revista General de la Legislación y Jurisprudencia, *Jurisprudencia Criminal. Colección completa de las Sentencias dictadas por el Tribunal Supremo en los recursos de casación y competencias en material criminal desde la instalación de sus salas segunda y tercera en 1870*, Madrid: Imprenta de la Revista de Legislación, 1892 (Tomo 46, 474-477); *Id.*, Madrid: Imprenta de la Revista de Legislación, 1896 (Tomo 54), pp. 267-268.

prove his point, González Llorente did not cite the Spanish law that he knew well. He rather mentioned the laws against polygamy and the conflicts of the American government with the Mormons. González Llorente was again striking a chord. The United States, the modern republic whose federal government controlled Cuba, prohibited certain religious practices in the name of Christian morality. Llorente hinted that the Cuban republic might do likewise and still have religious freedom.

Betancourt Manduley, who identified as a non-Catholic Christian, seemed not troubled by the idea that religious freedom could be limited but he wanted to disassociate morality from Christianity. However, the majority rejected Betancourt's position, as well as Cisneros's request to eliminate all references to religion. Delegates proclaimed a right to freedom of religious and cults that could be limited by Christian morality.<sup>37</sup> Alarmed by this vote and by the amendment presented by González Llorente, Juan Gualberto Gómez, and Juan Ríos Rivera against the separation of church and state, delegate Emilio Núñez observed that Cuba seemed poised to return to the rule of official Catholicism of colonial times. After a lengthy debate, the Convention ratified the separation of church and state achieved in 1899.<sup>38</sup> Before the final vote on the totality of the Constitution, the Convention approved without debate an amendment adding 'public order' as the second limit to religious freedom. Public order afforded the state some apparently religiously neutral

grounds, such as safety and health concerns or crime prevention, to restrict religious practices.<sup>39</sup>

These debates suggest that the majority of the delegates saw no contradiction between proclaiming complete freedom of religious conscience, and authorizing legal limitations on religious practices. What would define those limitations, how and when would they be enforced, and how would competing public interests and religious rights be balanced, were many of the questions left open by the Constitutional Convention. Citizens and state officials would have to contend in Congress and local legislative bodies, in government agencies and courts for practical answers to those questions.

For practitioners of Afro-Cuban religions, the Constitution of 1901 represented new opportunities to test the potential of the right of religious freedom. One of those religious practitioners was Afro-Cuban cigar maker Felipe Villavicencio who, as a *ñáñigo*, spent almost three years of deportation in Fernando Póo since 1896.<sup>40</sup> Ten days after the promulgation of the Constitution of 1901 in April 14, 1902, he sent a public letter to the Secretary of Justice. Self-identifying as a 'Carabalí believer of the tribe

---

37 *DSCCIC*, January 26, 1901, 210.

38 *DSCCIC*, January 26, 1901, 210-213.

---

39 *DSCCIC*, January 30, 1901, 288-289; February 4, 1901, 330.

40 Archivo Histórico Militar de Madrid, Sección Ultramar. Cuba, Rollo 2617, Signatura 61-12, Relación nominal, con expresión de los respectivos generales, de ciento ochenta y un individuos que, por pertenecer a asociaciones de ñáñigos, van deportados con destino a Fernando Póo, fol.3. For further information about Villavicencio's social and religious life, see Gerardo Castellanos G., *Relicario Histórico. Frutos coloniales y de la vieja Guanabacoa*, La Habana, Editorial Lex, 1948, pp. 588, 594; Ivor L. Miller, *Voice of the Leopard: African secret societies and Cuba*, Jackson, The University Press of Mississippi, 2009, pp. 126-127, 269.

Acureña Apapá; Villavicencio asked the Secretary of Justice to register his religion among those legally recognized by the government.<sup>41</sup> At the same, Villavicencio acutely restated his petition, questioning

...if it is necessary to register such a sect in order to adore God in my domicile and according to my beliefs because I do not want... to be molested in my domicile for being a believer of that God according to my Carabalí upbringing.

Anticipating an objection from the Secretary of Justice, Villavicencio closed his letter claiming that his religious practices did not violate morality or the peace of the neighborhood in any sense.<sup>42</sup> Villavicencio's letter mirrored the debates held at the Constitutional Convention on the scope of religious freedom, and it also echoed common concerns and aspirations shared by practitioners of Afro-Cuban and other popular religions. Legal technicalities, pressure from neighbors, bureaucratic arbitrariness, or restrictive notions of morality and public order could dilute their rights to worship and turned them into potential transgressors of the law. Indeed, as the cases against *brujos*, *curanderos* and *espiritistas* indicate, many Afro-Cubans saw their beliefs, rituals

and rights tested in criminal courts and police stations after 1898. Felipe Villavicencio knew that the new Constitution promised religious rights for all believers, and he was ready to claim them. The scope and actual worth of those rights would continue to be tested in criminal courts also.

### **The Case of Domingo Bocourt: Religious Freedom, Criminal Law and Child Murder**

Scholars often refer to the criminal case of Domingo Bocourt as a foundational example of state repression against Afro-Cuban religious practitioners and as a violation of the Constitution and the laws. Allegedly, black 'brujos' planned, attempted and sometimes consummated the ritual sacrifice of white children believing that the victim's blood and viscera cured illnesses and spells. Based on those allegations, government authorities charged and tried practitioners of Afro-Cuban religions for crimes of physical violence or death such as murder, homicide, rape, battery or kidnapping.

Although Afro-Cuban religious beliefs and practices played central roles in the criminal case of Domingo Bocourt, religious freedom occupied little space in the proceedings. Prosecutors constructed the beliefs, practices, and religious objects of the defendants as evidence of the latter's motivations to commit crimes of murder and kidnapping. Attorneys did not invoke religious freedom against those criminal charges. When courts found convincing evidence of criminal liability, claiming religious freedom as a defense was of little help. Trial and appellate judges who decided and reviewed Bocourt's case

41 Felipe Villavicencio was referring to the Register of Religions created by Military Order #487 of December 2, 1900, amended by Military Order #140, of May 28, 1901. The sole purpose of that register was the identification of priests, pastors and clergy authorized to perform religious weddings in order to grant those marriages the civil recognition. Biblioteca Jurídica de la República de Cuba, *Del Matrimonio. Orden No. 140 de 1901 concordada con el Código Civil, el Penal, modificaciones posteriores y modelos. Segunda edición*, Habana, Imprenta y Papelería de Rambla, Bouza y Compañía, 1915, pp. 8-9.

42 "La tribu Apapá." *La Discusión*, April 24, 1902, 2.

did not rule that *brujería* was a criminal religious practice. Courts did not rule that anyone reputed as *brujo* would be found guilty whenever accused of murder or other violent crimes. Each criminal case for death or physical violence allegedly motivated by beliefs in *brujería* would have to be proven in court after a trial where the defendants had an opportunity to exercise their defense rights.

