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Cuban Constitutionalism: Will There Be Changes?

Michael B. Wise*

I. INTRODUCTION

Recent changes in Cuba have focused largely on limited liberalization of economic policies in response to the effects of the recent world economic crisis. Cuba’s experience in the last two decades, however, suggests that when circumstances force changes in economic policies such as those following the fall of the former Soviet Union, the Cuban government may also make changes in the constitution. This article assesses the climate for constitutional change in Cuba in light of both the recent economic policy changes and recent Cuban constitutional history. Section II discusses the recent economic policy changes. Section III discusses an important feature of Cuba’s diverse constitutional history, the Constitution of 1940. Section IV discusses the constitutional developments of the Revolution of 1959. Section V considers the development and nature of the post-revolution Marxist-Leninist Constitution of 1976. Section VI analyzes the limited, but significant, changes that Cuba made with its 1992 Constitutional Amendments. Section VII briefly discusses the retrogressive Law of Constitutional Reform of 2002.

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II. CUBA AND CHANGES IN ECONOMIC POLICY

The Cuban Government has undertaken significant changes since the Soviet Union's collapse. These changes have largely been to economic policies and not to the basic political system or constitutional structure. Unlike the socialist governments of Eastern Europe, the Cuban Government has endured, albeit with economic hardship, the demise of the Soviet Union and the elimination of its substantial economic support. To survive, Cuba has made changes to its economic system, particularly by allowing foreign tourism and remittances from Cubans abroad to family members still in Cuba. The fall of the Soviet Union also had a great effect on agricultural policy: "In response to the crisis, the Cuban government introduced significant changes in the organization of agricultural production, authorized the creation of agricultural markets, and launched an ambitious program to promote organic and semi-organic farming techniques."

More recently, the Cuban Government has also weathered the change in leadership from Fidel Castro to his brother Raúl Castro, which has proceeded rather smoothly despite the expectation held by some North Americans that it would cause disturbances or even the fall of the Cuban Government. When Fidel Castro became ill in 2006, Raúl Castro took over as acting president after serving as the long-time head of the military. Raúl Castro was elected President by the National Assembly a few days after Fidel Castro's official resignation in 2008. Raúl Castro has demonstrated some flexibility in both economic and ideological matters that may give some hope of at least limited additional constitutional changes. On the economic front, Raúl Castro called for debate on "structural and conceptual changes" in the economy.

2. Carmen G. Gonzalez, Seasons of Resistance: Sustainable Agriculture and Food Security in Cuba, 16 TULANE ENVTL. L. J. 685, 712 (2003). These reforms converted state operated farms to cooperatives, distributed some land to small producers, opened agricultural markets for farmers to sell produce that they produced in excess of quotas at market determined prices. Id. at 713-29.
3. Jamison, supra note 1, at 907-08.
sent a move away from the ideological rigidity of the past. For example, Cuban citizens were permitted to stay in tourist hotels and to buy cellular telephones. Raúl Castro has also been willing to permit more small private businesses to operate. Most significantly, he has also sought to involve broad input from a range of entities within the state and political party on how to increase economic activity and the standard of living. Throughout this process, the government has held thousands of meetings and received thousands of proposals.

Since 2004, however, the Cuban Government has also avoided making many difficult economic decisions because of the willingness of Venezuela's President Hugo Chávez to supply petroleum to Cuba under a barter agreement whereby Cuba received oil products well below prevailing world market prices in exchange for Cuban health care and other services. . . . Venezuela's money freed Cuban leaders from having to think about changes that should have been adopted long ago.

The global economic crisis that began in 2009 and the reduction in Venezuela's support ensured that President Raúl Castro's efforts had to focus even more urgently on economic reform. In the fall of 2010, Raúl Castro announced that the Cuban Communist Party (PCC) would hold its Sixth National Congress, the first such congress in fourteen years. In September of 2010, the PCC released its Economic and Social Policy Development Project, an outline of economic policies to be considered at the Party Congress in April, 2011. After discussion and amendment, the economic proposals were adopted by the Party Congress. Professor Jorge Domínguez has commented on the policies as follows:

The new economic program embraces many market principles, yet it also affirms the principled value of centrally set prices for many products and services. It does not fly the flag

6. Id.
8. Id.
10. Shreve, supra note 5, at 378.
11. Domínguez, supra note 9, at 10.
12. Id. at 12.
of equality; instead, it challenges citizens to recognize that “egalitarianism” is unsocialist and an impediment to better economic performance. It vows to eliminate the rationing card, dismiss government employees whose jobs are examples of featherbedding, and even suspend subsidies to worker’s cafeterias. Economic rewards should go to each person according to the quality and quantity of the individual work effort.  

