# ARTICLES

## CUBA'S CONSTITUTIONAL MOMENT

RAFAEL COX ALOMAR*

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* Rafael Cox Alomar is an Associate Professor at the David A. Clarke School of Law in Washington, D.C.
I. Introduction

A. A Constitutional Moment

On April 16, 2016, during the inaugural session of the Communist Party’s VII Congress, and less than a month after President Barack Obama’s historic trip to Havana, President Raúl Castro announced that a new constitutional reform was under way in Cuba. Admittedly, President Castro’s statement raised more questions than answers. Does “constitutional reform,” in post-Fidel Cuba, mean replacing in toto the 1976 Constitution? Does it mean abrogating Article 3 of the constitutional text, which constitutionalizes the irrevocability of the 1959 Revolution? Will this new episode of constitutional tinkering necessarily lead to the undoing of the island’s communist superstructure? Will Cuba preserve the Communist Party’s constitutional ascendancy under any new institutional design? Will the constitutional rearrangement lead to structural changes in Cuba’s internal governance? Will Cuba’s constitutional moment, for instance, address the significant systemic infirmities afflicting the Cuban institutional landscape such as the problematic asymmetry of power subordinating the National Assembly of People’s Power to the Council of State, or the emaciation of the domestic judiciary at the hands of the legislative organ, or even the utter absence of an effective...
checks and balances system? From a procedural perspective, will the announced, yet unvailed, reform emerge from an open constitutional convention, ratified through a popular referendum, or through the dictates of the Communist Party’s Political Bureau?

These are but a few of the very complex questions that immediately arise after a close perusal of the uncertainties surrounding the Cuban scenario. The time is, thus, ripe for strictly scrutinizing Cuba’s constitutional repertoire. The future of the Cuban people rests in the balance.

B. The Roadmap

It is precisely against this background, as Cuba enters into a critical reassessment of its endogenous legal repertoire, that this article proposes an innovative reading of the ideological foundations of Cuba’s constitutionalism, grounded on a rich historical and comparative legal analysis that brings to the fore the foundational, yet often unexplored, values and institutions that gave rise to Cuba’s domestic legal topography. More importantly, this article parts ways with those voices that suggest Cuba’s constitutional regeneration ought to give way to the blind importation of legal figures and institutions foreign to Cuba’s formative trajectory. On the contrary, this article contends rather forcefully that the answers Cuba seeks as it embarks on its constitutional moment are to be found from within its rich (and syncretic) constitutional life—a life that clearly antedates the watershed of 1959. Part II traces the continental origins of Cuba’s constitutionalism, first within the context of Spanish colonialism, and then during the course of the traumatic postcolonial and revolutionary periods. Part III weighs in on the structural challenges besieging Cuba, both from a legal and public policy perspective, as it embarks on its uncertain journey of constitutional restructuring.

II. The Doctrinal Foundations of Cuban Constitutionalism

The Spanish Colonial Period

A. The Council of Indies

The genesis of Cuba’s legal tradition is found in medieval Spain. Discovered (albeit figuratively) during Columbus’s first voyage to the Americas on October 27, 1492, Cuba
soon became an overseas possession of the Spanish Crown. Then, the stage was set for a colonial entanglement that lasted 406 years—Cuba was Spain's oldest enclave in the Americas.

Cuba's legal superstructure squarely belongs to the so-called Roman French civil law tradition, tracing its origins back to legal institutions as ancient as Justinian's *Corpus Iuris Civilis* and Alfonso X's *Siete Partidas*. It would be impossible to grasp the historical evolution of Cuban law without paying heed to the discontinuous, and rather arbitrary, ways in which the Spanish Crown extrapolated its own endogenous legal institutions to its far-flung colony in the Caribbean. It is essential to note, moreover, that for the first 300 years of Spanish colonial rule, initially under the Catholic Kings, and subsequently under their Hapsburg and Bourbon heirs, the Crown ruled over Cuba through a complex web of laws,


8. Bernstein Magoc, *Imperialism and Expansionism in American History: A Social, Political, and Cultural Encyclopedia and Document Collection* 752 (2015); see also Alicia Castellanos Escudier, *Filipinas: de la insurrección a la intervención de EE.UU. 1896-1898* (1998) (discussing the catalysts leading to the Philippines' insurrection against the U.S.'s military forces in the wake of the 1898 Spanish-American War); Fernando Pico, *La guerra después de la guerra* (2nd ed. 1998) (discussing Puerto Rico's economic and political landscape at the time of the U.S.'s 1898 invasion). As shall be discussed in further detail below, following the signing of the Treaty of Paris, on December 10, 1898, the Spanish Kingdom relinquished in favor of the United States "all claim of sovereignty over and title to Cuba," while also ceding Puerto Rico (then a Spanish overseas province by virtue of the 1897 Autonomic Charter), Guam and the Philippines to the victor of the so-called Spanish-American War.


10. *Id; see also Manuel Torres Aguilar, Manual de Historia del Derecho 62–65* (2015). The *Corpus Iuris Civilis*, commonly known as Justinian's Code, was enacted in two separate installments in 527 A.D. and 534 A.D., respectively. Perhaps the most ambitious attempt at codification engineered during the very early Middle Ages, the *Corpus Iuris Civilis* was heavily influenced by, *inter alia*, Caracalla's legislation, the *Codex Gregorianus* (294 A.D.), the *Codex Hermogenianus* (314-324 A.D.), and the *Codex Theodosianus* (438 A.D.). It is essential to note that Justinian's codification effort, moreover, was at the heart of his geopolitical design for the recolonization of the Mediterranean, which resulted in Byzantium's re-annexation of the southern tip of the Iberian Peninsula.

11. Leslie M. Alexander, *Encyclopedia of African American History* 63. (Walter C. Rucker ed., 2010); see also Manuel Torres Aguilar et al., *Manual de Historia del Derecho 142* (Manuel Torres Aguilar, ed. 2015); John Thomas Vance, *The Background of Hispanic-American Law* 93–107 (1943). *Las Siete Partidas*, published under the auspices of Alfonso X (1252-1284) and perhaps the single most influential legal text produced in Castile during the Middle Ages, was an attempt at harmonizing Castile's complex legal repertoire, marred by internal inconsistencies due to an untrammeled degree of discontinuous syncretism. Hence, *Las Siete Partidas* compiled and synthesized legal principles found in Roman and Visigoth law, as well as in medieval canonical law and even in so-called Castilian customary law. It was officially sanctioned under the 1348 *Ordenamiento de Alcalá* available to Spanish courts and litigants until late 19th century.

decree and cédula, highly steeped in the Castilian legal tradition, under the exclusive jurisdiction of el Real y Supremo Consejo de Indias (Council of Indies).  