### Investigating a Murder Case against Brujos

To measure the impact of any legal debate about religion, religious freedom and crime in the case of Domingo Bocourt and his co-defendants, it is important to look at all the critical stages beginning by the investigation. Judges of instruction had to collect material evidence and testimony from any source that, in their sole judgment, could ground formal charges and a criminal trial against the suspects. By law, the investigations should last no longer than a month except under authorization of the trial court –i.e., the Audiencia-.<sup>43</sup> These rules, conceived to protect citizens from baseless accusations, put pressure on judicial authorities to timely conclude the investigations. Apparently, to comply with those provisions, judges of instruction detained, investigated and charged anyone that could be remotely linked to the alleged crime, leaving to the trial court the task of sorting out who was actually guilty. Since the reform of public criminal trials in the

43 Law of Criminal Procedure, Arts.299-648. In War Department, Division of Insular Affairs, *Translation of the Law of Criminal Procedure for Cuba and Porto Rico (With Spanish Text), with annotations, explanatory notes, and amendments made since the American Occupation*, Washington, Government Printing Office, 1901, pp. 81-156.

1880s, judges of instruction and prosecutors fed on sensationalism, rumors, speculations and prejudices to cover the weaknesses of criminal investigations, particularly in cases of murder and physical violence.<sup>44</sup> Similar judicial practices were clearly established by 1904 and were present in the investigation of Zoila Díaz's death.

On November 14, 1904, Camilo Pérez, reporter of *La Discusión*, wrote that a twenty-month-old white girl named Zoila Díaz was missing from her house in the rural hinterland of Havana. Given her age, Pérez hypothesized that Zoila might have been kidnapped.<sup>45</sup> Two days later, Pérez reported that people rumored that 'practitioners of fanaticism and *brujería*' killed children to use their heart for charms and healings, and that many considered that Zoila could have been killed for that reason. The investigations had produced no concrete evidence to support that idea thus far.

As it was common in suburban and rural areas, mayors, municipal police, and municipal judges conducted detentions, preserved the crime scene, and prevented the destruction of evidence pending the arrival of the Judge of Instruction.<sup>46</sup> On November 15, while searching for Zoila in nearby farms, local authorities stopped Julián

44 For examples of sensationalized criminal investigations in Cuba since the 1880s, see Santos Villa, *Los crímenes de la calle Inquisidor*, Habana, Establecimiento Tipográfico O'Reilly No. 9, 1889; Eduardo Varela Zequeira, *La venganza de un marido (Crimen en la Víbora)*, Habana, Est. Tip. "La Moderna," 1893.

45 K. Milo, "Desaparición misteriosa de una niña de veinte meses." *La Discusión*, November 14, 1904, 1, 12.

46 Law of Criminal Procedure, Arts.307-308, 318. In War Department, Division of Insular Affairs, *Translation of the Law of Criminal Procedure for Cuba and Porto Rico*, 84-85.

Amaro, a black man, because he was carrying a can containing viscera and blood. They concluded that Amaro had slaughtered a pig and he was left alone. Things were different when Eradio Bacallao, mayor of Güira de Melena, searched the house of Pablo and Juana Tabares, an Afro-Cuban couple that also lived near Zoila's family. The mayor found a letter in which someone named Bocourt instructed Pablo to rub a hen on the body of his recently born daughter. In that letter, Bocourt demanded 25 pesos to provide Pablo and Juana with a doll. Pablo explained that his partner, Juana, had had nine miscarriages and that Domingo Bocourt was helping her to keep their newborn child alive. From this, reporter Camilo Pérez considered that Bocourt was a *brujo*.<sup>47</sup>

By request of the mayor, Bocourt was detained at his house in San Cristobal, province of Pinar del Río, and sent to Güira de Melena. Among the objects seized at Bocourt's house, there was another letter in which Juana Tabares asked Bocourt 'to take *brujería* out of her body.' Meanwhile, Havana Special Police agent José Valdés visited Julián Amaro. Valdés pretended to be the messenger of a woman who requested the necklace that Zoila was wearing when she died. Valdés later claimed that Amaro promised to obtain the necklace for him with the help of Jorge Cárdenas. Valdés showed up at Cárdenas's house. Cárdenas, whom reporter Camilo Pérez identified as *mestizo*, told Valdés that he knew

47 K. Milo, "La desaparición de una niña de 20 meses." *La Discusión*, November 16, 1904, 11. Bocourt was an illiterate man. He dictated the letter to María de Jesús Carballo, an Afro-Cuban acquaintance, who wrote it for him. "El asesinato de la niña Zoila. La causa de los brujos. Segunda sesión del juicio oral." *La Discusión*, March 13, 1905, 1, 4.

nothing about Zoila.<sup>48</sup> Mayor Bacallao gathered this information and, based on his suspicions, speculated that Cárdenas and Amaro had killed Zoila following Bocourt's instructions. With Bocourt and the Tabares already in custody, Bacallao obtained an arrest warrant from the municipal judge and arrested Cárdenas and Amaro.<sup>49</sup>

When the suspects appeared before the local judge, nothing was certain yet as to the whereabouts of the girl.<sup>50</sup> Juana acknowledged as her own the letter seized at Bocourt's house. Pablo remarked that he did not believe in *brujería*. Both denied any knowledge about the expensive doll mentioned in Bocourt's letter. Bocourt denied having written any letter to or having demanded money from Pablo and Juana. The detainees were taken to Zoila's house where the girl's relatives identified only Julián Amaro as a neighbor but accused no one. The judge released them all. Reflecting on his fourteen-year experience as a reporter, Camilo Pérez commented that *brujos* in Cuba had never killed children, contrary to what Mayor Bacallao had surmised, and concluded that the arrest were baseless.<sup>51</sup> Thus, at least at

48 K. Milo, "Desaparición misteriosa de una niña de veinte meses. La brujería salvaje." *La Discusión*, November 17, 1904, 2.

49 To conduct valid arrests, the Constitution of 1901 (Art. 17) required warrants issued by competent judicial authorities. Once in custody, the detainee had a right to appear in court and to appeal any temporary decision regarding the grounds for the arrest. *Constitución de la República de Cuba. DSCCIC*, February 14, 1901, Appendix, ii.

50 K. Milo, "La misteriosa desaparición de una niña de veinte meses." *La Discusión*, November 18, 1904, 1, 12.

51 K. Milo, "La misteriosa desaparición misteriosa de una niña de veinte meses. Sigue el misterio." *La Discusión*, November 18, 1904, 1, 12; K. Milo, "Desaparición misteriosa de una niña de veinte meses." *La Discusión*, November 19, 1904, 1, 12. The Constitution of 1901 (Arts. 15-17) established that all individuals under criminal

this stage of the proceedings, the court required more than speculations about *brujería* to institute criminal charges even though they had sufficed to name five Afro-Cubans as criminal suspects.

The atmosphere changed on November 26, 1904 when the corpse of a girl was found missing the heart and three ribs. According to the law, in addition to the defendants, their attorneys, and judicial authorities, anyone could participate in the identification and autopsy of a corpse.<sup>52</sup> Those legal provisions favored public scrutiny of the investigations. For example, reporter Pérez criticized Mayor Bacallao and the municipal judge for having removed the body without following appropriate procedures: ‘Experience shows that the inspection [of the crime scene] is, in many cases, the basis for discovering the crime [authors]...’<sup>53</sup> Two physicians, doctors Abreu and Domínguez, examined the remains that relatives identified as Zoila’s, estimated the date of her demise, but reserved judgment as to the causes of death. They noted though that the ribs were apparently removed with a cutting instrument. From this detail, journalists suggested that Zoila’s death was not accidental and gave renewed force to the theory of ritual murder discarded barely a week before.<sup>54</sup>

---

investigation must be released or put under cautionary arrest by court order within seventy-four hours of the initial detention. *Constitución de la República de Cuba*. DSCCIC, February 14, 1901, Appendix, ii.