While the policies propose encouraging changes and show some ideological reordering, there remain many continuing policies that will still inhibit economic growth. The Cuban Government has made other changes that, while economically motivated, also incrementally increased a few political freedoms. Most recently, on October 16, 2012, the government announced that it would loosen the hated restrictions it had long imposed on foreign travel for Cuban citizens. To depart the country lawfully in the past, Cubans had to obtain an expensive exit visa and show a letter of invitation from the destination country. Beginning in mid-January 2013, Cubans, in most instances, will only need a passport and a visa to travel outside of the country. Additionally, those who depart will be allowed to remain outside of Cuba for two years without the need of further authorization. The announcement made clear, however, that restrictions on highly skilled professionals would remain to prevent the “brain drain” that Cuba accuses the United States of encouraging. The official newspaper Grandma announced:

The updating of the migration policy takes into account the right of the revolutionary state to defend itself from the aggressive and subversive plans of the US government and its allies. For this reason, those measures aimed at preserving the human capital created by the Revolution from theft of talents practiced by the powerful nations shall remain in force.

13. Id. at 10.
16. Id.
Our consideration, however, is not about the need for further economic change in Cuba. Rather, recent developments in economic policy are presented because they show some willingness of the Cuban Government to move beyond ideological constraints and demonstrate some ability of that Government to see the benefits of greater openness of debate. As Professor Domínguez observes:

Raúl Castro's most salient non-economic political comment at the party Congress came early in his main report. He described in some detail how many meetings there had been in advance of the Party Congress to discuss the new economic program, how many people had participated in them, how many suggestions had been made, which topics received the greatest attention, and how many specific items had been changed. In the midst of this recitation, he said, "there was no unanimity . . . and that was exactly what we needed, if we really wanted a serious and democratic consultation with the people." It may have been the first official praise of the absence of unanimity in a half-century of Cuban politics.  

Perhaps this limited tolerance of differences of opinion suggests the possibility of change in other areas, such as change toward constitutional reform and a more democratic political culture.

III. THE CUBAN CONSTITUTION OF 1940

The Constitution of the Republic of Cuba of 1940 is a document of particular historical importance. It has the unique status of being the only Cuban Constitution created by a constituent assembly that was broadly representative of the full range of Cuban political parties and social interests, including the PCC. The Constitution grew out of the global economic and political turmoil of the 1930s and, in particular, with the frustration of many Cubans with the "omnipotent, irresponsible executive and a fumbling, rubber-stamp legislature" that led to violence in the expres-

17. Domínguez, supra note 11, at 14.
18. CONST. (1940) (Cuba). English translations of the 1940 Constitution are available in Cuban Democratic Judiciary, CONSTITUTION OF THE REPUBLIC OF CUBA (1965); 1 Amos Jenkins Peasley, CONSTITUTIONS OF NATIONS 610-82 (2d ed. 1956).
sion of political opposition.\textsuperscript{20} Structurally, the Constitution of 1940 introduced some elements of a semi-parliamentary system as an intended, but ultimately unsuccessful, counterbalance to the executive.\textsuperscript{21} The 1940 Constitution's features included a bicameral legislature,\textsuperscript{22} executive power exercised by the President of the Republic,\textsuperscript{23} and a judiciary headed by a Supreme Court, a superior electoral court, and other tribunals as established by law.\textsuperscript{24} The major change from the model of the 1901 Constitution was the addition of a prime minister and a cabinet subject to the confidence of the Congress.\textsuperscript{25}

The Constitution of 1940 elaborated extensive provisions intended to protect political and civil rights as well as provide extensive social and economic guarantees.\textsuperscript{26} These included many progressive provisions such as a prohibition of the death penalty except for military crimes, treason, or espionage in time of war,\textsuperscript{27} a guarantee of equality making unlawful "all discrimination by reason of sex, race, color, class, or any other that detracts from human dignity"\textsuperscript{28} and specific labor protections for pregnant, postpartum, and nursing mothers.\textsuperscript{29}