Originally established by order of Charles V as a subdivision of the Council of Castile (el Real y Supremo Consejo de Castilla) in 1519, the Council of Indies outgrew the monarch's initial, rather limited, design. The sheer magnitude of Spain's vast colonial project in the Americas, particularly after Cortés's and Pizarro's exploits in Mexico and Peru, respectively, led the Crown, in 1524, to decree the Council of Indies' complete independence from the Castilian Council. Hence, from then on, until its suppression in 1834, the Council of Indies controlled every aspect of Cuba's colonial life. It exercised unencumbered legal authority over the island's executive, legislative, judicial, commercial, military, and even ecclesiastical affairs.

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15. See John Thomas Vance, Background of Hispanic-American Law 129–30 (1943). Under the 1519 design, all colonial issues pertaining to the peninsula's trade with its newly acquired possessions were addressed to the Casa de Contratación de Sevilla—an institution under the aegis of the Council of Castile. Having nullified the Santa Fe Capitulations (Capitulaciones de Santa Fe) entered with Christopher Columbus in 1492, the Crown now exercised absolute control over the new territories.

16. See José María Ots y Capdequi, Historia del Derecho Español en América y del Derecho Indio 116 (1969) (Under the royal decree of August 1, 1524, the Council of Indies was put under the control of Cardinal García de Loaysa y Mendoza, Charles V's confessor).

17. Herbert M. Kritzer, Legal Systems of the World: A Political Social and Cultural Encyclopedia 1524 (Herbert M. Kritzer ed., 2002). While definitively disbanded in 1834, the Council of Indies was initially abolished under the 1808 and 1812 Bayonne and Cádiz Constitutions, respectively, only to be re instituted during Ferdinand VII's absolutist restoration in 1814.


19. Moira B. MacKinnon & Ludovic Feoli, Representation and Effectiveness in Latin American Democracies: Congress, Judiciary and Civil Society (Moira B. MacKinnon & Ludovic Feoli eds., 2013); see also, Jorge de Esteban, Las Constituciones de España 25–26 (2000); Federico Barrachina y Pastor, Derecho Foral Español. (1911) (discussing Spain's derecho foral). The degree of centralization endured by Cuba, throughout the life of the Council, was a far cry from the more autonomous conditions of Spain's peninsular provinces. It is essential to note that the definitive political unification of Spain at the hands of Ferdinand and Isabella, following the fall of Granada in 1492 did not do away with the peninsula's legal heterogeneity—particularly in the realm of private law. Each region held on to its particular legal repertoire, while pledging allegiance to the Crown. Thus, while Spain denied Cuba any flexibility as to the articulation of an autochthonous legal tradition; Catalonia, Aragon, Navarre, Galicia, Valencia, Biscay and the Balearic Islands did enjoy such flexibility. Note that the superimposition of a more centralized governmental model, in the French mold, following the accession to the Spanish throne of Philip V of Anjou in 1700, did erode the ascendancy of the aforementioned regional legal systems.
The Council drafted all colonial legislation, appointed the colonial bureaucracy, while retaining impeachment authority, designed all colonial budgets, and, similar to the British Privy Council, also acted as the highest court of appeals for all Spanish colonies—including Cuba.\(^{20}\) The avalanche of legislation, decrees and cédulas rendered by the Council of Indies soon evolved into an intricate corpus of public law, commonly known as derecho indiano,\(^{21}\) which formed the basis for Cuba's early legal order, up to the first decades of the 19th century.\(^{22}\)

European constitutionalism, together with the French codification project, would make a rather fleeting appearance on Cuban soil as a direct consequence of Napoleon's 1808 invasion of Spain.\(^{23}\) Both the 1808 Bayonne Constitution,\(^{24}\) granted by l'empereur to the Spanish people, and the 1812 Cádiz Constitution,\(^{25}\) drafted by the Spanish Cortes in defiance of Napoleon's rule, were applied in Cuba.\(^{26}\) The return of Ferdinand VII to Madrid in 1814,\(^{27}\) following Napoleon's abdication pursuant to the Treaty of Fontainebleau,\(^{28}\) put an end to the Cádiz liberal experiment,\(^{29}\) turning the wheel back to absolutist rule under the firm grip of the ancient Council of Indies.

\(^{20}\) JOSÉ TRÍAS MONGE, HISTORIA CONSTITUCIONAL DE PUERTO RICO 13-14 (1980). The size of the Council of Indies increased through the centuries. Initially made up of one president and up to four or five councilors, by the end of the 17th century, its membership had increased to over 19 councilors.

\(^{21}\) See ROBERT C. SCHWALLER, GÉNEROS DE GENTE IN EARLY COLONIAL MÉXICO: DEFINING RACIAL DIFFERENCE 51-55 (2016); see also FELICIANO BARRIOS, LA GOBERNACIÓN DE LA MONARQUÍA ESPAÑOLA: CONSEJOS, JUNTAS Y SECRETARIOS DE LA ADMINISTRACIÓN DE CORTE (1556-1700) 548 (2015). The Spanish Crown made various attempts to compile the encyclopedic panoply of legal instruments pertaining to the derecho indiano. The first compilation project was commissioned by Charles V, and published on November 20, 1542 (Las Leyes Nuevas). Charles's son, Philip II, ordered a second compilation, which came to light in 1571 (Las Ordenanzas). Finally, in 1680, during the reign of Charles II, the Recopilación de las Leyes de Indias came out as the most definitive work on derecho indiano.

\(^{22}\) See Ots y Capdequi, supra note 16, at 205. Together with the derecho indiano, which for the most part was public in nature, Castilian law did play a role in Cuba as an important source of private law. See id.

\(^{23}\) See de Esteban, supra note 19, 58. In May 1808, after forcing the abdication of Charles IV and Ferdinand VII, along with the surrender of their respective dynastic rights, Napoleon imposed his own rule on Spain (by appointing his brother Joseph as king) and a constitution of his own making, the Bayonne Constitution.

\(^{24}\) See id. at 101-20 (text of the Bayonne Constitution).

\(^{25}\) See id. at 121-75 (text of the Cádiz Constitution, proclaimed on March 18, 1812).

\(^{26}\) Id. at 113-14, 167-69. Like its Bayonne counterpart, the constitutional text drafted in Cádiz abolished the Council of Indies.

\(^{27}\) Id. at 59. Ferdinand VII returned to Spain, from imprisonment in France, on March 22, 1814.

\(^{28}\) Napoleon Exiled to Elba, HISTORY (Apr. 11, 2009), http://www.history.com/this-day-in-history/napoleon-exiled-to-elba. The Treaty of Fontainebleau was signed on April 11, 1814. Following the signing of the treaty, Napoleon was exiled to Elba.

