

A CONSTITUTIONAL FRAMEWORK FOR A FREE CUBA¹

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This essay proposes the framework of a mixed constitution for a free Cuba. By “free” I mean a republican, i.e., representative regime where the government is the product of competitive elections and the population enjoys judicially safeguarded political and civil rights.³ By “mixed” I mean one that, in keeping with Aristotle’s advice, incorporates several competing political principles or values in one coherent arrangement.⁴ Finally, by “constitution,” I do not mean simply “a mere demarcation on parchment of the constitutional limits of the several departments,” as James Madison aptly put it, for that “is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.”⁵ Rather, I have in mind what Sartori calls the “living” or “material” constitution, i.e., “the actual configuration of the system.”⁶ It is a structure or pattern of political power that is aimed at here, one that is expected to emerge from a set of enforceable rules specified in the constitutional text.

Two theoretical assumptions underlie this essay. One is that political institutions matter.⁷ That is, the constitutional allocation of authority across offices of the state and the rules for electing or appointing public officials and limiting and staggering terms of office structure political incentives and constraints in a predictable manner. Different arrangements make a qualitative difference on how well democracy works.⁸ The other is that, particularly at founding moments in a nation’s history,⁹ people can purposefully design their own institutions, that they are not “forever destined to depend for their

political constitutions on accident and force,” but are “really capable” “of establishing good government from reflection and choice.”¹⁰

This is not to deny Alexis de Tocqueville’s conclusion that culture is more important than the laws in making democracy work. Assessing that “American legislation, taken as a whole, is extremely well adapted to the genius of the people and the nature of the country which it is intended to govern,” de Tocqueville went on to note that “American laws are therefore good, and to them must be attributed a large portion of the success that attends the government of democracy in America; but I do not believe them to be the principal cause of that success[;] . . . their effect is inferior to that produced by the customs of the people.”¹¹ However, that at any given moment laws place second, after customs, in determining the success of democracy is no reason to give them short shrift. In planning for a free Cuba, one should aim at designing the very best set of rules suggested by contemporary political research so as to make the most of that “large portion” of democratic success which is attributable to them. Moreover, one should not assume that political culture is frozen. It itself is subject to gradual modification by institutions. As Lijphart observes, the Swiss did not always have a consensual political culture, having been embroiled in several civil wars. Although it takes time for institutions envisioned in a constitution or laws to take root in and modify the political culture,¹² and although they usually take a life of their own, evolving in ways not entirely anticipated by those who begot them, it is supposed that, like the characteristics of domesticated animals and plants, the way a country conducts its political life is subject to human manipulation.¹³

In crafting a constitution, then, one would be well advised to consider recent empirical findings of the “neo-institutionalist” school of political science, particularly the work of Lijphart on two types of democracy and Shugart and Carey on presidentialism. Lijphart compares the operation and performance of what he calls majoritarian and consensual democracies in thirty-six countries. The former concentrate political authority at the national level, where it is exercised by a prime minister whose party’s legislative majority in a single or dominant lower house of parliament is disproportionate to its actual share of the popular vote. This is most likely to occur when legislators are elected from single-member districts according to a first-past-the-post rule, under which the candidate with the most votes, even a simple plurality, wins. In a majoritarian democracy, the judiciary, as well as other institutions such as the central bank, plays a subordinate role to the legislature, which can amend and interpret the constitution more or less at will, limited only by tradition, public opinion, and its own self-restraint. In turn, parliament is dominated by the prime minister and his cabinet, who are leaders of the majority party; other parties are relegated to playing the role of opposition. The United Kingdom is the model of majoritarian democracy.¹⁴

By contrast, in consensual democracy authority is separated horizontally across branches of government and divided vertically between national and sub-national levels according to a relatively rigid (i.e., difficult to amend) written constitution, under which ordinary laws are subject to judicial review, as in the United States. Vertically, sub-national units enjoy a great deal of legislative and fiscal autonomy either in a federal or a decentralized unitary regime. Horizontally, a legislature that is independent or not

dominated by the executive is divided between two chambers, each elected by different rules and for different lengths of term.

Where the executive is a creature of parliament, it is normally composed of members of a coalition cabinet in which several parties are represented. This arrangement is usually the result of proportional representation in legislative elections. Where the executive and the legislature are elected separately, as in the United States or France, it is not unusual for each to be controlled by a different party, a circumstance necessitating inter-party “cohabitation,” as the French call it. This involves having to compromise on major issues and, in some cases, working out a *de facto* bi- or multi-party coalition spanning the two branches of government. Other institutions, like the judiciary and central bank, enjoy a great deal of autonomy from both the legislature and the executive. Switzerland is the prototype of a consensual regime.¹⁵

When comparing the two forms of democracy on a series of performance measures Lijphart found that, although tied on most indicators, where a difference between the two types was discernible with the usual statistical tools, it was invariably in favor of the consensual variety. Of particular importance was this regime’s relative superiority at reducing political violence and representing the interests and values articulated by minority parties, a factor that contributes to legitimating the regime. Thus, Lijphart concludes that “*the consensus option is the more attractive option for countries designing their first democratic constitutions or contemplating democratic reform*” (my emphasis). He recommends, therefore, that “[d]ivided power institutions-- strong federalism, strong bicameralism, rigid amendment rules, judicial review, and

independent central banks . . . be prescribed by means of constitutional stipulations and provisions in central bank charters.”¹⁶