Four aspects of the Constitution of 1940 are of special relevance when considering potential changes in Cuba's present charter. One was a broad protection of expression stating, in part, that "Every person can, without subjection to prior censorship, freely express his thoughts orally, in writing, or by any other graphic or oral means of expression, utilizing for the purpose any or all of the

\begin{itemize}
\item \textsuperscript{22} CONST. (1940), arts. 119-137, (Cuba).
\item \textsuperscript{23} Id. arts. 138-163.
\item \textsuperscript{24} Id. arts. 170-208.
\item \textsuperscript{25} JAMES D. RUDOLPH, CUBA, A COUNTRY STUDY 160 (James D. Rudolph ed., 1985) ("The 1940 Constitution retained most of the provisions of the bill of rights from the 1901 Constitution but completely changed the structure of the government into a semi-parliamentary system with a president, elected by universal suffrage, who was assisted by a cabinet that was led by a prime minister. The Cabinet was directly responsible to the Congress, which could remove any minister or the entire cabinet by a vote of no confidence."); D'Zurilla, supra note 21, at 1237.
\item \textsuperscript{27} CONST. (1940), art. 25, (Cuba).
\item \textsuperscript{28} Id. art. 20.
\item \textsuperscript{29} Id. art. 68.
\end{itemize}
A second provision was its protection of religious freedom stating: "The profession of all religions, as well as the practice of all cults, is unrestricted, without other limitation than respect for Christian morality and public order. The church shall be separate from the State, which cannot subsidize any cult."  

A third important aspect of the Constitution of 1940 was the effort it made to protect political contestation. In addition to the protection of speech, Articles 36 and 37 expressly protected the right to petition and to peaceful assembly. Additionally, Article 38 stated that "Every act which prohibits or limits the participation of citizens in the political life of the Nation is declared punishable."  

A fourth factor is particularly important. The 1940 Constitution not only stated rights that would allow for a contested democratic process, it also sought to establish a constitutional court able to enforce those rights. The Constitution of 1940 expressly created a system of judicial review of constitutionality. The Supreme Court was divided into separate chambers, one of which being a Court of Constitutional and Social Guarantees. This constitutional chamber was to be presided over by the Chief Justice and, when considering constitutional matters, it would consist of at least fifteen members. The Court had the power "[t]o decide on the constitutionality of laws, decree-laws, decrees, regulations, resolutions, orders, provisions, and other acts of any body, authority or officer. . . ." The 1940 Constitution gave the Court of Constitutional and Social Guarantees broad jurisdiction and afforded broad standing to individuals and groups to seek relief.

30. Id. art. 33.  
31. Id. art. 35.  
32. Id. arts. 36, 37.  
33. Id. art. 38.  
35. CONST. (1940), art. 172, (Cuba).  
36. Id. art. 174.  
37. Art. 182. The court of constitutional and social guarantees is competent to take cognizance of the following matters:  
(a) Unconstitutionality appeals against laws, decree-laws, decrees, resolutions, or acts that deny, diminish, restrict or impair the rights and guarantees specified in this Constitution or that impede the unrestricted functioning of government bodies;  
(b) Opinions of judges and courts as to the constitutionality of laws, decree laws, and other provisions that they have to apply in lawsuits;
The 1940 Constitution directly stated that the decisions of the Court of Constitutional and Social Guarantees were binding on all:

No law, decree-law, decree, regulation, order, provision, or measure that has been declared unconstitutional can be applied in any case or manner, under penalty of disqualification to hold public office.

A decision declaring unconstitutional a legal precept or an administrative measure or resolution shall obligate the body, authority, or officer who issued the annulled provision to repeal it immediately.

In every case the legislative or regulatory provision or administrative measure declared unconstitutional shall be considered null and without any value or effect from the date that the decision is made public in court.39

(c) Habeas corpus proceedings, on appeal, or when a claim made against other authorities or tribunals is inefficacious;

(d) The validity of constitutional modification and procedure;

(e) Juridico-political questions and those of social legislation which the Constitution and the law submit to its consideration;

(f) Appeals against abuse of power.

Id.