\(^{29}\) See Esteban, supra note 19, at 122, 147-49. The 1812 Cádiz Constitution was an autochthonous legal instrument drafted by delegates from across the peninsula and its overseas American and Asian colonies. For the first time in Spain's constitutional history, this constitution explicitly subordinated the Crown to the popular will. Article 3 of the Cádiz constitutional text establishes that "sovereignty resides essentially within the Nation, and for that reason it alone enjoys the exclusive right of establishing its fundamental laws" ("La soberanía reside esencialmente en la Nación, y por lo mismo pertenece a ésta exclusivamente el derecho de establecer sus leyes fundamentales").
B. The Superimposition of the Spanish Codification Project

From this period onwards, up until Spain’s withdrawal from Cuba in 1898, the island’s legal superstructure reflected the acute inconsistencies ingrained in the Spanish Kingdom’s tumultuous political landscape. Torn by incessant civil strife at home and insurrection abroad, while considerably weakened by the acute ideological clash pitting absolutists against constitutionalists, both Ferdinand VII and his daughter, Isabella II, chose not to extend to Cuba (and the rest of the Spanish colonies) the same repertoire of limited constitutional liberties already available in the peninsula. At the colonial level, the Bourbons’ absolutist entrenchment meant Cuba was left out of all subsequent Spanish constitutional experiments, namely the 1834 Royal Statute along with the 1837, 1845, 1869, and the 1876 Constitutions. Thus, Cuban law throughout the 19th century effectively became an unintelligible hodgepodge, borrowing most of its public and private law from the...
archaic *derecho indiano*, as well as from more modern Spanish legislation, such as the 1855 Law of Civil Procedure, the 1870 Penal Code, the 1872 Law of Criminal Procedure, the 1885 Commerce Code, and even the 1861 Mortgage Law, all of which were made applicable to Cuba with considerable delay.

Cuba’s long wait for a constitutional arrangement grounded on the Westminster model came far too late, on November 25, 1897, with Spain’s desperate concession of the so-called Autonomic Charter. Embroiled in the losing side of an epic struggle for national liberation, which since February 1895 reignited Cuba’s protracted war of independence, the

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37. *Id.* at 186, 200, 233, 273 (Article 4 of the 1837 Constitution, Article 4 of the 1845 Constitution, Article 91 of the 1869 Constitution, and Article 75 of the 1876 Constitution). All Spanish constitutions, following the Cádiz experiment, explicitly provided for the homogenous applicability throughout the realm of the code system.

38. Crawford M. Bishop & Anyda Marchant, A Guide to the Law and Legal Literature of Cuba, the Dominican Republic and Haiti 65 (1944). The 1855 Law of Civil Procedure was made applicable to Cuba on July 1, 1866 by the Royal Decree of December 9, 1865. Subsequently, the 1885 amendments to the Spanish Law of Civil Procedure were made extensive to Cuba on January 1, 1886.

39. Spain Ministerio De Ultramar, Spanish Rule in Cuba: Laws Governing the Island 35 (1896). The 1870 Penal Code was made applicable to Cuba on May 23, 1879. Note that the Spanish Penal Code survived the U.S. invasion of 1898 and the 1902 declaration of independence, remaining in full force and effect on Cuban soil until 1936.


41. Bishop & Marchant, *supra* note 38, at 20. The 1885 Commerce Code was made applicable to Cuba on May 1, 1886.

42. *Id.*. The Spanish Civil Code was made applicable to Cuba, Puerto Rico and the Philippines on July 31, 1889. It entered into full force and effect in Cuba on November 5, 1889.

43. *Id.* at 109. The Mortgage Law (Ley Hipotecaria) was extended to Cuba to take effect on May 1, 1880.

44. See Constitution Act, 1867, 30 & 31 Vict. Ch. 3, reprinted in R.S.C. No. 5 (1985). A close perusal of the Spanish Autonomic Charter confirms its foundational elements mirrored the British colonial model, as had been applied to Canada since 1867 pursuant to the British North America Act of that year.

45. See Papers relating to the foreign relations of the United States, with the annual message of the President transmitted to Congress December 5, 1898. U.S. Dept. of State 558, 617–44 (1898), http://images.library.wisc.edu/FRUS/EFacs/1898/reference/frus.fru1898.0025.pdf (dispatch from U.S. Ambassador in Madrid, Stewart L. Woodford, sent to the U.S. State Department on this development, along with a copy of Práxedes Mateo Sagasta’s official statement to the Cuban people and of the Charter itself). The archives reveal the U.S.’s interest in the new Cuban landscape, following the concession of the Autonomic Charter.

46. See Carmelo Delgado Centron, Imperialismo Jurídico Norteamericano en Puerto Rico (1898-2015) 83–92 (2015) (analysis of Madrid’s political scenario during the months leading to the signing of the Autonomic Charter). The concession of the Autonomic Charter to Cuba and Puerto Rico was the byproduct of Spain’s financial collapse and of the utter failure of Valeriano Weyler’s draconian military tactics on the ground. Both liberal and conservative governments in Madrid consistently denied their Caribbean possessions of any meaningful installment of self-governance. As late as 1895, the Abárzuza reforms were rejected for their alleged liberality. From a political perspective, the assassination of Spanish Conservative Premier Antonio Cánovas del Castillo, on August 8, 1897, and the resulting accession to power of the liberal Práxedes Mateo Sagasta enabled, albeit belatedly, the approval of an autonomic statute for the overseas colonies.

47. Richard B. Gray, The Quesadas of Cuba: Biographers and Editors of José Martí y Pérez, 22 The Americas 389, 391 (1966); Raimundo Lazo, José Martí: Sus Mejores Páginas 47–48, 67–72 (México: Editorial Porrúa, 1992) (discussing Martí’s ideas and values, as he embarked on Cuba’s definitive war of independence). The last chapter of Cuba’s war of independence began on February 24, 1895, under the leadership of José Martí—who together with General Máximo Gómez joined the insurgents on Cuban soil on April 11, 1895.
Spanish Crown’s belated efforts at reigning in the insurgency by means of a constitutional solution failed. The stage was set for the United States’ head-on collision with Spain, which irretrievably led to the so-called Spanish American War \(^{48}\) and its momentous aftermath. \(^{49}\)

C. Cuba’s Endogenous Constitutionalism

Before going any further, it is essential to note that some of the more refined works of Cuban endogenous constitutionalism came to life during the turbulent years of the Cuban fin de siècle. Born in the battlegrounds of Cuba libre, and inspired on the ideas of Félix Varela, \(^{50}\) Narciso López, \(^{51}\) Carlos Manuel de Céspedes, \(^{52}\) Ignacio Agramonte \(^{53}\) and José Martí, \(^{54}\) among others, the revolutionary constitutions of Guáimaro (1869). \(^{55}\)

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49. See, e.g., Downes v. Bidwell, 182 U.S. 244 (1901). By the end of the war, the U.S. had become a colonial power with significant control of the Western Hemisphere and the Pacific, where the acquisition of the Philippines and Guam significantly enhanced its geopolitical interests. From a purely domestic constitutional perspective, following the war the U.S. Supreme Court, in the so-called insular cases, validated the U.S.’s imperial project devising a new legal construct: the unincorporated territory, which “belongs” to the U.S. but is not “part” thereof, where the U.S. Constitution does not fully follow the U.S. flag and where Congress has made no promise of statehood.