52 Law of Criminal Procedure, Arts.340-341, 353. In War Department, Division of Insular Affairs, *Translation of the Law of Criminal Procedure for Cuba and Porto Rico*, 90-92.

53 “Hallazgo del cadáver de la Niña Zoila. Importantes detalles.” *La Lucha*, November 27, 1904, 3; K. Milo, “La misteriosa desaparición de una niña de 20 meses. El cadáver aparece.” *La Discusión*, November 28, 1904, 1, 10, 12.

54 “El secuestro y asesinato de la niña Zoila. Traslación del

Domingo Bocourt, Julián Amaro, Jorge Cárdenas, Pablo Tabares, and Juana Tabares were arrested for a second time, even when no clear evidence linked them to Zoila’s death. Víctor Molina, a black man and rural worker who resided with the Tabareses, was also arrested. Bocourt and his co-defendants had the right to remain silent at all stages of criminal proceedings. By law, any conviction had to be supported by evidence other than the confession.<sup>55</sup> Between November 27 and December 11, the detainees cooperated with newly-appointed Special Judge of Instruction, Manuel Landa González. Some of the suspects admitted involvement in the death of Zoila and accused their co-defendants. Juana Tabares said that Bocourt asked Pablo Tabares to obtain the heart and blood of a white girl to cure Juana. She demanded that Bocourt and Pablo discuss this matter with her before Judge Landa. Both agreed to listen to Juana’s accusations but denied them.<sup>56</sup> Juana also identified Víctor Molina and Ruperto Ponce as the actual killers of Zoila. Ponce, another Afro-Cuban, was arrested. Based on Juana’s declarations, Judge Landa seized from detainee Julián Amaro a knife stained with blood. To the contradictory testimony of the defendants and the knife, forensic doctors Abreu and Pina added their

---

cadáver al cementerio.” *La Lucha*, November 28, 1904, 4; E. H. Moreno, “El salvaje asesinato de la niña Zoila.” *La Lucha*, November 30, 1904, 1; Jesús Castellanos, “Humos Habanos.” *Cuba y América*, 8:10 (December 4, 1904):6.

55 Law of Criminal Procedure, Arts.406, 700 paragraphs fifth and sixth. In War Department, Division of Insular Affairs, *Translation of the Law of Criminal Procedure for Cuba and Porto Rico*, 101, 172.

56 “El salvaje asesinato de la Niña Zoila.” *La Lucha*, December 3, 1904, 1, 12; “El salvaje asesinato de la Niña Zoila.” *La Lucha*, December 4, 1904, 4; K. Milo, “El asesinato de la niña Zoila.” *La Discusión*, December 4, 1904, 1.



experts' opinion: The blood on the knife was human.<sup>57</sup>

Five defense attorneys tried diligently to minimize the incriminating declarations made by Juana and by the forensics, adopting different strategies. One of the attorneys, Juan Tranquilino Latapier, was an Afro-Cuban and a close collaborator of Juan Gualberto Gómez in the struggles for civil rights and independence since the 1890s.<sup>58</sup> At least *La Lucha* and *La Discusión* attributed no special relevance to Latapier's complexion though. Latapier, filed documents with the Judge indicating that his clients would no longer testify in the case except under his instructions. Reporter Camilo Pérez commented that despite the lack of public sympathy for the detainees, defense attorneys guaranteed that innocents were not persecuted just for 'professing beliefs based on ignorant superstitions.'<sup>59</sup>

By the end of the investigations, Judge Landa concluded that Domingo Bocourt, Víctor Molina, Juana Tabares, Pablo Tabares, Julián Amaro, Jorge Cárdenas, Ruperto Ponce, Adela Luis, Laureano Díaz, Pilar Hernández, Dámaso Amaro and Jacobo Arrenal should be tried for the murder of Zoila Díaz. Judge Landa also submitted that

---

57 "El salvaje asesinato de la Niña Zoila." *La Lucha*, December 12, 1904, 4; "El asesinato de la niña Zoila. ¡La sangre de la víctima acusando a sus victimarios!" *La Discusión*, December 19, 1904, 2.

58 Enrique Ubieta, *Efemérides de la Revolución Cubana*, Habana, Imprenta y Papelería "La Moderna Poesía," 1911, Vol.1, pp. 368, 372; A. Helg, *Our Rightful Share*, pp. 130-131.

59 K. Milo, "El asesinato de la niña Zoila." *La Discusión*, December 4, 1904, 1; "El salvaje asesinato de la niña Zoila." *La Lucha*, December 4, 1904, 4; "El salvaje asesinato de la niña Zoila." *La Lucha*, December 7, 1904, 4.

Bocourt, Pablo and Juana Tabares, Modesta Chile, Adela Luis and Francisca Pedroso should be tried also for the attempted kidnapping of an almost three-year white girl named Virginia Perdomo. Landa suggested that the alleged failed kidnapping of Perdomo had been the first effort of *brujos* under Bocourt's directions to secure the blood of a white girl for Juana's cure. Of the fourteen defendants, four were African-born; ten were Afro-Cubans. All ten men worked as peasants and rural laborers. Three women worked at their houses, and one was a launderer. All defendants claimed to be illiterate. All lacked criminal records.<sup>60</sup>

These data suggest that classifying the beliefs and healing practices of Afro-Cuban defendants as *brujería* and hypothesizing about ritual sacrifice of white children alone did not suffice to institute formal criminal charges. Defendants acknowledged their beliefs on the efficacy of healing practices that authorities and journalists called *brujería*, objects typically classified as *brujería* were seized from their houses, and yet judges conducting pre-trial investigations had to release them for lack of incriminating evidence. Only when a corpse was found and identified, judicial authorities obtained some grounds to formulate a stronger accusation against *brujos*. Claims of religious freedom played no role during this stage of the case. Judge Landa used those religious beliefs of the suspects to tarnish their moral character and to infer their alleged motivations to kidnap Virginia Perdomo and to kill Zoila. However, the investigations also hinged

---

60 República de Cuba. *Jurisprudencia del Tribunal Supremo en materia criminal de 1º de julio a 31 de diciembre de 1905*, Habana, Imprenta y Papelería de Rambla, Bouza y Cía., 1913, Vol.29, p. 302.

around forensic reports, witness testimony and the declarations of the suspects themselves.

## Criminal Trial

By March 3, 1905, in addition to the fourteen defendants, the public prosecutor, a privately appointed prosecutor, five defense attorneys, nine expert witnesses, and one hundred and twenty-six lay witnesses were scheduled to appear at trial. Public prosecutor Juan Gutiérrez Quirós requested death sentences for five defendants and twenty years of prison for the remaining nine.<sup>61</sup> Press coverage of this stage of the case indicates that Judge Landa's investigation, the evidence that he collected, and the accusations of the prosecutors remained in dispute through the end of the trial.