38. Art. 183. The following can apply to the court of constitutional and social guarantees, without the necessity for furnishing surety:

(a) The President of the Republic, The Prime Minister and each one of the members of the cabinet, the presiding officer of the Senate, the House of Representatives, and the tribunal of accounts, governors, mayors, and councilmen;

(b) Judges and courts;

(c) The public prosecution service;

(d) Universities;

(e) Autonomous bodies authorized by the Constitution or the law;

(f) Every individual or collective person affected by an act or provision that he deems unconstitutional. Persons not comprised in any of the foregoing paragraphs can also apply to the court of constitutional and social guarantees, provided they furnish the surety fixed by law....

Id.

39. Id. art. 194.
The Constitution of 1940 has been, and still is, a source of national pride to many Cubans for its progressive principles and its truly Cuban origin.⁴⁰ Although many of its far-reaching provisions were never implemented, the document served as a codification of Cuban aspirations for economic and social development and remained a rallying point for the opposition throughout the dictatorship of Fulgencio Batista y Zaldivar. Its reenactment was the stated goal of Castro's revolutionary movement and remained the goal of Cuban exiles living in the United States...⁴¹

The Constitution of 1940 did not, however, produce a satisfactory political system. As one commentator observed, “Graft and corruption were pervasive. Political competition became armed confrontation as partisan disputes were settled by assassinations and thuggery.”⁴² While Cuba did conduct three elections under the Constitution, Fulgencio Batista reestablished military rule when he seized power in a coup before the scheduled 1952 election.⁴³ The government established under Batista after the coup suspended the Constitution of 1940 and imposed its own constitution.⁴⁴

IV. CONSTITUTIONALISM AND THE REVOLUTION OF 1959

During the 1950s, opposition, including armed insurrection, intensified against the abuses and incompetence of the Batista regime. By 1958, even the United States began to withdraw its support for Batista and imposed an arms embargo.⁴⁵ On January 1, 1959, the Batista regime collapsed and the July 26th Movement led by Fidel Castro entered Havana with widespread support. As Luis Pérez observed

⁴⁰. Klein, supra note 19, at 455.
⁴¹. RUDOLPH, supra note 25, at 161.
⁴⁴. Klein, supra note 19, at 456-57. For criticism of Batista's efforts to impose his own constitution, see INTERNATIONAL COMMISSION OF JURISTS, CUBA AND THE RULE OF LAW 82-84 (1962).
⁴⁵. PÉREZ, supra note 42, at 235-37.
An unpopular government was displaced, its political allies discredited, and its armed forces defeated. Cubans had challenged a repressive regime on its own terms and succeeded—unconditionally and unassisted. . . . The revolution had succeeded unconditionally and because it had, it could proceed to make revolutionary change uncompromisingly.46

As a result, although Castro's revolutionary movement had long asserted that its goal was to restore the Constitution of 1940, it did so in only the most formal sense. As I have observed elsewhere:

When Castro triumphed in 1959, however, he soon proclaimed what in effect was a new constitution, the Fundamental Law of 1959. Although the new government maintained that the Fundamental Law was merely an update of the 1940 Constitution, it clearly was not. While many of the social and economic rights formulations were retained, the Fundamental Law made major alterations in the structure of the executive and legislative powers. The position of the President from the 1940 document was retained but as a ceremonial figurehead. Both legislative and executive functions were concentrated in the Council of Ministers which served at the pleasure of the President. In reality, however, the President was subservient to the wishes of the Prime Minister, the position held under the Fundamental Law by Fidel Castro.

Although laws issued by the Council of Ministers formally remained subject to judicial review under the Fundamental Law, the power concentrated in the Council of Ministers negated the power of judicial review completely.47

A professor of law at the University of Havana has attempted to rationalize the discrepancy between the promise to restore the Constitution of 1940 and the actual rule under the Revolutionary Government by noting that Fidel Castro had stated that a legitimate constitution is one born directly from the people. The professor explained that, therefore, the first revolutionary law was one restoring the 1940 Constitution; but that, in order to imple-

46. Id. at 238-39.
47. Wise, supra note 34, at 256 (citations omitted); see INTERNATIONAL COMMISSION OF JURISTS, supra note 44, at 91-113 (1962); see also D'Zurilla, supra note 21, at 1239-41.
ment it and to punish those who had betrayed it, the revolutionary movement—as temporary incarnation of people's sovereignty, the only legitimate source of power—assumed all the powers: to legislate, to execute, and to judge. In reality, although the Fundamental Law was soon adopted, the incarnation of the people's sovereignty in the revolutionary movement was far from temporary. Rule continued under the Fundamental Law for seventeen years until the adoption of a doctrinaire Marxist-Leninist constitution in 1976, a time when Cuba was highly dependent on support from the Soviet Union.