50. See generally Joseph McCadden, Felix Varela Torch Blarer from Cuba 44-47, 72 (1969). Félix Varela (1788-1853) was a Cuban priest who fought both for the abolition of slavery and against Spanish colonialism on Cuban soil. A Cuban delegate to the Spanish Cortes during the liberal triennium of 1820-1823, Varela lived in exile all his adult life — first in New York and then in St. Augustine where he died at the age of 65. His remains today sit at the Aula Magna of the University of Havana.

51. See generally Jose Manuel Castañon, Cuba: Habla contigo, siga hablando contigo 255 (2001). Narciso López de Urriola (1796-1851) was a Venezuelan general, of Basque descent, who designed Cuba’s flag and coat of arms. Moreover, López attempted to overthrow the Spanish colonial regime by means of an armed invasion launched from the U.S. He was captured in Cuba and executed by Spanish forces on September 1, 1851.

52. Raúl Eduardo Chiao, Contraméstre 7, 21 (2008). Carlos Manuel de Céspedes y del Castillo (1819-1874), the first president of the insurgent Cuban government, instituted on the basis of the 1869 Guáimaro Constitution, was a lawyer and small plantation owner from Oriente. Considered the father of the Cuban nation, Céspedes died in combat against Spanish units on February 27, 1874.

53. Raúl Eduardo Chiao, Baraguá: Insurgents and Exiles in Cuba and New York During the Ten Year War on Independence (1868-1878) 362 (2009). Ignacio Agramonte y Loynaz (1841-1873) was a Cuban lawyer who rose to the rank of major general during the Ten Year War, where he commanded the Camagüey division. A member of the Republic in Arms’ House of Representatives, Agramonte died an untimely death at the hands of the Spanish forces on May 11, 1873. The Law Faculty of the University of Havana today bears his name.

54. Alfred J. López, José Martí: A Revolutionary Life 160–64, 253 (2014). José Martí y Pérez was born in old Havana on January 28, 1853. The son of a peninsular father from Valencia and an islander mother from the Canary Islands, Martí was an ardent separatist, who at the age of 17 was already a political prisoner condemned to hard labor at the San Lázaro quarry in Havana. Following his deportation to Spain in 1871, Martí dedicated the rest of his life to Cuba’s struggle for liberation. He was, undoubtedly, the intellectual architect of Cuba’s definitive war of independence.

55. See Fidel Castro, Fidel Castro Reader 333-342 (David Deutschmann ed., 2007). The Guáimaro Constitution, proclaimed on April 10, 1869, by the Cuban separatists headquartered in Oriente was Cuba’s first autochthonous constitutional text. Modeled after the U.S.’s federal structure, it abolished slavery in all territory under insurgent control. It deposited, moreover, a significant quantum of authority in a House of Representatives to which President Cés-
(1878),\textsuperscript{56} Jimaguayú (1895),\textsuperscript{57} and La Yaya (1897)\textsuperscript{58} stood as prominent illustrations of the profound imprint the more progressive French and Anglo-American constitutional doctrines had on the Cuban landscape of the time.\textsuperscript{59}

\textit{The U.S. Military Period}

\textbf{D. American Military Rule}

The anti-climactic denouement of Cuba’s war of independence led, not to outright sovereignty as the late Martí had envisioned, but to four long years of military occupation under the watchful eye of the U.S. War Department.\textsuperscript{60} From a purely legal perspective, the “little splendid war”\textsuperscript{61} introduced in Cuba a brief, albeit confusing, period of constitutional balkanization. On the one hand, the Spanish Autonomic Charter applied in those provinces still under Spain’s control, while the separatists’ Yaya Constitution remained in full force and effect in \textit{mambi}\textsuperscript{62} territory. The fall of Santiago on July 16, 1898, at the hands of Theodore Roosevelt’s power, and that of the army generals, was subordinated. It expired following the signing of the 1878 Pact of Zanjón.

\textsuperscript{56} Carlos Marquez Sterling & Manuel Marquez Sterling, \textit{Historia de la Isla de Cuba} 97–101 (1975); see also Orestes Hernández Más, \textit{El constitucionalismo revolucionario y su abandono en la república neocolonial}, 9 \textit{Revista Cubana de Derecho} 141, 141–52 (1975). The Baraguá Constitution, drafted on March 15, 1878, was the juridical expression of Maceo’s rejection of the Zanjón capitulation. It infused temporary life on the revolutionary government on the basis of a much more centralized decision-making apparatus revolving around a directorate. It finally dissolved in 1880, with the end of the so-called \textit{Guerra Chiquita}.

\textsuperscript{57} See Carlos Manuel Villabella Armengol, \textit{De Guáimaro a La Habana: Historiografía de la organización del poder en el constitucionalismo cubano}, 32 \textit{Revista Cubana de Derecho} 5, 15-16 (2008). The Jimaguayú Constitution was established on September 18, 1895, shortly after the resumption of Cuba’s war of independence. Drawing on past experiences, this constitutional text granted the military high command more flexibility and autonomy than its Guáimaro predecessor while concentrating political power on a governing council made up of the president, vice president and 4 secretaries of state.

\textsuperscript{58} Id. at 16. The Yaya Constitution, issued on October 30, 1897, strengthened the revolutionary government and provided further detail on areas as sensitive as the administration of civil justice and the concession of Cuban nationality.

\textsuperscript{59} Andrés María Lazcano, \textit{Las Constituciones de Cuba} 981–82 (1952). Note that the first known draft of a liberal constitution for Cuba, inspired on modern continental principles, was authored by Joaquín Infante in 1811.

\textsuperscript{60} Nigel D. White, \textit{The Cuban Embargo under International Law: El Bloqueo} 19 (2014); see also David F. Healy, \textit{The United States in Cuba} 1898-1902 (1963) (analysis of the challenges facing the U.S. military commanders in Cuba during the 1898-1902 American occupation).

\textsuperscript{61} See William Roscoe; Thayer The Life and Letters of John Hay 337 (1915) (discussing the origin of phrase coined by then U.S. Secretary of State John Hay); See generally Margaret Leech, \textit{In the Days of McKinley} 151–347 (1959) (inside account of how President McKinley managed the Cuban crisis).