Lijphart recognizes that certain features of consensual democracy are not easily transplanted across regions. For example, in Latin America, where presidentialism has long been the norm, parliamentarism is unlikely to be adopted, or if adopted, to survive.¹⁷ Also, with an implicit bow to de Tocqueville, he realizes that “consensus democracy may not be able to take root and thrive unless it is supported by a consensual political culture.”¹⁸ Yet, the latter obstacle is not insurmountable because the relation between culture and institutions is reciprocal: “although a consensual culture may lead to the adoption of consensus institutions, these institutions also have the potential of making an initially adversarial culture less adversarial and more consensual.”¹⁹

For their part, casting a skeptical glance at the academic consensus against presidentialism forged, *inter alia*, by Linz and Stepan,²⁰ Shugart and Carey find that the survival of this type of democracy depends on the actual distribution of authority between congress and president, on the one hand, and the party system, on the other, which are a function of the constitution and electoral rules, respectively.²¹ They argue that the performance of presidentialism varies according to the relative powers vested in president and congress, their respective controls over cabinet formation and survival, and the number and internal cohesion of parties represented in the legislature. Presidential systems which centralize authority in the executive are the most vulnerable to breakdown. Where the president is granted legislative powers such as a strong veto, exclusive prerogative to submit bills over certain policy areas, strategic initiative over the budget, and rule by decree, and where he has authority to go over the heads of

congress by calling a popular referendum to enact his program into law, executive-legislative relations tend to deteriorate to the point where the risks of regime breakdown become unacceptably high. By contrast, the longest-lived presidential democracies are those where the constitution contemplates a president whose role in the making of laws is marginal at best.²² Costa Rica, the oldest continuous democracy in Latin America, is a case in point.

Another problematic type is what they call the “presidential-parliamentary” regime, one of shared authority over the cabinet, with the president being free to appoint and dismiss but the parliament has the authority to censure and force the resignation of ministers. This form of government, plagued by “‘confusion’ over to whom the cabinet is responsible, is a recipe for dangerous cabinet instability. This is especially true where one branch alone names the cabinet to begin with.”²³ In a confirmatory study of fourteen Latin American countries over a ten year period, Jones, too, found that “the legislature’s possession of the power to censure government’s ministers results in an increased level of executive-legislative conflict.”²⁴ As I shall show, this was an unfortunate feature of the Cuban Constitution of 1940.

In the remainder of this essay, I draw on the aforementioned research findings to design a framework for crafting a constitution for a free Cuba. My purpose is not to expound on all the elements that go into a constitution. Rather, I limit myself to sketching what, according to Sartori, should be its “core and centerpiece,” i.e., a “frame of government.”²⁵ That means a plan for partitioning authority horizontally, across branches of the national government, and vertically, among levels of government, specifying qualifications for office, election or appointment rules, and length and

staggering of terms for each office. Much of what follows is rather conventional, incorporating as it does variations of constitutional formulas of long usage, either in the United States or, as in the case of the supreme electoral tribunal, Costa Rica. However, I do offer a few innovations that, as far as I know, have not been tried elsewhere.

I begin with a brief discussion of the last democratic constitution of Cuba, that of 1940, paying particular attention to what I consider to have been its principal structural weaknesses. Next, I lay out my proposal. Then I analyze it in light of the literature discussed above, and compare and contrast its most salient features to those of the 1940 Constitution.

The Constitution of 1940.

The Cuban Constitution of 1940, the product of an assembly elected for the purpose in which every political current, including that of the communists, participated, though short-lived, having been in effect a mere twelve years, soon attained mythic status among generations of Cubans.²⁶ Its legitimacy was such that, when Fulgencio Batista's 1952 *coup d'état* rendered it *de facto* inoperable, "its restoration soon developed into the rallying cry of the opposition movement."²⁷ In 1955, having emerged triumphant in a single-candidate "election" arranged the previous year, even the dictator himself felt compelled to declare that the constitution was again in effect. Following Batista's flight four years later, Fidel Castro initially pretended only to have had amended the constitution, even though from the very beginning his regime was in clear violation of its most basic provisions, such as proscription of the death penalty, prohibition of expropriation of property except for matters of public utility or interest and then only after judicially-adjudicated compensation, independent courts, elections

for legislative and executive offices, and amendment procedures. Today, more than six decades after its disemboweling by Batista and discarding by Castro, there are those who argue not only that restoration of the 1940 Constitution should be the first order of business of a post-Castro provisional government but that, it never having been abrogated, the 1940 Constitution remains in effect (in some sort of legal limbo, I suppose).²⁸

Institutionally, the 1940 Constitution attempted to do the very thing which Shugart and Carey believe one should avoid, i.e., construct a “presidential-parliamentary” republic.²⁹ It provided for separate but concurrent elections of a president and a bicameral congress, all to a four-year term, with half the lower house elected every two years. The president was free to appoint and dismiss members of his cabinet, but these, including a prime minister, were responsible to the congress. Either house could interpellate and censure ministers individually or the cabinet as a whole, upon which vote of no confidence they were required to resign. The president, however, was free to reappoint them to another portfolio.