V. THE CONSTITUTION OF 1976

Although the Revolution of 1959 started out with rather broad support for ousting the Batista regime, it quickly changed to adopt a more radical socialist and then Marxist-Leninist character. Because the Fundamental Law focused all real power in the Council of Ministers and was easy to amend, the change in the nature of the Cuban government could be accomplished rapidly. The early confiscations of property, the hostility of the United States, the Bay of Pigs invasion, the Cuban Missile Crisis, the U.S. trade embargo, and the other heightened tensions of the Cold War all served to increase Cuba's commitment to Marxist-Leninist ideology. With regard to its constitution, however, revolutionary Cuba was not so quick to follow the new ideology. Marxist-Leninist ideology usually suggested that the Marxist-Leninist "structure must be embodied at an early moment in a document of 'constitutional' nature." Cuba did not begin the process of adopting a constitution consistent with that ideology until 1974.

In 1974, both the Council of Ministers and the Political Bureau of the PCC appointed a subgroup from their members to draft a new constitution consistent with Marxist-Leninist principles. The Council and the Bureau then considered the draft and, after

50. AZICRI, supra note 44, at 27.
51. INTERNATIONAL COMMISSION OF JURISTS, supra note 44, at 91-113.
52. PÉREZ, supra note 42, at 239-45, 248-52, 257-60.
54. The Constitution is modeled after the Soviet Constitution of 1936. RUDOLPH, supra note 25, at 162.
slight changes, submitted it for broad consideration by popular organizations. The First Party Congress, also making slight changes, approved the final draft and submitted it to a public referendum where it was reported to have received 97.7% approval.\(^5\)

It entered into effect on February 24, 1976.\(^6\)

The Constitution of 1976 follows Marxist-Leninist ideology closely by adopting the principle of the unity of power. This principle has been explained by Professor Brewer-Carías:

One of the basic principles of the constitutional systems of the socialist countries, principally derived from the influence of Soviet constitutionalism, is the principle of the unity of state powers based on the assignment of all legislative and executive powers of state to its representative democratic body. This representative political organ is the supreme organ of state power and the only one able to create law and control the activities of all other state organs.\(^7\)

The Constitution of 1976 followed this principle by having Assemblies of People's Power elected by the people of their region, these assemblies then elected the member of the Provincial Assemblies, whose members, in turn, elected the National Assembly of People's Power. The National Assembly then elected the Council of State and the President.\(^8\) Amendments to the Constitution in 1992, however, provided for the direct election of the National Assembly.\(^9\) The primary difference between the Constitution of 1976 and the usual socialist model is in its creation of a strong presidency by permitting the same person to be President of the Council of State and President of the Council of Ministers.\(^10\) Of course, a strong President is very much in keeping with Latin American tradition.\(^11\)

The doctrine of the unity of power stands in sharp contrast to the principle of separation of powers. While it shares a political theory similar to the ideas of parliamentary sovereignty, it has a harsher ideological tone—separation of powers is regarded as a

56. Id. at 465.
58. Klein, supra note 19, at 499-513.
59. See discussion infra note 75.
60. CONST. (1976), art. 69, (Cuba).
bourgeois idea to prevent the working class from asserting its legitimate power.\textsuperscript{62} As a result, the unity of power doctrine rejects the possibility of an independent judiciary exercising the control of constitutionality. The logic of the theory is summarized by Professor Mauro Cappelletti:

All powers are united in one supreme organ drawn directly from the people, who are "the source of all power." Thus the laws which emanate from the supreme organ. . . . whose members are popularly elected, represent "the will of the whole sovereign people." Accordingly, from the principles of the unity of powers and the supremacy of the people flows the corollary that, under socialist systems, constitutional control may not be exercised by extra-parliamentary bodies . . . .\textsuperscript{63}