Although defendants had the right to remain silent at trial, Bocourt, Molina, Pablo Tabares, Julián Amaro, and Jorge Cárdenas, all represented by Afro-Cuban attorney Latapier, chose to testify. They reasserted their innocence but opened the door for questioning and for the emergence of contradictory testimony that harmed their defense. They were all convicted. Attorneys Arturo Santaló, Armando Castaños, and José Calzadilla instructed their seven clients to remain silent. Five of them were acquitted.<sup>62</sup> Silence

did not guarantee an acquittal, but defendants' silence made the task of the prosecution more difficult.

Prosecutors dedicated considerable attention to the religious beliefs and practices of the defendants and witnesses. The law of criminal procedure called for investigations into the life and moral character of the accused. Anyone could offer her opinions and voice racist and religious prejudices.<sup>63</sup> Like Judge Landa during the investigation stage, prosecutors sought to portray the defendants as *brujos* to taint their character. Without defining it, public prosecutor Gutiérrez Quirós asked sixty-eight-year-old Bocourt if he practiced *brujería*. Bocourt denied it. Private prosecutor Mario García Kohly was more incisive than Quirós in his questions. He asked Bocourt if his religion had priests and if such religion served to heal sick people. Bocourt answered: 'It is my land's religion. One heals everything there'. Bocourt admitted to having healed people using a chicken offered to 'Santa Bárbara.' García Kohly also asked Jorge Cárdenas about his beliefs in *brujería*. Cárdenas acknowledged that he cured his own sores using several objects seized from his house, but denied any belief on *brujería*.<sup>64</sup>

Prosecutors Gutiérrez Quirós and García Kohly spent days questioning witnesses on whether each and every defendant was a *brujo*. Witnesses testified that some of the defendants had cured

61 "El asesinato de la niña Zoila. Siete penas de muerte." *La Lucha*, January 29, 1905, 4.

62 República de Cuba. *Jurisprudencia del Tribunal Supremo en materia criminal de 1º de julio a 31 de diciembre de 1905*, Habana, Imprenta y Papelería de Rambla, Bouza y Cía., 1913, vol.29, 290. In the case for the death of Clotilde Ayllón (Matanzas, 1909), the three defendants who remained silent the entire trial were also acquitted. "La causa de los brujos. Tres procesados en libertad." *La Lucha*, March 11, 1909, 1.

63 Law of Criminal Procedure, Arts.377-378. In War Department, Division of Insular Affairs, *Translation of the Law of Criminal Procedure for Cuba and Porto Rico*, 97.

64 "El asesinato de la niña Zoila. La causa de los brujos." *La Discusión*, March 11,1905, 12; "El asesinato de la niña Zoila. Declaraciones de los brujos." *La Lucha*, March 11, 1905, 4.

them or their relatives. Several witnesses denied having any knowledge about *brujería* and about the beliefs of the defendants. Race was not a predictor of witnesses' solidarity or bias towards the defendants. For example, several white and Afro-Cuban witnesses identified defendant Modesta Chile as *bruja*. Modesta Chile denied any involvement in *brujería* or in any crime. Questioned by public prosecutor Gutiérrez Quirós, Modesta testified that she fought in the Revolution of 1895 with the troops of Afro-Cuban General Quintín Banderas. General Pedro Sáenz ratified that point. Octavio Rivero, Mayor of the town of Candelaria in Pinar del Rio, declared that Modesta was an industrious and honest woman, although she was a *bruja*.<sup>65</sup> In the end, the trial court believed Modesta and those who testified on her behalf. Finding no connection between her religious beliefs and the criminal charges, the Audiencia of Havana acquitted her. Lack of incriminating evidence and Modesta's prestige as an insurgent weighed in her favor more than her reputation as *negra bruja*.

Defense attorneys cross-examined witnesses and challenged the evidence offered by the prosecution. They showed that two police officers provided false information to the court. Witness Luciano Guerra contended that, from his house, he had seen Víctor Molina and Ruperto Ponce the day of the crime near the site where

Zoila's body was later found. Attorney Latapier requested a court's inspection of that site. During the inspection, one of the judges concluded that Guerra could not have identified Molina and Ponce. Latapier skillfully used the results of the inspection as a central element in his closing argument.<sup>66</sup> Attorney Arturo Santaló questioned two forensics experts as to whether the corpse showed any indication of cannibalism or ritual sacrifice. The doctors could not confirm the ritual sacrifice hypothesis.<sup>67</sup>

Although religious beliefs figured prominently at trial, no defense attorney invoked the constitutional right to religious freedom in defense of his clients. Latapier affirmed that healing with chickens, dolls, and prayers dedicated to a divine entity as the one Bocourt believed in, was not a crime. Even if *brujería* was harmful and criminal as prosecutors and some witnesses claimed, Latapier argued that Bocourt was a *curandero* rather than a *brujo*. Attorney Castaños observed more concisely that, whatever *brujería* meant, no evidence linked his clients and their beliefs to Zoila's death. Arturo Santaló closed oral arguments dramatically stating that

65 "El asesinato de la niña Zoila. La causa de los brujos. Segunda sesión del juicio oral." *La Discusión*, March 12, 1905, 12; "El asesinato de la Niña Zoila. Tercera sesión del juicio oral." *La Lucha*, March 14, 1905, 4; "El asesinato de la niña Zoila. La causa de los brujos. Cuarta sesión del juicio oral." *La Discusión*, March 15, 1905, 1, 12; "El asesinato de la niña Zoila. La causa de los brujos. Sexta sesión del juicio oral." *La Discusión*, March 17, 1905, 12; "El asesinato de la Niña Zoila [sexta sesión]." *La Lucha*, March 17, 1905, 4.

66 "El asesinato de la Niña Zoila. Tercera sesión del juicio oral." *La Lucha*, March 14, 1905, 4; "El asesinato de la Niña Zoila. Cuarta sesión del juicio oral." *La Lucha*, March 15, 1905, 4; "El asesinato de la Niña Zoila [sexta sesión]." *La Lucha*, March 17, 1905, 4; "El asesinato de la Niña Zoila. Inspección ocular [8ª sesión]." *La Lucha*, March 19, 1905, 4; "El asesinato de la Niña Zoila [11ª sesión]." *La Lucha*, March 24, 1905, 4; "El asesinato de la Niña Zoila [12ª sesión]." *La Lucha*, March 25, 1905, 4.

67 At least in two other criminal cases for murder involving allegations of child sacrifice in Matanzas, forensics experts offered equally crucial evidence for the defense. "Los bárbaros crímenes de la Brujería. Últimas noticias recibidas del lugar del triste suceso." *La Lucha*, June 25, 1913, 1, 2; "Los crímenes de la brujería." *La Lucha*, March 23, 1919, 2; "Nota oficial del crimen de Alacranes." *La Lucha*, March 24, 1919, 2.

his clients faced the same predicament as Jesus Christ: They committed no crime but were about to be unjustly crucified by public opinion and by a people of fanatics.<sup>68</sup> Most attorneys drew the court's attention to the lack of incriminating evidence of murder, dodging any discussion on what their clients believed.