As diagnosed by Shugart and Carey, this recipe was, indeed, problematic.³⁰ Too much scarce congressional energy (and it *was* scarce, absenteeism being rampant) was spent in a tug of war with the president over his ministers. On one occasion, the congress censured the Minister of Commerce, whereupon President Ramón Grau San Martín made manifest his contempt for the legislature by promoting him to head Foreign Relations, an action that left the opposition frustrated and bitter. A contemporary analyst noted that “dangerous friction between executive and legislative branches in the years 1945-1947 presage further deterioration in the chances of ultimate

successful operation unless both branches cooperate earnestly to give meaning to the Constitution.”³¹ But the problem was not only that of a lack of good will on the part of political adversaries, which was undoubtedly in short supply, with demagogic scandal-mongering and irresponsible oppositionism the order of the day, but also structural, the consequence of a “confused” division of authority between the president and the congress over the cabinet.³²

Two other structural problems in the 1940 Constitution are worth mentioning. One, shared with many others in Latin America, prohibited the immediate reelection of the president, but allowed him to run again after two terms had elapsed.³³ One can expect such a rule to have two effects. One, in his first term the president or his supporters will spend some of his political capital over a scheme to amend the constitution to allow him to run for reelection. Two, if this stratagem fails, following the end of his term the former president will not abandon the spotlight completely, but from time to time will call attention to himself, hoping for a comeback. Nor he will let go the reins of his political party.³⁴

This appears to have happened in the case of President Grau San Martín, elected in 1944. First, he intrigued to amend the constitution. That went nowhere, it having met with opposition even from within his party, the *Auténticos*. So, after vacating the presidential palace he lost no time in criticizing his successor, Carlos Prío Socarrás, a former protégé, expressing regret at having “made” him president and characterizing him as an “unfaithful disciple’.”³⁵ That set the two men at loggerheads. For his part, Batista, who had won a senate seat in 1948, and was eligible for election to the presidency in 1952, entered the race. A May 1951 survey showed him trailing badly, with

only 20 percent of respondents favoring his candidacy. Less than a year later the *Auténticos* still outnumbered Batista's party two to one among registered voters.³⁶ Three months before the election, Batista staged a *coup*.

If it is a mistake to prohibit presidential reelection—and I believe it is—the error is only compounded by allowing the president to try again after sitting out one or two terms. Better to limit the president to one sole term, as is done in Mexico, than having him wait in the wings until he is eligible to run again. But it is preferable to allow at least one reelection. As Alexander Hamilton put it in *Federalist 72*, “re-eligibility”

is necessary to give to the officer himself the inclination and the resolution to act his part well, and to the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits. The last is necessary to enable the people, when they see reason to approve of his conduct, to continue him in his station, in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of administration.³⁷

The last organic problem in the 1940 Constitution I will take up has to do with the organization of provinces. It provided for the election of a governor, but not of a provincial assembly. Rather, a provincial council, made up of all the mayors of the province, was to exercise the legislative power. It was given authority to draw up a budget, to be financed by assessing each member municipality a quota in proportion to its revenues. In this aspect, the provincial government resembled a confederal arrangement. Not having read any studies of their operations, I have no empirical knowledge how the provincial governments worked in practice. However, my guess is

that they were plagued by collective action and free-rider problems that are the bane of confederations, i.e., indifference or shirking on the part of many of their members, great difficulty in getting them to agree to undertake projects of common interest, and many municipalities falling in arrears with their financial obligations.

That said, and without minimizing the seriousness of these organic flaws, the Cuban Constitution of 1940 amounted to an earnest attempt to decentralize authority in a manner that is consistent with consensual democracy. Specifically, it provided for a bi-cameral congress, judicial review, an electoral tribunal administered by the judiciary, a *Tribunal de Cuentas* (a national inspector of accounts charged with auditing the books of all government entities), and municipal autonomy. At a time when most of Latin America and Europe were under the thrall of one dictatorship or another or rent by political conflict, this was no mean feat. As Hugh Thomas put it, “The new Constitution was one of the most serious political achievements of the Cubans, and it was achieved as a result of an unusual degree of cooperation between the different politicians.”³⁸

*A Proposed Constitutional Framework.*³⁹

In this section, I present a constitutional framework for a free Cuba. I begin with a set of working assumptions. First, that in Cuba, as elsewhere in Latin America, it would be futile to attempt to introduce a parliamentary system. The constitution will be presidential. Second, that the Cuban state will be unitary, not federal.⁴⁰ And third, that the new republican regime will restore the six historic provinces of Pinar del Río, La Habana, Matanzas, Las Villas, Camagüey, and Oriente.⁴¹ This would be desirable for a number of reasons, not least that these units would be large enough, in area or population, to support strong regional governments that, collectively, would function as

an effective counterpoise to the national level. A related advantage derived from their size is that, if the provinces were made coterminous with electoral districts, these would be of sufficient magnitude to reduce the probability of electoral disproportionality.⁴²

In a unitary republic, it is meet to begin with the national government. Here authority is to be partitioned into overlapping branches, legislative, executive, and judicial. As in the 1940 Constitution, the legislative power, including the power to tax and spend, would be vested in a bicameral congress, composed of a lower house (*cámara de representantes*) and a senate (*senado*). The congress would also have the power to impeach the president, vice-president, all cabinet and sub-cabinet officers, as well as all judges, but only for cause.