In keeping with this doctrine, the Constitution of 1976 gives the responsibility for the control of constitutionality to the political legislative bodies it establishes,\textsuperscript{64} with ultimate power to determine compliance with the Constitution residing in the National Assembly.\textsuperscript{65} However, since the National Assembly only meets briefly during the year, the Constitution grants the Council of

\begin{footnotes}
\item[62] VEGA, \textit{supra} note 48, at 331-41.
\item[63] MAURO CAPPELLETTI, \textit{JUDICIAL REVIEW IN THE CONTEMPORARY WORLD} 7 (1971) (footnotes omitted).
\item[64] The Constitution provides that with regard to the lower levels of government that "within the limits of their jurisdiction, the Assemblies of People's Power: annul, suspend, or modify, provincial and municipal as the case may be, the resolutions and measures of the organs subordinate to them which violate the Constitution . . . ." CONST. (1976), art. 105(c), (Cuba).
\item[65] Article 73 provided, in part:

\textit{Article 73. The National Assembly of People's Power is vested with the following powers:}

\begin{itemize}
\item[c)] deciding on the constitutionality of laws, decree-laws, decrees, and all other general provisions;
\item[u)] revoking those provisions or decree-laws of the Council of State, and the decrees or resolutions of the Council of Ministers which are contrary to the Constitution or the laws;
\item[v)] annulling or modifying those resolutions or provisions of the local organs of People's Power which violate the Constitution . . . .
\end{itemize}

CONST. (1976), art. 73, (Cuba). These provisions are now contained in CONST. (1976), art. 75(c), (r), & (s), (Cuba), as amended July 10-12, 1992.
\end{footnotes}
State the power to suspend the provisions of the Council of Ministers and of Lower Assemblies that it determines to be unconstitutional and to report its actions to the next National Assembly.66

Finally, in keeping with Marxist-Leninist practice, the Constitution of 1976 used highly partisan language of class struggle and explicitly recognized Cuba's special relationship to the Soviet Union and its bloc of allies.67 Of particular significance, Article 5 established the preeminent role of the PCC:

The Communist Party of Cuba, the organized Marxist Leninist vanguard of the working class, is the highest leading force of society and of the state, which organizes and guides the common effort toward the goals of the construction of socialism and progress toward a communist society.68

The Constitution of 1976 also articulated basic rights in highly partisan terms. Two examples are illustrative. First, Article 52 defined the right to speak freely in this manner:

Citizens have freedom of speech and of the press in keeping with the goals of the socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies, and other organs of the mass media are state or social property and can never be private property. This assures their use at the exclusive service of the working people and in the interests of society. The law regulates the exercise of these freedoms.69

Second, Article 54 concerning religion stated:

The socialist state, which bases its activity on and educates the people in the scientific materialist concept of the universe, recognizes and ensures freedom of conscience and the right of everyone to profess any religious belief and to practice, within the framework of respect for the law, the belief of his prefer-

66. CONST. (1976), art. 88(q), (Cuba); CONST. (1976), 90(a), (Cuba), as amended July 10-12, 1992.
67. For example, the Preamble of the Constitution contains the phrase: By the victorious doctrine of Marxism-Leninism; . . . Basing ourselves . . . On proletarian internationalism, on the fraternal friendship, help, and cooperation of the Soviet Union and other socialist countries, and on the solidarity of the workers and the peoples of Latin America and of the world . . . . CONST. (1976), preamble, (Cuba).
68. Id. art. 5.
69. Id. art. 52.
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ence. The law regulates the activities of religious institutions. It is illegal and punishable by law to oppose one's faith or religious belief to the Revolution, education or the fulfillment of the duty to work, to the defense of the homeland with arms, to the show of reverence for its symbols, and to other duties established by the Constitution.\(^\text{70}\)

While some of this language has now been muted by the amendments to the Constitution adopted in 1992 following the demise of communism in the Soviet Union and Eastern Europe, the basics of the Constitution of 1976 remain in force. The protection of rights afforded in the Constitution and the practices of the Cuban Government continue to fall far short of international human rights norms.\(^\text{71}\)

VI. THE 1992 CONSTITUTIONAL AMENDMENTS

The fall of the Soviet Union and the retreat from communism in Eastern and Central Europe was a great shock to the Cuban system. The Cuban Government moved to make enough changes to survive while avoiding the fate of the communist regimes in Europe.\(^\text{72}\) The changes were regarded as "limited economic reforms dictated by the critical state of the Cuban economy. . . . The transition's purpose is to buy time for the current government to enable it to remain in power with minimum departures from socialism."\(^\text{73}\) In July of 1992, the National Assembly made several amendments to the Constitution in response to the crisis. The amendments primarily made changes to the economic provisions by opening some possibility for limited private ownership of the

\(^{70}\) Id. art. 54.