\textsuperscript{62} See Mark Abendroth, \textit{Rebel Literacy: Cuba’s National Literacy Campaign and Critical Global Citizenship} 29 (2009). The term “\textit{mambi}” was initially used pejoratively by the more reactionary elements of the Spanish press, typecasting Cuban separatists as black brigands. In time, the term “\textit{mambi}” was appropriated by the Cuban rebels themselves to describe their fellow freedom fighters. It, thus, became a term of honor.
Roosevelt's *Roughriders* superimposed on the Cuban terrain a third legal order premised on the vast body of military orders issued by the U.S. Army's high command on the ground. Moreover, the end of the hostilities, following Spain's peace offer, led U.S. General Leonard Wood to issue a provisional constitution, initially for Santiago and subsequently for the whole of Cuba, effectively abrogating the Spanish Autonomic Charter. This notwithstanding, on January 1, 1899, as Spain officially handed over Cuba to the McKinley Administration in Washington, Governor John R. Brooke's first order established that the Spanish Civil and Penal Codes, together with the Spanish Civil and Penal Procedural Laws, would remain in full force and effect on Cuban soil. Soon thereafter in April 1899, Brooke abolished the old Spanish administrative court (*Tribunal de lo Contencioso Administrativo*), while establishing a Cuban Supreme Court (*Tribunal Supremo*). By October 15, 1900, less than a month before the first meeting of Cuba's Constitutional Convention, Wood, who succeeded Brooke in the island's governorship on December 20, 1899, introduced the writ of *habeas corpus*.

**The Postcolonial Period**

**E. The 1901 Constitution**

It was under the shadow of Wood's military rule that Cuba's first postwar endogenous constitution-making exercise took place. The 1901 Constitution, Cuba's first postcolonial constitutional text, was then the byproduct of an uneasy and asymmetrical geopolitical relationship.

Elected pursuant to General Wood's military orders, a Constitutional Convention made up of 31 delegates from across the island was convened in September 1900 to draft a constitution for the future Republic of Cuba. The Convention's deliberations, which began on November 5, 1900, and finally adjourned on February 21, 1901, produced a rather co-

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66. Id. at 20-21.

67. Id. at 23.

68. *Leonard Wood, Military Order No. 301 of July 25, 1900, reprinted in 1 Annual Reports of the War Department for the Fiscal Year Ended June 30, 1900*, 519 (Military Governor of Cuba on Civil Affairs, 1901). The 31 Cuban delegates were elected on the following basis: Pinar del Rio: 3; La Habana: 8; Matanzas: 4; Santa Clara: 7; Puerto Príncipe: 2; and Santiago: 7.

gent constitutional text. From a purely technical perspective, the 1901 Constitution crystal-
lized a series of principles then unbeknownst to Cuba's legal culture. For instance, Title IV
provided the Cuban people an enumerated bill of rights, which expounded on the rather
limited catalog of rights General Wood offered the population in October 1898.70 Structur-
ally, this legal instrument replicated the republican form of government enshrined in the U.S.
Constitution. A bicameral legislative branch, made up of a popularly elected senate and
house of representatives,71 would now stand on equal footing with a president chosen by
the newly enfranchised Cuban electorate, who would act as head of state and government as well
as commander in chief.72 Of even greater significance was that, contrary to the U.S. Constitu-
tion, the Cuban text did openly provide for judicial review.73 The Cuban judiciary was en-
dowed, from the outset, with explicit constitutional authority to pass muster over the
constitutionality of all statutes passed by the legislature.

The legitimacy of the 1901 experiment, however, was severely compromised by the
McKinley Administration's requirement that the Cuban delegates to the Constitutional Con-
vention incorporate the so-called Platt Amendment74 as an appendix to the newly minted
constitutional instrument. Under the strictures of Senator Platt's (R-Conn.) amendment to
the 1901 U.S. Army Appropriations bill, the Republic of Cuba, as a pre-condition for inde-
pendence, had no choice but to, firstly, grant the U.S. the right to intervene militarily on the
island; secondly, surrender to the U.S. for the foreseeable future possession of the Isle of
Pines (today Isle of Youth); and thirdly, sell or lease the U.S. "lands necessary for coaling or
naval stations."75

To the chagrin of a sizeable proportion of the Cuban people, the delegates to the
Convention, in a controversial 16-11 vote held on June 12, 1901, caved into the McKinley
Administration's demands, thus finally incorporating the Platt Amendment as an appendix
to the 1901 Constitution.76 Hence, following the election and subsequent inauguration of
President Tomás Estrada Palma, on May 20, 1902, the U.S. finally "transferred to the Presi-
dent and Congress of the Republic of Cuba the government and control of the island"77 now
under the aegis of the 1901 Constitution.

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70. See id. at 531-33 (Wood's provisional constitution provided for the right to peacefully assemble; religious
freedom; due process of law; compensation from expropriation; protection from self-incrimination, cruel and unusual
punishment and unreasonable searches and seizures; and afforded the writ of habeas corpus.)
71. Constitución de la Republica de Cuba, art. 44 (1901).
72. Id. art. 65.
73. Id. art. 83, §4.
74. See Louis A. Perez, Cuba c. 1930-59, in 7 THE CAMBRIDGE HISTORY OF LATIN AMERICA: 1930 TO THE
75. Platt Amendment, ch. 803, 31 Stat. 897. It is worth noting that the U.S.'s possession of Guantánamo finds its
initial legal basis in the discredited Platt Amendment.
76. The Platt Amendment is Accepted by Cuba, N.Y. Times, June 13, 1901, at 1.
77. U.S. DEPT. OF STATE, PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 268 (1906).
The 1901 Constitution survived, relatively unscathed, for the next three decades despite the pervasive civil wars and endemic political chaos that scarred Cuban life during the postcolonial period.\textsuperscript{78}

\textbf{F. The Interwar Constitutional Crisis}

In 1928, besieged by the global collapse of the sugar markets and a boisterous political opposition at home, the Gerardo Machado Administration, for the first time in Cuba’s postcolonial history, amended the constitutional text by means of an \textit{ultra vires} mechanism in order to unilaterally extend the president’s term, modify the line of presidential succession and reconfigure the composition of the island’s legislature.\textsuperscript{79} Not only did this preposterous maneuver plant the seeds of Machado’s downfall in August of 1933,\textsuperscript{80} but more importantly, opened the floodgates for future legal instability, sending shockwaves through Cuba’s constitutional superstructure.

Following the implosion of Machado’s regime, a provisional government under Carlos Manuel de Céspedes passed Decree No. 1298 on August 24, 1933,\textsuperscript{81} restoring the 1901 Constitution in its entirety. The toppling of Céspedes’ interim government, shortly thereafter, led to additional rounds of constitutional modifications of dubious legality.\textsuperscript{82}

\textbf{G. The 1940 Constitution}

It was precisely this downward spiral, of chaotic proportions, the catalyst leading to Cuba’s second Constitutional Convention. This new constitution-making exercise started in November 1939 with the election of delegates to the new Convention and finished on June 8, 1940.\textsuperscript{83} The new constitutional text entered into full force and effect on October 10, 1940.\textsuperscript{84}

\textsuperscript{78} See, Ciro Bianchi Ross, \textit{AGENDA DE LA REPÚBLICA} (2015) (discussing the events shaping the first decades of Cuba’s so-called neocolonial period).