To be eligible for election, candidates for all legislative offices would be required to be Cuban citizens.⁴³ To run for congress, a candidate for the *cámara* would have to be 25 years or older, and for the senate 30. The *cámara* would consist of 125 members,⁴⁴ known as *representantes* apportioned to the provinces according to population.⁴⁵ The representatives would be elected to a three-year term⁴⁶ according to a system of proportional representation by party list,⁴⁷ the province serving as an electoral district.⁴⁸ The terms would be staggered, one third of the *cámara* being up for reelection every year.⁴⁹ There would be no limit on reelection. The parties would have to receive at least five percent of the provincial vote to elect any members.

The senate would consist of 36 members, six from each province, elected at large, to a six-year term.⁵⁰ The terms would be staggered so that every year one-sixth of the senators, one per province, would be up for reelection.⁵¹ Any candidate who comes first with more than 40 percent of the provincial vote is declared the winner; if no candidate

crosses that threshold, within a month a second round would be held between the two top vote getters. Again, there would be no limit to reelection.

Legislation could originate in either the *cámara* or the senate, except for expenditure and revenue bills, which would have to be voted out of the lower house first. In both chambers, a simple majority of the membership would constitute a quorum. To be enacted into law, a bill would have to be approved by both houses. Differences between the two versions of the same bill would have to be ironed out in conference. A three-fifths vote in both chambers would override the president's veto. All cabinet departments and agencies not specifically mentioned in the constitution would be established by law. Their employees would be required to testify under oath regarding the performance of their duties when called upon to do so before either branch of congress.

Additional congressional checks on executive power would be divided between the two houses as follows. All appointments (but not their dismissal) to the president's cabinet, except for four reserved for the senate, would need approval by the *cámara*. Appointments to the departments of foreign affairs, interior (police), justice, and treasury, and to the boards of autonomous agencies (more about these below), as well as ambassadorships, and promotion of military officers to the rank of general (and their equivalent in the air force, navy, other armed services, and national police), would require confirmation by the senate. So would appointments to the highest courts. Also, all treaties with foreign nations would need senate ratification by a two-thirds vote of those present.⁵² Impeachments would originate in the *cámara* by majority vote and

trial would be conducted by the senate, with the chief justice of the Supreme Court presiding, conviction requiring a two-thirds vote.

The executive power would be vested in a president, elected in a nation-wide popular vote for a three-year term. To be eligible for election, a candidate would have to be at least 40 years old. The president would be eligible for reelection three more times, either sequentially or after a break, for a maximum tenure in office of twelve years.⁵³ As with elections to the senate, any candidate who comes first with more than 40 percent of the vote is declared the winner; if no candidate crosses that threshold, within a month a second round would be held between the two top vote getters.⁵⁴ Along with the president, a vice-president of the same party or coalition of parties would also be elected on the same ticket. The vice-president would have to meet the same qualifications as the president, and would assume the presidency in case of death, resignation, or disability of the president.

The president would be charged with “faithfully executing the laws,” act as commander in chief of the armed forces and national police, be responsible for conducting foreign affairs, and subject to senate confirmation make appointments to the cabinet, ambassadorships, the autonomous agencies, and the courts.

On the other hand, the president’s legislative power would be limited to a moderate veto (congress could override with a three-fifths vote of both houses), which must be cast within ten working days of congress having sent him a bill. He would not have line-item veto authority: any bill would have to be vetoed in its entirety or not at all. Concerning “pocket” vetoes, this would be discouraged by the following rule: any bill sent to the president fewer than ten days before the congress adjourns, which he

neither signs nor vetoes, becomes law if, within three months of the new session of congress, it passes both houses by simple majority vote. The president would be explicitly prohibited from issuing decrees except for the express purpose of implementing a law or judicial decision, regulating a statute as provided for by congress, or arranging the internal administration of the executive branch, narrowly conceived, and then again never contrary to law. In other words, “the authority of the executive to establish laws in lieu of action by the assembly”⁵⁵ would be nil.

As for the budget, the president would be required to submit a proposal nine months before the start of the new fiscal year, but it would be up to the congress to decide what, if any, of the president’s plan to adopt in one or more revenue and expenditure bills. Neither would the congress have to wait for the president’s budget to consider revenue and appropriations bills. This would reduce the executive’s strategic advantage over fiscal policy, an advantage derivative from his having the budgetary initiative, as is the case in many countries,⁵⁶ including the 1940 Cuban Constitution.