\(^{71}\) See Joanne Mariner, Cuba: Improvements Without Reform, HUMAN RIGHTS WATCH AMERICAS (Oct., 1995), at 1, 3.

\(^{72}\) Jorge Dominguez observed in 1993:
Cuban leaders have learned several lessons from the attempted reforms that eventually undermined other communist regimes. Lesson no. 1: undertake as few political reforms as possible. Lesson no. 2: get rid of deadwood in the party early, before you are forced to do so. Lesson no. 3: deal harshly with potential or evident disloyalty. Lesson no. 4: do not allow a formal opposition to organize.

means of production and of property and by also eliminating the state monopoly on foreign trade.\textsuperscript{74}

The 1992 amendments also included other changes directed at more the political aspects of the Constitution. One such change was to allow for the direct election by secret ballot of deputies to the National, Provincial and Municipal Assemblies.\textsuperscript{75} This change did not greatly increase open political participation, however. The Electoral Law passed in November of 1992 provided that candidates will be proposed by commissions and selected by municipal assemblies with only the same number of candidates allowed to appear on the election ballot as there are positions available.\textsuperscript{76}

The Amendments of 1992 removed those statements in the 1976 Constitution that explicitly recognized Cuba's relationship with the Soviet block of nations.\textsuperscript{77} The Amendments also eliminated some of the harshest Marxist-Leninist ideological rhetoric of the 1976 Constitution. For example, prior to the amendments, Article 66 read: "State organs are set up, operate, and carry out their activities based on the principles of socialist democracy, unity of power, and democratic centralism. . . ."\textsuperscript{78} The 1992 amendments, changed the language to read: "The State organs are formed and engage in their activity based on the principles of socialist democracy. . . ."\textsuperscript{79} Additionally, Article 123 of the Constitution of 1976, which had laid out an extremely partisan role for the courts, was removed entirely.\textsuperscript{80} The Amendments of 1992, however, do not

\begin{footnotesize}
\begin{itemize}
  \item[75.] \textsuperscript{75} CONST. (1976), art. 71, (Cuba ), as amended July 10-12, 1992. Juan Escalona Reguera, \textit{En Torn a la Ley de Reforma Constitucional}, REVISTA CUBANA DE DERECHO, Oct.-Dec. 1992, at 3, (This article contains the remarks to the National Assembly of Dr. Escalona Reguera upon introducing the proposed reforms. He was the President of the National Assembly of People's Power in 1992.)
  \item[77.] Escalona Reguera, \textit{supra} note 75, at 6.
  \item[78.] CONST. (1976), art. 66, (Cuba).
  \item[79.] \textit{id.} art. 68, as amended 10-12 July 1992.
  \item[80.] CONST. (1976), art. 123, (Cuba) stated: Article 123. The main objectives of the activities of the court are:
  \begin{itemize}
    \item[a)] to maintain and strengthen socialist legality;
    \item[b)] to safeguard the economic, social and political regime established in this Constitution;
    \item[c)] to protect socialist property and the personal property of citizens and others, which this Constitution recognizes;
  \end{itemize}
\end{itemize}
\end{footnotesize}
alter the 1976 Constitution’s placement of the power of constitutional control in the hands of the political branches: the National Assembly and the Council of State.\textsuperscript{81}

Changes regarding religious freedom are perhaps most interesting. In 1991, the Communist Party of Cuba ended its requirement that one must be atheist to be a member.\textsuperscript{82} Additionally, the Constitution as amended in 1992 substantially improved the protection for freedom of religion. All references to the “scientific materialist concept of the universe” and punishment for opposing one’s religious belief to the Revolution were removed. Now the guarantee regarding religious freedom is contained in Article 55. It simply states:

The State, which recognizes, respects and guarantees freedom of conscience and religion, simultaneously recognizes, respects, and guarantees the freedom of every citizen to change religious creeds, or not to have any: and to profess the religious worship of their choice, with respect for the law.