Amidst the overwhelming racist outcry against *brujos* fueled by the press, some newspapers reflected the inconsistencies of the prosecution, publicized the intervention of the attorneys, and helped to convey some sense of solidarity towards the Afro-Cuban defendants.<sup>69</sup> *La Lucha* noted that Afro-Cuban House Representative Generoso Campos Marquetti arrived in Güira de Melena with attorney Carlos de Armas to provide some legal protection to the accused. The actions of attorney Juan Tranquilino Latapier were carefully reported. Sectors of public opinion voiced concerns about the campaign against *brujería*. Political leaders like veteran Magdalena Peñarredonda blamed Cuban society and civilized Christians for victimizing Afro-Cubans as slaves in colonial times and as citizens without opportunities and education under the republic. Others, like white intellectual Gabriel Camps, convicting

and punishing these *brujos* was just one step in the uprooting superstition. In Camps' view, the republic had to rely on education and other social measures to end those practices.<sup>70</sup> The press and public opinion functioned as collateral arenas of debate in the case.

## Court Decisions

Even if the records of this case were complete and available today, few could be certain today as to whether Domingo Bocourt, Víctor Molina, Pablo Tabares, Juana Tabares, Julián Amaro, Ruperto Ponce and Jorge Cárdenas committed the crimes for which they were accused. However, the Justices of the Audiencia of Havana who read the records and presided over the trial found them guilty of murder. The court was persuaded that Bocourt had promised Juana and Pablo a ritual cleansing with the blood and heart of a white girl, after which Juana would bear children and keep them alive. The court concluded that Bocourt, who was a *curandero* and claimed to heal illnesses by supernatural means, used his reputation as *brujo* to ask her acquaintance Molina to kidnap and kill a white girl. Molina, with the help of Ponce, Julián Amaro, and Jorge Cárdenas, selected Zoila as the victim and carried out Bocourt's command. To convict for murder, the trial court focused on the sixty-gold pesos that Pablo and Juana paid to Bocourt for his services, the age of the victim, her helplessness

68 "El asesinato de la niña Zoila. La causa de los brujos. Undécima sesión del juicio oral." *La Discusión*, March 24, 1905, 12; "El asesinato de la Nina Zoila [12ª Sesión]." *La Lucha*, March 25, 1905, 4; "El asesinato de la Nina Zoila [12ª Sesión]." *La Lucha*, March 26, 1905, 4; "El asesinato de la Nina Zoila." *La Lucha*, March 28, 1905, 4.

69 A. de la Fuente, *A Nation for All*, pp. 61-62, 163; Lillian Guerra, "From Revolution to Involvement in the Early Cuban Republic: Conflicts over Race, Class, and Nation, 1902-1906." In *Race & Nation in Modern Latin America*, ed., Nancy P. Appelbaum, Anne S. Macpherson, and Karin Alejandra Rosenblatt, Chapel Hill and London, the University of North Carolina Press, 2003, pp. 132-162.

70 "El salvaje asesinato de la niña Zoila." *La Lucha*, December 1, 1904, 1; "El salvaje asesinato de la niña Zoila." *La Lucha*, December 2, 1904, 4; "El salvaje asesinato de la niña Zoila." *La Lucha*, December 3, 1904, 4; Magdalena Peñarredonda, "Los crímenes de la barbarie y los crímenes de la civilización." *La Lucha*, January 30, 1905, 4; Gabriel Camps, "Tópicos Rurales." *Cuba y América*, XIX: 19 (August 6, 1905):34.

situation, and the isolated location of the crime. Only Molina was sentenced to death. The Justices sentenced the other six defendants to lengthy prison terms. Seven Afro-Cuban defendants, including Modesta Chile, were acquitted. No one was found guilty of Virginia Perdomo's attempted kidnapping.<sup>71</sup>

On appeal to the Supreme Court, attorney Latapier submitted, among other grounds, that Bocourt, Molina, Ponce, and Cárdenas should have received lesser sentences because they acted under the powerful influence of their 'erroneous beliefs in supernatural means.' Thus, Latapier argued, his clients were not in full control of their minds to act with premeditation and deliberation.<sup>72</sup> This desperate effort was doomed. Latapier had raised no insanity defense at any stage of the case. The Supreme Court could not hear new issues on appeal. On August 23, 1905, the Supreme Court affirmed the convictions and sentenced Domingo Bocourt to death as the public prosecutor requested in his appeal.<sup>73</sup>

---

71 República de Cuba. *Jurisprudencia del Tribunal Supremo en materia criminal de 1º de julio a 31 de diciembre de 1905*, Habana, Imprenta y Papelería de Rambla, Bouza y Cía., 1913, vol.29, pp. 288- 290; "El asesinato de la Niña Zoila. Fallo del Tribunal." *La Lucha*, April 4, 1905, 4.

72 F. Ortiz, *Los Negros Brujos*, pp. 409-410; A. Helg, *Our Rightful Share*, pp. 111-112.

73 "Fallo del Supremo. Dos sentencias a muerte y dos a cadena perpetua." *La Lucha*, August 24, 1905, 4; Cuba. *Jurisprudencia del Tribunal Supremo en materia criminal de 1º de julio a 31 de diciembre de 1905* (Habana: Imprenta y Papelería de Rambla, Bouza y Cía., 1913) vol.29, 298-304. The Supreme Court was authorized to enhance on appeal the sentence imposed by lower courts. See, Orden Militar #92 de 26 de Junio de 1899, Del Recurso de Casación y su procedencia, Art.LXXVIII. In United States. Division of Insular Affairs, *Translation of the law of criminal procedure for Cuba and Porto Rico (With Spanish Text), with Annotations, Explanatory Notes, and Amendments Made since the American Occupation*, Washington, Government Printing Office, 1901, p. 275.

The Audiencia of Havana and the Supreme Court remained silent on whether Afro-Cuban healing practices and beliefs on supernatural powers called *brujería* and *curanderismo* were legal and out of the protective scope of religious freedom. Their decisions addressed one main question: whether the actions of a group of adult men and women, not their religious beliefs, constituted kidnapping, murder or both. Racial, religious and criminal stereotypes about *brujería* shaped this court case from the beginning. A closer look at available sources might suggest nonetheless that the convictions were far from predetermined by those prejudices. All defendants were Afro-Cubans practitioners of religions of African origin, but the court acquitted seven of them. Any serious study of the history of persecutions of the practitioners of Afro-Cuban religions during the first three decades of the republic should account for the practices of the Cuban judiciary, the police, the prosecutors, or the experts when they twisted and contorted evidence and laws to convict alleged *brujos* as well as when they constructed them in favor of the suspect believers. Any discussion of the repression of *brujería* must incorporate the numerous examples and life stories of those who were accused of crimes, but were ultimately acquitted. In the case of Domingo Bocourt religious freedom played a very limited role.