The judicial power⁵⁷ would be vested in the courts, to consist of ordinary tribunals established by law,⁵⁸ capped by a supreme court, and one constitutional court. The former would be the final court of appeals in law and equity in civil and criminal cases. Questions regarding the constitutionality of any law, decree, ordinance, or regulation issued by any level of government, or of judgments rendered by the supreme court, would fall under the jurisdiction of the constitutional court. Appointments to these two bodies would be made by the president, subject to senate confirmation. To be eligible, candidates would be required to have a law degree from any accredited university in the world and be at least 40 years old. There would be a mandatory

retirement age of 70. Both courts would consist of ten members, nine associate justices and a chief justice. Except for the chief justice, whose appointment would extend until retirement, the term of office would be nine years, renewable once. In both the supreme and constitutional court, the chief justice would chair meetings and would have voice but no vote except to break a tie. All judicial appointments would be staggered so that one-third of the membership would be up for reappointment every three years.⁵⁹

A number of autonomous agencies would be charged with administering a range of public responsibilities. The following would have constitutional standing: an electoral tribunal, a *Tribunal de Cuentas*, the central bank, and university boards of trustees. The electoral tribunal would be charged with voter registration, administering elections, certifying winners, and apportioning seats to parties according to the proportional representation formula specified by congress. The *Tribunal de Cuentas* would be charged with auditing government accounts at all levels, national ones annually and provincial and local ones at least biennially, something it would either do itself or contract out to CPA firms, reporting its findings to congress and making them available to the press and the public. The central bank would be charged with safeguarding the value of the currency so that it is not eroded by inflation. Public universities would be governed by boards of trustees that would set policy, appoint top administrators and generally oversee their operations. (There would be no prohibition against provincial or private universities.) Except for the supreme electoral tribunal, these agencies would each be governed by a nine-member board appointed by the president with the consent of the senate, for staggered, nine-year terms, with one-third of the membership renewable every three years, with reappointment possible for

another term, sequentially or after a break. For its part, the supreme electoral tribunal would be governed by a nine-member board appointed by the constitutional court for the same length of term and schedule for staggering appointments as those applicable to itself. The congress would be free to create additional autonomous agencies by law.

Below the national government, there would be provincial governments and municipalities. Both the provincial and the local governments would have legislative and fiscal autonomy, subject to the following constraints. On the revenue side, taxes over exports and imports would be the exclusive prerogative of the national government, and in taxing (and regulating) industry and commerce provincial and local governments would be prohibited from discriminating between items produced or sold within their jurisdictions and those without. On the expenditure side, the national government could mandate provinces or local governments to provide for schools, water and sewers, public health, environmental protection, and other items the neglect of which at the regional or local level would have adverse national impact. To ensure at least minimal compliance with national mandates, provincial or local officials who ignore or flatly refuse to carry them out would be subject to civil suits and liable to judicially-imposed fines.⁶⁰ However, one would expect that the national government would rather rely on a fiscal carrot, offering grants-in-aid and similar subsidies to persuade recalcitrant provincial or local governments to comply. Another means would be for the congress to hold hearings on the state of public services in jurisdictions that are grossly under-performing, something which would attract unfavorable publicity and, presumably, negative electoral consequences for the officials responsible.

Other than that, provinces and municipalities would be free to levy taxes on property, income, sales or consumption, charge user fees for any service, and borrow money by issuing bonds, subject only to such regulations as are deemed necessary to guarantee transparency in all their financial transactions and to pay off creditors in case of default.⁶¹ Similarly, over and beyond that required to fulfill national mandates, provinces and municipalities would be free to spend their revenues for any purpose that finds favor with the voters. All provincial and municipal accounts would be subject to at least biennial auditing by the *Tribunal de Cuentas* or by CPA firms contracted by it for the purpose.

Provincial governments would consist of an elected unicameral assembly, which would exercise legislative power, and an elected governor charged with executing the laws. Half of the assembly would be elected from single-member districts and the other half by proportional representation to provincial party lists subject to a five percent threshold.⁶² Single-member districts would be drawn following the contours of municipal boundaries. Several municipalities of few inhabitants could be combined into one district, and one populous municipality divided into two or more districts, but in no case would a district be drawn with parts of two or more municipalities. This would reduce the opportunity for incumbents to gerrymander districts. All municipalities would be governed by a council or commission (elected by proportional representation, at large, or from districts, or some combination of the three) and either an elected mayor or an administrator appointed by and responsible to the council.

Within these constraints, each province would be free to draw up a charter to govern its own affairs, subject to approval by referendum of the residents of the

province, on the one hand, and by the senate, on the other. Similarly, each municipality would draw up its own charter subject to approval, on the one hand by its residents and, on the other, by the corresponding provincial assembly. Also, municipalities may, by referendum, extend or contract their boundaries according to rules established by the provincial government. Provincial and municipal charters might include a provision for provincial and local courts, respectively, with jurisdiction over their own legislation or ordinances, or either or both levels may opt to rely on the ordinary national tribunals to interpret and adjudicate their own laws, regulations, or ordinances. In either case, all decisions made by provincial and local tribunals would be appealable to the national judiciary.