\textsuperscript{79} See Lazcano y Mazón, \textit{supra} note 59, at 586–87, for President Machado’s Decree of May 11, 1928.


\textsuperscript{81} See Lazcano y Mazón, \textit{supra} note 59, at 608–12 (discussing how Decree No. 1298 invalidated Machado’s extension of his first term in office to 1931 and eliminated the presidential reelection provision the former president had incorporated into the constitutional text).

\textsuperscript{82} See Fabricio Mulet Martínez, \textit{El desarrollo constitucional en Cuba durante los años 1933-1939}, 43 REVISTA CUBANA DE DERECHO 71 (2014), for a detailed analysis of this tumultuous period and its effects on Cuba’s constitutional structure.

\textsuperscript{83} Carlos Manuel Villabella Armengol, \textit{Una nueva mirada al constitucionalismo cubano desde los modelos constitucionales y la periodización de la República}, 44 REVISTA CUBANA DE DERECHO 30 (2014).

\textsuperscript{84} The text of the 1940 Constitution was first published in Cuba’s \textit{Gaceta Oficial} on July 8, 1940.
Cuba’s 1940 Constitution, inaugurated along with Fulgencio Batista’s first administration, while maintaining the republican imprint of its predecessor, was a more progressive legal instrument than the old 1901 Constitution. From a substantive perspective, it reflected the more advanced legal values of its times. The 1940 Constitution’s Title IV (Derechos Fundamentales), Title V (De la Familia y la Cultura) and Title VI (Del Trabajo y la Sociedad) provided the Cuban people, if only theoretically, with an extensive bundle of social, economic and political rights, then unavailable in a significant number of developing countries.

H. The Schism of 1952

Nevertheless, the dissonances of the past came to life once again in 1952 with the collapse of this brief experiment. Batista’s coup of March 10, 1952, not only put an end to the upcoming presidential election but forever changed Cuba’s political and legal jigsaw puzzle.

Batista, as Machado before him, upon regaining absolute control of the island, modified the supreme law of the land. Under the new Constitutional Law of April 4, 1952, the Cuban legislature was now stripped of all meaningful authority, while the checks and balances system ingrained in Cuba’s republican form of government was completely shattered. A Council of Ministers with power to amend the constitutional text as it saw fit was now presided by Batista himself, who effectively wielded all legislative and executive authority. The conditions were, thus, ripe for the flourishing of the 26th of July Movement (Movimiento...
26 de Julio) and the definitive triumph of the Cuban Revolution on January 1, 1959, under the leadership of Fidel Castro Ruz.

The Revolutionary Period

I. The 1959 Fundamental Law

The Revolution's first attempt at resuming constitutional order in Cuba came on February 7, 1959, with the signing by interim President Manuel Urrutia Lleó of the so-called Fundamental Law of Cuba (Ley Fundamental de Cuba). Initially intended as a transitional or provisional instrument, the Fundamental Law was in full force and effect in Cuba for the next 17 years until its replacement by the 1976 Constitution, which is still the supreme law of the land.

Substantively, the Fundamental Law reproduced the 1940 Constitution, with regards to the availability of the wide panoply of social and economic rights guaranteed therein, while providing for a complete re-engineering of Cuba’s governmental structure, both at the national and municipal levels.

More specifically, the Fundamental Law amended in toto Article 119 of the 1940 Constitution, explicitly suppressing both the Republic’s Senate and House of Representatives. From then on, all legislative power would be exercised by a new Council of Ministers.

92. The 26th of July (1953) Movement takes its name from the date of Castro’s attack on the Moncada barracks in Santiago. Moncada, a fortress built by the Spanish, was then the headquarters of the Antonio Maceo Infantry Regiment.

93. Jeffrey M. Elliot and Mervyn M. Dymally, FIDEL BY FIDEL: AN INTERVIEW WITH DR. FIDEL CASTRO Ruz 6-7 (2009).


95. MASS MEDIA AND THE CARIBBEAN, 131 (Surlin and Soderlund, eds., 1990). Years later, on February 24, 1975, and only a few months prior to the enactment of the 1976 Constitution, Fidel admitted that in 1959, conditions in Cuba did not allow for a constitution-making exercise on the basis of socialist principles. (“Es posible que diez años atrás, dada todavía la lucha de clases tan fuerte que existía en nuestro país, dada la actividad contrarevolucionaria relativamente poderosa, no hubiéramos podido aplicar, con la misma libertad, criterios que están en esta Constitución.”) See Palabras pronunciadas por el Primer Secretario del P.C.C. y Primer Ministro del Gobierno Revolucionario, Comandante en Jefe, Fidel Castro, en el acto de entrega del Anteproyecto de Constitución, 11 REVISTA CUBANA DE DERECHO 55 (1976).

96. FUNDAMENTAL LAW OF CUBA, supra note 94, at 6-8. Pursuant to Articles 21, 24, and 25 of the 1959 Fundamental Law, tailor-made sanctions were added to the constitutional text against those citizens who collaborated with the Batista regime. Id. The application of the death penalty was widely expanded and people deemed to be Batista collaborators were sanctioned with confiscation of property without compensation.

97. See id. art. 119, at 33 (“The Legislative Power is exercised by the Council of Ministers.”).
The Council of Ministers, moreover, effectively wielded all legislative, executive and administrative authority.\(^9\)

Similarly, Titles XV (\textit{Del régimen municipal}) and XVI (\textit{Del régimen provincial}) of the 1940 Constitution, which provided for an elaborate regime of autonomy for municipalities and provinces, were redesigned. The Council of Ministers was now endowed with authority to unilaterally delineate their positioning within Cuba’s governmental tapestry.\(^9\)

More decisively, the drafters of the Fundamental Law did away, in its entirety, with the amendment mechanism at the heart of the 1940 Constitution.\(^10\) Under the Fundamental Law, the Council of Ministers alone could amend the constitutional text.\(^10\)

Both structurally and substantively, the Fundamental Law proved utterly inadequate. As a threshold matter, it failed to provide a coherent legal framework upon which to institutionalize the socialist superstructure the Revolution intended to perpetuate on Cuban soil. The text’s evident shortcomings came to light through the avalanche of special legislation the Council of Ministers passed during this period in a clear attempt at harmonizing the constitutional text to the new realities on the ground.\(^10\) Unsurprisingly, the swift superimposition of new legal figures and institutions, in the mold of Eastern European and Soviet socialism, which were unavailable in the Cuban constitutional text, created an inherent disconnect between the Fundamental Law and the Revolution’s ideological compass.