### **Brujería, Ritual Sacrifice, and Religious Freedom in the Aftermath of Bocourt's Case**

By ruling that several Afro-Cubans murdered Zoila Díaz motivated by their religious beliefs among other reasons, the Supreme Court did not

call for a witch-hunt nor guarantee that *brujos* accused of child murder would be convicted just for their race and religious beliefs. Some journalists, however, constantly referred to this case and used it as a blueprint to articulate their racist campaigns against the Afro-Cuban population. But in courts, the narrative of black *brujos* sacrificing white children did not work exactly as those journalists intended. For example, the criminal case against Guillermo Álvarez and his relatives corroborates that court's decisions regarding crimes allegedly related to *brujería* relied on evidence of criminal conduct, particularly actions that caused death or physical harm, rather than on prosecutorial theories about the beliefs of the defendants or about the purposes of their sacred objects. Judicial practices and adherent to certain legal principles concerning legal procedures, evidence, and the rights of criminal defendants could explain why claims of religious freedom rarely made into the courtroom. Whenever the courts found that a serious crime had been committed, religious freedom had to be ruled out as a valid defense.

On August 22, 1918, ailing Justina Álvarez López, a seven-year-old Afro-Cuban girl, was rushed to an emergency clinic in Havana. Justina's maternal grandmother and the neighbors reported to the police that her own father, Guillermo Álvarez, and other household members were physically abusing the girl. Police agents searched the house and found Justina wounded, burned, and starving. Guillermo Álvarez and nine other Afro-Cubans were arrested. Scores of ritual objects were seized as evidence of *brujería*. Newspaper *El Mundo* suggested that the race of the victim

was irrelevant to the *brujos*: 'to consummate the horrendous crimes of *brujería*, [they] only need [to look at] the age [of the child]...'74

Unlike other cases of alleged ritual sacrifice investigated since 1904, where the victimized child was dead, Justina was alive. In her compelling testimony before the Judge of Instruction, she described how her father and relatives burned her with cigars, cut her with blades and knives, and mistreated her.<sup>75</sup> Afro-Cuban Guillermo Álvarez was not an illiterate rural worker or a former slave like Bocourt and his co-defendants. Álvarez had served in the army and in the police. He attributed his arrest to personal enemies that he had made when he was a policeman. From jail, Álvarez claimed that the objects found in the house were sacred, denied harming his daughter, and stopped granting interviews when he sensed that his chances for acquittal could be affected by press reports. Public opinion was not in his favor either. A mob tried to lynch him on his way to the police station. According to *El Mundo*, people of color demanded the lynching more than any other protesters.<sup>76</sup>

This case provoked another round of public debates about *brujería*, religion, and crime. Afro-

74 "Una niña de 7 años torturada por los brujos." *El Día*, August 23, 1918, 1, 6; "Martirio de una niña de 7 años." *El Mundo*, August 23, 1918, 1, 16.

75 "Ayer aparecieron en montón informe las pruebas del delito de los brujos." *El Día*, August 22, 1918, 1, 16.

76 Israel Castellanos, "La lucha policiaca contra el fetichismo." *Revista de Técnica Policial y Penitenciaria*, 4:2-3 (Septiembre, 1936): 245-246, 248-251; "Nuevo caso horripilante de brujería en Marianao." *La Lucha*, August 23, 1918, 1; "Cueva de los bandidos." *El Mundo*, August 26, 1918, 16; "El brujo de Buena Vista pudo ser linchado ayer." *El Mundo*, September 1, 1918, 16. For another analysis of this case see Reinaldo L. Román, *Governing Spirits*, 90-92.

Cuban journalist Ramiro Neyra remarked that black Cubans were not the only practitioners of fetishism and that political manipulation and racial prejudice had tainted the court proceedings. Dr. Juan Martínez Velasco, an Afro-Cuban school inspector, wrote to *El Día* highlighting that *brujería* was not a true religion, whereas for Afro-Cuban journalist José Armando Plá, chief editor of *La Antorcha*, *brujería* was primitive, but it was a religion practiced by people of all races on all continents, including modern Europe. Plá concluded: ‘The remedy against *brujería* is not to be found in the Penal Law...the fundamental problem is not of repression, but of education.’<sup>77</sup>

Public prosecutor Manuel Castellanos charged ten Afro-Cuban men and women for attempted parricide and illicit association. Castellanos informed that ‘based on their erroneous beliefs in *brujería*,’ the defendants decided to kill Justina because she was causing them spiritual harm. Abundant evidence showed that the accused practiced an Afro-Cuban religion. Justina had described how a woman named Yemayá and a man named Eleguá -alluding to two *Orishas* of Afro-Cuban Santería- bled her several times and collected her blood in a pot with her father’s consent.<sup>78</sup> This case had what zealous prosecutor would inclined to hunt brujos could have dreamed

of. Victim and witnesses testified as to a pattern of physical abuses. Medical experts documented the victim’s physical injuries as connected to the defendants’ actions. The fact that the girl was an Afro-Cuban rather than a white girl did not stop the prosecutor from using the theory of the ritual sacrifice of children. The Audiencia of Havana found Guillermo Álvarez, Caridad Valdés, and Robustiano Álvarez guilty of battery and sentenced them to less than two years in prison rather than to the twenty years that the prosecutor requested for a crime of parricide. Even if they had harmed Justina, the court concluded that they did not intend to kill her. The Audiencia acquitted the remaining seven Afro-Cuban defendants; they shared the same religious beliefs of the convicts but committed no crime.<sup>79</sup>

The case of Guillermo Álvarez shows that there was no single model for prosecuting alleged *brujos* for violent crimes. Here, the court convicted some Afro-Cuban defendants for physically harming a black rather than a white child and this was not exceptional. *Brujos* could belong to any race and bear any skin color. In 1913, newspapers jointly labeled Afro-Cuban and white citizens as *brujos* and courts investigated and prosecuted them for accidentally killing a white child.<sup>80</sup> Not only were alleged criminal

77 “El problema de la brujería tratado por los hombres de color.” *El Día*, September 6, 1918, 1, 12; “El problema de la brujería tratado por los hombres de color.” *El Día*, September 8, 1918, 1; “El problema de la brujería tratado por los hombres de color.” *El Día*, September 13, 1918, 1, 10. For other analyses on this debate, see Alejandra Bronfman, *Measures of Equality*, 95-96.

78 “Los brujos que martirizaban a la Niña Justina serán condenados.” *La Lucha*, March 22, 1919, 1; “Tribunales. El ruidoso proceso de los brujos de Marianao.” *Diario de la Marina*, March 22, 1919, 7.

79 “Los brujos que martirizaban a la niña Justina serán condenados.” *La Lucha*, March 22, 1919, 1; “Tribunales. El ruidoso proceso de los brujos de Marianao.” *Diario de la Marina*, March 22, 1919, 7; “Juicio oral contra los brujos de Marianao.” *La Lucha*, June 7, 1919, 12; “Los brujos de Marianao condenados.” *La Lucha*, June 17, 1919, 10.