The electoral calendar would follow a three-year, staggered cycle of terms. To begin the cycle, elections for all offices would be held simultaneously in the first year.⁶³ The president, all provincial governors and mayors, and one-third of all legislators (senators, representatives, and municipal councilors) chosen by lot would serve a full term. At the end of the first year, one-third of all legislators chosen by lot would face the voters, and those elected would serve a full term. The same process would be followed at the end of the second year with another third of all legislators chosen by lot. At the end of the third year, the president, all governors and mayors, and the remaining one-third of all legislators would be up for reelection.

To amend the constitution, two options would be available. One, initiated “from above,” would be by a two-thirds vote of both houses of congress, followed by a popular referendum, with a three-fifths margin required for enactment. The other, initiated “from below,” would be for two-thirds of the provincial assemblies, each by a two-thirds

vote, to endorse an identically worded proposed amendment, followed by a popular referendum at the next election, with a three-fifths vote required for enactment. A transitory provision would stipulate that, upon completion of two full election cycles for the senate, i.e., in the twelfth year, the voters by a three-fifths vote would decide whether to maintain the schedule of staggered terms or thenceforth to hold elections at all levels concurrently every three years. If this amendment were adopted, senate terms would be staggered so that half its membership would be renewed every three years.

Analysis and justification.

Although it does not fit it perfectly, several of the principal elements of the proposed constitution match those of a consensual type. These are: a legislature not dominated by the executive; a bicameral national congress, with the branches roughly equal in authority, elected according to different rules and for varying lengths of term; proportional representation in the lower house of congress; equal representation of the provinces in the senate; an independent constitutional court to which a relatively rigid constitution is entrusted; an independent central bank; additional autonomous agencies; and vertical decentralization, with elected provincial and local governments enjoying local autonomy.

Several features are sufficiently unusual or controversial as to require justification. Frequent elections are desirable for a number of reasons. For one thing, elections function as the linchpin of a republican regime, the pivot on which government policy moves in response to public opinion. In the ratification debates, one of the objections of the anti-federalists was that the proposed constitution did not provide for annual elections for congress.⁶⁴ A problem with their argument was that it failed to

distinguish between the length of term of an office and the frequency of elections. By staggering the terms of all legislative offices in the manner proposed here, the framework combines the best of both worlds: a sufficiently long term in office for stability and continuity in government, along with annual input from the electorate. The latter feature should keep in check any majority's tendency to exceed their mandate, as Erickson, MacKuen and Stimson found to be the case in the United States.⁶⁵ Policy is more likely to be adjusted or fine-tuned in response to quick feedback from the public. Second, after more than two thirds of a century of dictatorship Cubans need to acquire, in relatively short order, the habits and skills of republicanism. Annual elections would speed up the learning process.⁶⁶ Third, frequent elections hold out hope to the losers of any one contest of victory in the next. They are much more likely to accept defeat graciously, something that contributes to legitimating the regime, if, having lost at one level, they can look forward to a new election at another level shortly thereafter. Thus, a losing presidential candidate can seek election to the senate the following year. Similarly, those who fail to win a seat in the senate or the lower house can contest another seat in either house of congress or look to provincial or local opportunities the very next year. Again, with only one-third of all legislative seats up for election every year, the constitution strikes a balance between stability and change in government personnel and, hence, in policy.⁶⁷

A senate with fewer members than the number provided for in the 1940 Constitution (36 vs. 54), elected for longer (six years vs. four), staggered terms, so that one senator per province (one sixth of the total) comes up for renewal every year needs defending. First, the size, length of term, and schedule of senatorial elections are all

meant to endow this body with sufficient authority, prestige, and independence, and the individual senators with enough stature so as to make the office an attractive alternative to the presidency for ambitious politicians. Ambitious politicians whose hunger for political recognition cannot be easily satiated but for whom the presidency is an improbable attainment, as it must be for all but a handful of aspirants every three or four decades, should find a senatorial career to be a satisfying one.⁶⁸ In turn, their ambition (and jealousy, too) would be harnessed into providing checks on the inordinate pretensions on the part of an overweening executive. As James Madison put it in *Federalist* 51, for a system of checks and balances to be effective in practice, “Ambition must be made to counteract ambition.”⁶⁹ More positively, channeling political ambition into a senate career would harness talent and energy into legislating and overseeing long-term public interests in the areas of foreign policy, the armed forces and national police, taxation and revenue, the currency, the justice system, higher education, in short, in all areas governed or regulated by institutions to which presidential appointments require senate concurrence.