\textit{J. The 1976 Constitution}

By the early 1970’s, it was clear that Cuba required a fresh constitutional text that could reflect the Revolution’s legal principles while instilling cohesiveness across Cuba’s le-

\(^{98}\) \textit{Id.} at 33–35. The 1959 Fundamental Law did provide for a cosmetic president, but his executive authority was considerably diminished by the Council of Minister’s overwhelming powers. \textit{See id.} arts. 125–26. During this period, the Cuban presidency was held by Manuel Urrutia Lleó (January 2, 1959–July 17, 1959) and Osvaldo Dorticós Torrado (July 18, 1959–December 2, 1976). \textit{Cuba, WorldStatesman.org}, http://www.worldstatesmen.org/Cuba.html (last visited Apr. 15, 2017). Fidel acted as prime minister, at the helm of the Council of Ministers, from February 1959 until his investiture as president of the newly established Council of State in December 1976. \textit{Id.}

\(^{99}\) \textit{Fundamental Law of Cuba, supra} note 94, arts. 198–201, at 60.

\(^{100}\) \textit{Constitution of the Republic of Cuba} (1940), arts. 285-86.

\(^{101}\) \textit{See Fundamental Law of Cuba, supra} note 94, arts. 232–33. Under the new mechanism, the constitutional instrument could be amended by a two-thirds majority vote of the Council of Ministers, ratified by a similar vote at three successive Council meetings, and with the approval of the president of the Republic.

\(^{102}\) Paramount among this corpus of special legislation was, for instance, the 1959 Agrarian Reform Law. Carlos Villabella Armengol, \textit{Una Nueva Mirada al Constitucionalismo Cubano desde los Modelos Constitucionales y la Periodización de la República}, \textit{44 Revista Cubana de Derecho} 19, 38 (2014).
Cuba’s Constitutional Moment

gal landscape. It was precisely against this background, that in 1974, the Council of Ministers and the Political Bureau of the Cuban Communist Party initiated the process leading to the proclamation, on February 24, 1976, of Cuba’s current constitution.

By all accounts, the main goal behind this new exercise was to, in the words of Fidel Castro, “institutionalize” the Revolution. In so doing, Article 1 of the 1976 Constitution made it clear that “Cuba is a socialist state.” More specifically, this opening salvo was directly intertwined to Article 5, which in no uncertain terms proclaimed that the “Communist Party of Cuba, Martian* and Marxist-Leninist, the organized vanguard of the Cuban nation, is the superior leading force of society and of the state.” Article 53, moreover, left no room for equivocation by providing that the “freedoms of speech and the press of the citizens are recognized in keeping with the objectives of a socialist society.”

Structurally, the 1976 Constitution redesigned Cuba’s governmental architecture, while ratifying the island’s definitive abandonment of the republican form of government, which since 1959 had altogether disappeared. A National Assembly of People’s Power (Asamblea Nacional del Poder Popular) was now erected as the “supreme organ of the Cuban state’s power.” Elected to 5-year terms, the deputies of the National Assembly of People’s Power would select from among their peers the members of the newly created Council of State. The 1976 Constitution also required the president of the Council of State

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103. JORGE I. DOMÍNGUEZ, CUBA: ORDER AND REVOLUTION 243-44 (1979). On October 22, 1974, the Council of Ministers and the Political Bureau of the Communist Party announced the appointment of a mixed commission, made up of ministers and party leaders, tasked with the responsibility of producing the first draft of the 1976 Constitution. Id.

104. Id. The proclamation of the 1976 Constitution was the denouement of a process originally initiated on February 24, 1975 when the Executive Committee of the Council of Ministers, together with the Political Bureau of the Cuban Communist Party, published a draft of the constitutional text. Id. at 243. Following a period of consultation, the constitutional draft was approved by the First Party Congress in December 1975, and approved by the Cuban electorate on February 24, 1976, garnering the approval of 97.7% of the voters. Cuba, WIPO, http://www.wipo.int/wipolex/en/details.jsp?id=10663 (last visited Apr. 15, 2017).

105. Palabras pronunciadas por el Primer Secretario del P.C.C. y Primer Ministro del Gobierno Revolucionario, Comandante en Jefe, Fidel Castro, en el acto de entrega del Anteproyecto de Constitución, 11 REVISTA CUBANA DE DERECHO 54 (1976). On February 24, 1975 Fidel suggested: “In discussing this Constitution, our people will be able to feel proud. The Revolution will take a great historical step towards its institutionalization, towards ending the provisional nature of the Revolutionary Government.” (“Nuestro pueblo podrá sentirse orgulloso cuando se discuta esta Constitución. La Revolución dará un gran paso histórico hacia la institucionalización, hacia el cese del carácter provisional del Gobierno Revolucionario.”). Also refer to Professor Leonardo Pérez Gallardo’s illuminating introduction to the definitive Commentary on the 1987 Cuban Civil Code, where he suggests that the enactment of the new Code, 11 years after the 1976 Constitution, was the “culmination of a process of institutionalization.” LEONARDO PÉREZ GALLARDO, COMENTARIOS AL CÓDIGO CIVIL CUBANO TOMO 1 (2013).

106. CONST. OF CUBA (1976), art. 1.

107. Id. art. 7.

108. Id. art. 53 (emphasis added).

109. Id. art. 69 et. seq.

110. Id. art. 72.

111. Id. art. 74.
to act as Cuba’s head of state and government, as well as commander in chief of the armed forces. More importantly, the Council of State was given authority under Article 90 of the 1976 Constitution to enact decree-laws in between the two yearly sessions of the National Assembly of People’s Power, as well as the quasi-judicial power to render legally binding opinions on all applicable laws.

The Council of Ministers, for its part, endured a profound transformation. The Council no longer embodied the supreme constitutional body of the Cuban Republic; its members would now be chosen by the president of the Council of State, who would also preside over it.

One of the more salient aspects of the new constitutional experiment was its treatment of the Cuban judiciary. While the 1959 Fundamental Law provided for a Court of Constitutional and Social Guarantees with jurisdiction to determine the constitutionality of laws and decree-laws, under Cuba’s 1976 Constitution the power of judicial review rested squarely in the hands of the National Assembly of People’s Power. Different from the republican configuration of the 1901 ancien régime, pursuant to which the judiciary, legislative and executive all enjoyed identical constitutional status as co-equal branches, the 1976 Communist Constitution subordinated the judiciary to the National Assembly of People’s Power.

The monumental implosion of the “iron curtain,” as the 1989 fall of the Berlin wall so vividly foreshadowed, together with the sudden death of the Soviet Union, brought Cuba’s communist experiment to a period of acute uncertainty and systemic infirmity. Opening, thus, a complex Pandora’s Box which to this day has not been closed.

112. *Id.* Fidel Castro became president of Cuba’s Council of State, and hence head of state, following the resignation of President Dorticós in 1976. An enormous degree of centralization was nurtured under this arrangement, whereby the leadership of the Communist Party also fell in the hands of the head of state and commander in chief of the armed forces.

113. **Const. of Cuba, supra** note 106, art. 93(g).

114. *Id.* art. 90(c).

115. *Id.* art. 90(ch).

116. *Id.* art. 93(d).

117. *Id.* art. 96.