80 [Constantino] Cabal, “El suceso de Artemisa. Otra víctima de los brujos.” *Diario de la Marina*, November 27, 1913, 1, 3; “Una era de barbarie amenaza a este país.” *El Mundo*, November 28, 1913, 1, 9; X., “La brujería en acción. Alrededor de Benito Jorrín.” *Diario de la Marina*, November 29, 1913, 1, 6; Justo Pérez, “Los brujos de

*brujos* and their victims found among all races and skin colors, in some cases the victim was not a child but an adult and the *brujos* were practitioners of *espiritismo* rather than of Afro-Cuban religions. In 1916, one Afro-Cuban man and several white individuals faced trial as *brujos* and *espiritistas* for murdering Salvador Guerra, an adult white man. Guerra's blood was used in a healing ritual. Most defendants were Guerra's white relatives and were convicted.<sup>81</sup> Last, in less publicized cases victim and defendants were all white adults, and no blood or healing ritual occurred in connection with the crime yet the suspects appeared in court records as *brujos*.<sup>82</sup> Thus, by the early 1920s, the case of Domingo Bocourt was an emblematic, sensational case of *brujería* but it was far from being the model case to prosecute *brujos* for murder and other violent crimes. Cases for violent crimes involving alleged practices of *brujería* combined different kinds of *brujos*, victims, and supernatural practices, even when some journalist, scientists, and politicians persisted in characterizing *brujería* as the murder of white children by Afro-Cuban citizens to perform blood rituals in religions of African origin.

---

Artemisa." *El Mundo*, December 1, 1913, 1.

81 "Las siniestras visiones del brujo "Pata de Palo"." *Heraldo de Cuba*, October 1, 1915, 1, 3; Sentencia No. 68 de 13 de septiembre de 1916 por asesinato. *Jurisprudencia al Día, Sección Penal*, 2:(1916): 923-927; Diego Vicente Tejera y García, *Comentarios al Código de Defensa Social. Tomo II. Parte General. Artículos 39 al 80* (La Habana: Jesús Montero, Editor, 1945), 50.

82 Sentencia No.244, de 20 de octubre de 1915 por asesinato. *Jurisprudencia al Día, Sección Penal*, 1:(1915): 749-750; Sentencia No. 66 de 9 de marzo de 1920 por homicidio, infracción de leyes sobre inhumación y ejercicio sin título de una profesión que lo requiere. *Jurisprudencia al Día, Sección Penal*, 1:(1920): 177-183 (182-183); Sentencia No.102 de 21 de noviembre de 1921 por violación, tentativa de violación y parricidio. *Jurisprudencia al Día, Sección Penal*, 2: (1921): 1123-1129.

## Conclusions

The cases against Domingo Bocourt, María Julia Torres, Guillermo Álvarez and other religious believers suggest that the principle of religious freedom proclaimed in Constitution of 1901 was largely inconsequential to the defense of *brujos* prosecuted for murder and other violent crimes. The framers of the Constitution authorized the state to pass and enforce existing laws limiting, prohibiting and criminalizing religious practices in the name of Christian morality and public order. As a constitutional right subject to limits, as perhaps most constitutional rights, religious freedom was a two-edge sword that citizens could invoke in most circumstances to their benefit but that, in other occasions, would not shield them from legal liability vis-à-vis the state or other individuals. As Afro-Cuban Felipe Villavicencio understood as soon as the Constitution was published, it belonged to the believers to assert the legitimacy of Afro-Cuban religious practices. However, the main legal battles of Bocourt, Torres, Álvarez and other alleged *brujos* accused of crimes focused on the Penal Code and on the merits of their criminal defenses rather than on the constitutional legitimacy of their religious beliefs.

Racist narratives about *brujería* and allegations of child murder turned practitioners of Afro-Cuban religions into a class of criminal suspects. But legal cases against *brujos* dealt with crimes such as murder, parricide, rape, kidnapping or battery as defined in the Penal Code and interpreted by courts, state officials, and legal scholars. In those cases, *brujería* stereotypes



served police agents, judges of instruction, prosecutors, and witnesses to tarnish the defendant's moral character, to provide context for the accusation and to explain the motivations of some individuals to commit the alleged crimes. But conviction had to be based on evidence of an actual wrongdoing. When courts concluded that such evidence existed, any debate about religious freedom was rarely helpful. Absent such evidence, many of the accused *brujos* were simply acquitted. Any protection for religious freedom resulting from those acquittals may be seen more as a byproduct of the criminal cases than as an explicit judicial affirmation of the legality of Afro-Cuban religions. The struggles for the legal protection of Afro-Cuban religions or for their repression as criminal *brujería* were fought day by day, case by case, in and out of court, in Congress and in local city councils, peacefully accepting state control or actively defying it in the name of equal rights and citizenship.

---

Part of the research and drafting of this article has been possible thanks to an Arts & Science Summer Research Fellowship from the Department of History of the University of Pittsburgh, and to the 2009 Latin American Social and Public Policy Graduate Fellowship from the Center for Latin American Studies of the University of Pittsburgh. Earlier versions of these article were presented at the 2011 Mid-Atlantic Conference on Latin American Studies held at the University of Pittsburgh, and at the conference "New World(s) of Faith Religion and Law in Historical Perspective" held at the University of Philadelphia in 2013. I thank Alejandro de la Fuente García, George Reid Andrews, Lara E. Putnam, Alejandra Boza Villarreal, Matthew Casey, Francisco Flórez Bolívar, Mercedes García Rodríguez, Sarah B. Gordon, Oilda Hevia Lanier, Jesse L. Horst, Magaly Leyva Rodríguez, Edward Muller, Rainer Schultz, Christopher Tomlins, Kelly L. Urban, Barbara Young Welke, and an anonymous reader from the editorial board of *Taller de la Historia* for their critical comments, mentorship, and support.

## Bibliography

### Primary Sources

- Cuba y América, 1904.  
Diario de Sesiones de la Convención Constituyente de la Isla de Cuba, 1901.  
Diario de la Marina, 1913.  
El Día, 1918.  
El Mundo, 1913, 1918.  
Heraldo de Cuba, 1915.  
La Discusión, 1889-1906.  
La Lucha, 1886-1919.  
Revista de Técnica Policial y Penitenciaria, 1936.

### Printed Sources

- Bachiller y Morales, Antonio, *Elementos de Filosofía del Derecho, o Curso de Derecho Natural*, Habana, Imprenta del Tiempo, 1857.
- Balbé y Huguet, P, *Códigos de Cuba*, 4ª Edición, La Habana, Imprenta "Benavent" 1925.
- Castellanos G., Gerardo, *Relicario Histórico. Frutos coloniales y de la vieja Guanabacoa*, La Habana, Editorial Lex, 1948, pp. 588, 594.
- De Vizmanos, Tomás María y Álvarez y Martínez, Cirilo, *Comentarios al Nuevo Código Penal*, Madrid, Establecimiento Tipográfico de J. González y A. Vicente, 1848.