As to senate terms being staggered so that one-sixth or one per province is renewed every year, this would amount, in effect, to electing senators from single-member districts. This would tend to reduce the number of effective parties represented in that chamber, balancing the multi-party system that by design⁷⁰ is likely to emerge in the *cámara*, elected on a proportional representation system. Also, at-large elections would allow for extraordinary persons who have distinguished themselves in other walks of life and have not previously been involved in internal party politics to make an independent run. Such potential competition from independents would help prevent

political parties from taking the voters for granted. In short, the senate as conceived here would be a prestigious body, worthy of the cravings for distinction on the part of spirited individuals, something which would lend necessary ballast to the ship of state and function as an effective counterpoise to the executive even as it remains uniquely in tune with public opinion by annual electoral infusion into the chamber.⁷¹

As for equal representation in the senate by provinces that differ in population size, it need be said, first, that the ratio of the largest to the smallest of the pre-Castro Cuban provinces, Oriente and Pinar del Rio, respectively, is only about 6:1. This is nothing like the disparity in the United States, where California is 76 times larger than Wyoming. More to the point, though, equal representation in the senate takes into account the fact that a country or nation is not simply like one gigantic bag of freely rolling marbles that tilts this way or that in response to shifts in direction of the larger number. Rather, it consists of people who live and work in specific locations, each with its own distinctive geography, environment and social networks, to which they feel various degrees of emotional attachment.⁷² Moreover, voters residing in a sparsely occupied rural, forested or mountainous area lead a kind of life style that is in many ways radically different from those congregated in cities. It is an environment much closer to nature, rooted in the land, in intimate contact with the animals and plants that grow there, either in the wild or in farms, and much more subject to the vagaries of the weather, than the man-made habitat of concrete and steel of the metropolis. It is no more just to subject the farmer, the hunter, the miner and the fishermen to rule by city folk simply because there are more of the latter than it is the other way around. To capture this plurality of environment and lifestyle, a consensual constitution has to

incorporate more than one principle of representation.⁷³ Thus, along with the principle of one person-one vote built into the election of the *cámara* and the presidency,⁷⁴ in this constitution what for a lack of a better term one might call the federalist or corporatist principle is given electoral expression in the senate.

It may be objected that having legislative elections every year will interfere with the process of governing. One might surmise that the president and his party, on the one hand, and opposition parties represented in the congress, on the other, would be at constant loggerheads, seeking maximum electoral advantage from every disagreement or confrontation over policy. Engaged in a permanent electoral campaign, they would be less likely to compromise over issues that divide them. The plausibility of such a hypothesis led me to ask Professor Mark P. Jones to see if he could find a relationship between election year and executive-legislative conflict in his data set. He graciously agreed to my request, and reported the results by e-mail: "There was no statistically significant difference in the level of executive-legislative conflict between election years and non-election years for the analysis population of Latin American democracies during the 1980s and 1990s."⁷⁵ This finding cannot be viewed as anything but tentative. Nevertheless, it is at least reassuring to know that the test came out negative, that empirical evidence on executive-legislative conflict in one statistical test applied to Latin America over two decades does not lend ready support to what is otherwise an entirely plausible hypothesis. In any case, if these results do not put the issue to rest, the fact that only a third of the lower house and one-sixth of the senate would be up for grabs every year may very well ameliorate the phenomenon, if it indeed exists.

A three-year term for all elected offices, including the executive (but excepting the senate) is short by world standards and goes against the grain of Latin American practice. As far as I know, only Australia, New Zealand, and Sweden have tried it. By contrast, two-thirds of Latin American countries have adopted a five or six year presidential term. Yet, the advantages of a three-year presidential term are manifest.⁷⁶ If the incumbent makes wrong decisions, and loses public support, the nation is not saddled with an unpopular and hence weak executive for long. Also, if congress and president reach an impasse, the stalemate will be short-lived, thus reducing the risk of the government becoming mired in chronic “immobilism,” one of the allegedly potential pitfalls of presidential regimes.⁷⁷ Furthermore, requiring the president to be endorsed by the voters within three years of his having been elected would contribute to his keeping in mind where the source of his authority lies. Instilling humility into presidents, who tend to be short on this virtue, would be desirable.

A last advantage of a three-year term is that it reduces the cost of presidential reelection. That this is a sensitive subject in Cuban history is evident from the extremely difficult procedure which the 1940 Constitution stipulates before the clause prohibiting presidential reelection can be changed. Twice in the nation’s history a revolt broke out when the incumbent president attempted reelection or to extend his term of office. The traditional Cuban aversion to *continuismo* cannot but have become stronger after the seemingly interminable Castroite dictatorship, a dubious Latin American record.⁷⁸ Nevertheless, for the reasons offered when discussing the Constitution of 1940, I believe that, on balance, it is more prudent to allow reelection than to proscribe it. By limiting the presidential term to three years, and keeping in mind that the proposed framework

contemplates both a reduction of the president's powers relative to the congress and autonomous agencies *and* a senate worthy of political ambition, presidential reelection should be less threatening to the opposition. Lastly, to allow presidential reelection is not to guarantee it. Nothing is more likely to deflate the pretensions of presidents and would-be presidents than an occasional defeat of one of their number in his bid for reelection.