The law regulates the State’s relations with religious institutions.\textsuperscript{83}

These changes regarding some greater space for religion are quite possibly not motivated by a higher regard for freedom by the Cuban Government. Rather, it has been suggested that:

d) to safeguard the rights and legitimate interests of state agencies and those of economic and social institutions and the masses;

e) to protect the life, freedom, dignity, honor, property, family relations, and other legitimate rights and interests of citizens;

f) to prevent violations of the law and anti-social conduct, restrain and reeducate those who are guilty of such violations or conduct, and reestablish the rule of legal standards when demands are made in protest against their violation;

g) to increase awareness as to the need for strictly observing the law, making timely comments in their decisions aimed at educating citizens in the conscious and voluntary fulfillment of their duty of loyalty to the Fatherland, the cause of socialism, and the norms of socialist living.

\textbf{CON. (1976), art. 123, (Cuba).}

\textsuperscript{81} \textbf{CON. (1976), arts. 75(c), (r) \& (s), 90 (a), (Cuba ), as amended July 10-12, 1992.}


\textsuperscript{83} \textbf{CON. (1976), art. 55, (Cuba), as amended July 10-12, 1992.}
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[C]uba changed its constitution to exploit U.S. regulations that allow economic aid to flow into the island via religious groups. While seemingly increasing constitutional freedoms, the Cuban Government has actually used religion to increase its own political strength. By softening its anti-religious stance, the Cuban government has opened its tightly controlled spiritual and economic marketplaces in the wake of its economic crisis caused by the collapse of the Soviet Union. At the same time, the Cuban state has bolstered its own power by stifling political opposition by religious groups . . . . The government acted carefully to ensure that its actions would quell potential civil unrest rather than fomenting rebellion. The government wished to avoid cooptation of its political power by religious groups while bolstering its popular support through religious deregulation.84

This view is perhaps confirmed by the failure of the amendments to make any changes to the highly partisan and restrictive Article purporting to guarantee freedom of expression.85 Nevertheless, it is clear, as even Cuba's harshest critic the United States acknowledges, "the government's respect for religious freedom improved."86

VII. LAW OF CONSTITUTIONAL REFORM OF 2002

On May 20, 2002, President George W. Bush gave remarks at the White House commemorating the 100th anniversary of Cuban independence. The speech contained harsh rhetoric condemning the lack of economic and political freedom in Cuba and demanding changes, including changes to Cuba's electoral procedures. The speech also suggested, however, that the United States would reciprocate by incrementally easing the economic embargo against Cuba, provided that Cuba undertook far-reaching political and economic reforms on its part.87 The Cuban government dismissed the speech, dwelling on its harsh language and interpreting the

84. Goldenziel, supra note 82, at 181, 193.
Bush statement as demanding regime change in Cuba. In response, meetings of mass organizations demanded amendment of the constitution to guarantee the continuation of the socialist state. The National Assembly of People’s Power obliged by passing Law of Constitutional Reform, 2002, on June 26, 2002. The amendments were “intended to restate and reinforce the socialist and social-evolutionary principles of the Cuban State as well as to constitutionalize Cuba’s sovereignty and foreign policy to be free of foreign influence and aggression.” Fortunately, under the presidencies of Raúl Castro and Barrack Obama the rhetoric of both countries has moderated and small changes in economic policy have resumed.

VIII. CONCLUSION

President Raul Castro has suggested in his comments and actions a willingness to tolerate some open discussion of policy alternatives, to be less concerned with rhetoric, and more concerned with adopting policies that will address Cuba’s difficult economic circumstances. The Constitutional Amendments of 1992 show that incremental improvements in the Cuban constitutional structure can accompany and, indeed, may be necessary to accomplish desired economic goals. One can hope that the current small changes in Cuban policy and greater openness to debate may lead to similar discussion and movement toward a more democratic constitutional structure.

90. Id.
91. See Domínguez, supra note 88, at 42-45; see also supra text accompanying notes 11-18.