Dirección de la Revista General de la Legislación y Jurisprudencia, *Jurisprudencia Criminal*. Colección completa de las Sentencias dictadas por el Tribunal Supremo en los recursos de casación y competencias en material criminal desde la instalación de sus salas segunda

- y tercera en 1870, Madrid, Imprenta de la Revista de Legislación, 1892 (Tomo 46, 474-477).
- González, Julián, *Martín Morúa Delgado. Impresiones de su última novela y su gestión en la Constituyente de Cuba*, Habana, Imprenta de Rambla y Bouza, 1902.
- Pacheco, Joaquín Francisco, *El Código Penal concordado y comentado. 6ª edición corregida y aumentada*, Madrid, Imprenta y Fundición de Manuel Tello, 1880 (Tomo II).
- Revista de Legislación Universal y Jurisprudencia Española/Casa Editora, Librería e Imprenta "La Moderna Poesía", 1906.
- Roche Monteagudo, Rafael, *La Policía y sus misterios en Cuba*, 3ª Edición, Habana, La Moderna Poesía, 1925.
- Rodríguez, José Ignacio, *Estudio histórico sobre el origen, desenvolvimiento y manifestaciones prácticas de la idea de la anexión de la Isla de Cuba à los Estados Unidos*, Habana, Imprenta La Propaganda Literaria, 1900.
- Santamaría de Paredes, Vicente, *Curso de Derecho Político según la filosofía política moderna, la historia general de España y la legislación vigente*, Cuarta edición, Madrid, Establecimiento Tipográfico de Ricardo Fé, 1890.
- Biblioteca Jurídica de la República de Cuba, *Del Matrimonio. Orden No. 140 de 1901 concordada con el Código Civil, el Penal, modificaciones posteriores y modelos. Segunda edición*, Habana, Imprenta y Papelería de Rambla, Bouza y Compañía, 1915, pp. 8-9.
- Santos Villa, *Los crímenes de la calle Inquisidor*, Habana, Establecimiento Tipográfico O'Reilly No. 9, 1889.
- Varela Zequeira, Eduardo, *La venganza de un marido (Crimen en la Víbora)*, Habana, Est. Tip. "La Moderna," 1893.
- Secondary sources**
- Bronfman, Alejandra, *Measures of Equality: Social Science, Citizenship, and Race in Cuba, 1902-1940*, Chapel Hill, The University of North Carolina Press, 2004.
- Brooke, John R., *Civil Report of Major-General John R. Brooke, U. S. Army, Military Governor, Island of Cuba*, Washington, Government Printing Office, 1900, p. 7.
- Chávez Álvarez, Ernesto, *El crimen de la niña Cecilia. La brujería en Cuba como fenómeno social (1902-1925)*, La Habana, Editorial de Ciencias Sociales, 1991.
- De la Fuente, Alejandro, *A Nation for All: Race, Inequality, and Politics in Twentieth-Century Cuba*, Chapel Hill & London, The University of North Carolina Press, 2001.
- Erenchún, Félix, *Anales de la Isla de Cuba. Diccionario administrativo, económico, estadístico y legislativo. Año de 1856*, (Tomo II), La Habana, Imprenta La Habanera, 1857.

- García Moreno, Alejo y Aybar, José Rosado, *Código penal vigente en la República de Cuba completado, anotado y de Cuba*, Madrid/Habana.
- Guerra, Lillian, *The Myth of José Martí: Conflicting Nationalisms in Early Twentieth-Century Cuba*, Chapel Hill, The University of North Carolina Press, 2005.
- Guerra, Lillian, "From Revolution to Involution in the Early Cuban Republic: Conflicts over Race, Class, and Nation, 1902-1906", In *Race & Nation in Modern Latin America*, ed., Nancy P. Appelbaum, Anne S. Macpherson, and Karin Alejandra Rosenblatt, Chapel Hill and London, the University of North Carolina Press, 2003, pp.132-162.
- Helg, Aline, *Our Rightful Share: The Afro-Cuban Struggle for Equality, 1886-1912*, Chapel Hill, The University of North Carolina Press, 1995.
- Iglesias Utset, Marial, *Metáforas del cambio en la vida cotidiana: Cuba 1898-1902*, La Habana, Ediciones UNEAC, 2003.
- Johnson, Paul Christopher, "Law, Religion, and "Public Health" in the Republic of Brazil", *Law & Social Inquiry*, vol. 26, No.1 (winter, 2001),
- Jurisprudencia del Tribunal Supremo en materia criminal de 1º de julio a 31 de diciembre de 1905*, Habana, Imprenta y Papelería de Rambla, Bouza y Cía., 1913.
- Logan, Enid Lynette, "The 1899 Cuban Marriage Law Controversy: Church, State, and Empire in the Crucible of Nation", In *Journal of Social History*, Winter 2008, 469-490.
- Maza Miquel, Manuel P., *Entre la ideología y la compasión: Guerra y Paz en Cuba, 1895-1903. Testimonios de los Archivos Vaticanos*, Santo Domingo, Instituto Pedro Francisco Bono, 1997.
- Miller, Ivor L., *Voice of the Leopard: African secret societies and Cuba*, Jackson, The University Press of Mississippi, 2009.
- Moore, Robin D., *Música y mestizaje. Revolución artística y cambio social en La Habana. 1920-1940*, Madrid: Editorial Colibrí, 2002.
- Ortiz, Fernando, *Los Negros Brujos*.
- Palmié, Stephan, "From Enchantment by Science to Socialist Sorcery: The Cuban Republic and Its Savage Slot", In *Sorcery in the Black Atlantic*, Luis Nicolau Parés and Roger Sansi (Eds.), Chicago and London, The University of Chicago Press, 2011.
- Palmié, Stephan, "The Cuban Republic and its wizards," In *Permutations of order: religion and law as contested sovereignties*, In Thomas G. Kirsch and Bertram Turner (Eds.), Burlington, Ashgate Publishing Company, 2008.
- Palmié, Stephan, *Wizards and Scientists: Explorations in Afro-Cuban Modernity and Tradition*, Durham, Duke University Press, 2002.
- Paton, Diana, "Obeah Acts: Producing and Policing the Boundaries of Religion in the

- Caribbean.” *Small Axe: A Caribbean Journal of Criticism*, 28 (March 2009): 1-16.
- Perdiguero, Enrique, “Magical Healing in Spain (1875-1936): medical pluralism and the search for hegemony”, In *Witchcraft Continued: Popular Magic in Modern Europe*. Edited by Willem de Blécourt and Owen Davies, Manchester and New York, Manchester University Press, 2004.
- Ramsey, Kate, “Legislating “Civilization”, In Postrevolutionary Haiti”, In *Race, Nation, and Religion in the Americas*, In Henry Goldschmidt and Elizabeth McAlister (Eds.), Oxford & New York: Oxford University Press, 2004, 231-258.
- Román, Reinaldo L., *Governing Spirits: Religion, Miracles and Spectacles in Cuba and Puerto Rico, 1898-1956*, Chapel Hill, The University of North Carolina Press, 2007.
- Ubieta, Enrique, *Efemérides de la Revolución Cubana*, vol., 1, Habana, Imprenta y Papelería “La Moderna Poesía”, 1911.
- Watson, Carolyn E., *Citizenship, Religion and Revolution in Cuba*. Ph.D. Dissertation, Albuquerque, The University of New Mexico, December 2009.
- Zeuske, Michael, “Estructuras, movilización afrocubana y clientelas en un hinterland cubano: Cienfuegos, 1895-1906”, en *Tiempos de América*, No.2 (1998).