118. **Fundamental Law of Cuba, supra** note 94, art. 160.

119. **Const. of Cuba, supra** note 106, art. 75(c).

120. *Id.* art. 121.


122. See Philip Brenner et al., *A Contemporary Cuba Reader: The Revolution under Raúl Castro* 423 (2nd ed. 2014). The fall of the communist bloc opened up what is commonly known in Cuba as the “special period,” which goes from 1989 until the late 1990s—when the late Venezuelan President Hugo Chávez agreed to deliver close to 100,000 oil barrels a day to Cuba for a nominal price. During the most acute years of the special period, Cuba saw an alarming collapse of its import activity. Alarming rates of inflation and a mass exodus of young Cubans severely contracted the island’s growth. It is against this background that on October 10, 1991, the Communist Party’s IV Congress
As of the time of this writing, an intense debate is raging in Havana on the degree to which Cuba's constitutional repertoire should evolve to meet the gargantuan economic and geopolitical challenges besieging the island today.

III Conclusion

The Post-Fidel Period: A Pandora’s Box?

Cuban constitutionalism is no stranger to the judicial enforcement of constitutional norms, the horizontal separation of governmental powers, and the transubstantiation of public international law into domestic law or even to basic notions of participatory democracy; values ingrained at the core of Western legal thought. These values have percolated Cuba's endogenous legal culture since before the proclamation of the Guáimaro Constitution under the leadership of Céspedes and the 1868 generation. Yet, Cuba's endless cycles of institutional boom and bust — more often than not the unavoidable consequence of fierce ideological struggles at the heart of Cuban society — have left these values under intense and continuous siege.

Céspedes' short-lived yet monumental liberal experiment, immortalized in the text of Cuba's first autochthonous constitution, brought to life on Cuban soil (albeit theoretically) concepts as basic as the separation of constitutional powers, the independence of the judiciary, and even the harmonious coexistence of domestic law alongside the law of nations.123

opened the door for amending the 1976 Constitution. This directive led to the approval by the National Assembly of People's Power, on July 12, 1992, of a series of amendments to the constitutional text. Among the more prominent amendments was the recognition of new types of proprietary rights under so-called mixed companies (empresas mixtas) and economic associations (asociaciones económicas) between Cuban nationals and foreigners. For a complete analysis of the process leading to the 1992 amendments see, among others, Juan Escalona Reguera, En torno a la Ley de Reforma Constitucional, 8 REVISTA CUBANA DE DERECHO 3-12 (1992). Also see Félix Pérez Milán, Motivos para una reforma, 7 REVISTA CUBANA DE DERECHO 3-7 (1992). On June 26, 2002, the National Assembly of People's Power unanimously approved a new set of amendments to the Cuban Constitution. First, new language was added to Article 3 affirming the Revolution's irrevocability. ("El socialismo y el sistema político y social revolucionario establecido en esta Constitución ... es irrevocable, y Cuba no volverá jamás al capitalismo.") Second, and perhaps more importantly, Article 137 now precludes the National Assembly of People's Power from passing any future amendment to the Constitution that could imperil the irrevocable nature of the Revolution. ("Esta Constitución sólo puede ser reformada por la Asamblea Nacional del Poder Popular ... excepto en lo que se refiere al sistema político, social y económico, cuyo carácter irrevocable lo establece el Articulo 3 del Capítulo I ... ").

123. Article 14 of the 1869 Guáimaro Constitution delegated to the House of Representatives of the Republic in Arms the power to ratify treaties with foreign powers. Under Article 18 of the Guáimaro text, however, the president of the Cuban Republic in Arms was the only governmental official with authority to negotiate and sign treaties. Moreover, the power to appoint and receive ambassadors, plenipotentiary ministers and consuls was, similarly, entrusted to the president.
Notwithstanding the institutional implosion of Céspedes’ foundational project, its juridical values did find an echo in a new tapestry of endogenous legal instruments. Martí’s *Bases del Partido Revolucionario Cubano*¹²⁴ and his invaluable *Manifiesto de Montecristi*,¹²⁵ the ideological subtext to Cuba’s nationalist movement, openly embraced (although obliquely) notions of institutionality, social equilibrium, civic restraint and participatory democracy.¹²⁶ Both *Jimaguayú*¹²⁷ and *Yaya*,¹²⁸ as Guáimaro before them, provided, at least in principle, for horizontality among the constitutional branches of government, judicial independence and the transubstantiation of treaties into domestic Cuban law.¹²⁹ Moreover, these autochthonous constitutional formulations were put together by constituent assemblies. While obviously influenced by Anglo-American and Roman-French legal traditions, these instruments, more so than the 1901 and 1940 postcolonial constitutions, bring to the surface rather vividly the often unseen building blocks of Cuban constitutionalism.

Cuba’s *constitutional moment*, thus, requires not the recolonization of Cuba’s legal culture with utterly foreign socio-political institutions, but rather a critical (un-ideological) reassessment of values that for far too long have survived, more often than not hidden from plain view, amidst the vagaries of authoritarianism, unforeseen geostrategic variables and the uneven cycles of the global economy.

In the final analysis, Cuba’s *constitutional moment* is as much an exercise in self-discovery as it is a bold, albeit uncertain, attempt at nation building under the most trying of circumstances.

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¹²⁴. José Martí published the platform of the Cuban Revolutionary Party in New York on March 14, 1892. (“Article 4: The Cuban Revolutionary Party does not propose to perpetuate in the Cuban Republic, either with new forms or with changes that are more apparent than essential, the authoritarian spirit and bureaucratic composition of the colony, but to build, in the frank and cordial exercise of man’s legitimate capabilities, a new and sincerely democratic nation able to defeat, through the order that stems from meaningful work and a balance of social forces, the dangers of sudden liberty in a society built upon slavery.”).

¹²⁵. The Montecristi Manifest was signed by José Martí and Máximo Gómez on March 25, 1895 in the Dominican Republic.


¹²⁷. Articles 9 and 10 of the 1895 *Jimaguayú* Constitution reproduced the Guáimaro arrangement, whereby the president of the Republic in Arms was granted authority to negotiate and sign treaties with foreign powers as well as to appoint and receive ambassadors, plenipotentiary ministers, and consuls. The power to ratify treaties with foreign powers, however, now gravitated to a newly established governing council with plenary executive authority over the Republic in Arms.

¹²⁸. Article 22(15) of the 1897 *Yaya* Constitution, contrary to the *Jimaguayú* instrument, vested in the governing council alone the power to negotiate, sign and ratify treaties with foreign sovereigns. Pursuant to this constitutional provision, it was for the governing council to appoint, on an *ad hoc* basis, those commissioners who would negotiate a given treaty on Cuba’s behalf. Ratification lay squarely in the governing council’s hands.

¹²⁹. See, *Jimaguayú* Const arts. 1, 7, 23; See, *Yaya* Const. arts. 17, 22.