In summary, the constitutional framework proposed here combines several principles of institutional design and representation, hopefully for best effect. Although encased in a unitary design, the provinces and localities enjoy considerable autonomy to act within their respective spheres. Horizontally, the division of powers across the traditional constitutional offices of executive, a bicameral legislature, and a judiciary is extended to include a constitutional court and several independent agencies, including a central bank, an auditing organ, and public universities. The design incorporates two principles of representation, proportional and federal or corporate, and are held frequently in both single- and multi-member districts at several levels of government, municipal, provincial, and national. Elected by proportional representation in provincial party-lists with a five percent threshold, the lower house of congress would likely include several parties reflecting multiple shades of opinion and interests, including many minority views. Majoritarian interests general to a province would find their voice in the senate, and those across the entire nation in the presidency. The mode of election of the latter would satisfy the object of "counter[ing] the potentially disaggregating effects of legislative and subnational competition."⁷⁹ With half of their membership elected by proportional representation and half from single member

districts, the same combination of territorial and ideological interests would be fashioned in the provincial assemblies, with the governor providing the majoritarian counterweight. A multi-party system is likely to emerge as a result. My guess is that over time two or three large, multi-issue parties will take in most of the votes and an equal number of smaller parties, some with an occupational or strictly regional or local coloring will divide up the rest, thus giving expression to a wide variety and scale of opinions and interests.⁸⁰

The analysis of the proposed framework would not be complete without a systematic comparison of its key provisions with those of the Constitution of 1940. This is shown in the Appendix. There are parallels as well as differences between the two designs. Taking the correspondences first: like the 1940 Constitution, the proposed framework calls for a presidential, bicameral, and unitary regime. It provides for separation of powers and checks and balances between the executive and legislative branches, judicial review, a supreme electoral tribunal beyond executive or legislative control, an independent *Tribunal de Cuentas*, provincial governments, and municipal autonomy. Both are difficult to amend. Thus, in form, the two designs are very similar.

Substantively, however, the proposed framework is more consensual, taking the horizontal separation and vertical division of powers much farther than the 1940 Constitution. The most important departures from the 1940 Constitution are the following. First, the features characteristic of the “presidential-parliamentary” constitutional type are done away with in favor of a pure presidential regime, one where the survival of the cabinet is independent of the legislature (except in cases of impeachment). Second, the president is elected by a qualified plurality vote for a three-

year term, with reelection for up to three more terms permitted. Third, the lower house of congress is elected for a staggered, three-year term while the senate is elected for a six-year term, staggered so that every year one senator per province is elected. Fourth, such functions as judicial review, the administration of elections, and a central bank, all contemplated in the 1940 Constitution, are placed in separate, specialized, autonomous institutions. Fifth, a full-fledged provincial government—with an elected assembly and an elected governor—is provided for, and both provincial and municipal governments are granted greater autonomy. Finally, appointments to the supreme and constitutional courts would not be for life but for fixed, renewable terms.⁸¹

Conclusion.

The constitutional framework proposed in this paper is intended to promote the establishment and development of a presidential democracy in post-Castro Cuba which, although necessarily majoritarian in some aspects, incorporates many elements associated with consensual democracy. In form, the design parallels the Cuban Constitution of 1940 in most respects, an attribute that should enhance its palatability. Substantively, the proposed framework retains the better features found in the 1940 design while remedying its structural flaws, and introduces certain innovations designed to make for a more perfect democracy. It is hoped that this proposal will contribute to discussion and debate pursuant to the crafting of a *magna carta* for a free Cuba.⁸²

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Appendix I
Suggested Framework Compared to the 1940 Cuban Constitution

Item	Cuban Constitution	Suggested Framework
Regime	unitary, presidential, bi-cameral	Same
Congress: mode of election	lower house elected from each of six provinces, one per 35,000 inhabitants, for four-year staggered terms, one-half renewed every two years; candidates must be at least 21 years of age	125 member lower house elected from each of six provinces, for a three-year term, by proportional representation, with minimum threshold set at five percent of the vote; candidates must be at least 25 years of age
	upper house composed of nine senators from each of six provinces, for a total of 54, elected on same day, for a four-year term; candidates must be at least 30 years old; minority parties allowed representation [subsequently interpreted by the electoral code so that six senators went to the majority party and three to minority parties]	upper house composed of six senators from each of six provinces, for a total of 36, for staggered, six-year terms, one senator elected from each province every year; candidates must be at least 30 years old
Congress: power of impeachment	lower house has power to impeach the president by a vote of 2/3 of its membership; trial conducted in the senate, joined by members of the supreme court, and presided by its chief justice [with verdict reached presumably by majority vote]	lower house has power to impeach the president by majority vote; trial conducted in the senate, chief justice of the supreme court presiding; 2/3 vote of senate membership required for conviction
Congress: vote of no confidence	either house, by a vote of an absolute majority of its membership, may register a vote of no-confidence in a cabinet minister or the whole cabinet, which requires immediate resignation by one or all, as the case may be	N.A.

Congress: unique powers of lower house	has priority in discussion and approval of the budget of the nation	all revenue and spending bills must be voted out of this chamber first;
Congress: power of the senate	approves heads of diplomatic missions and treaties with other nations negotiated by the president; approves all appointments to cabinet except for Foreign Affairs, Justice, National Police, and Defense	approves presidential appointments of heads of diplomatic missions, other ambassadors, and treaties with other nations negotiated by the president; approves all appointments to the departments of Foreign Affairs, Defense, Justice, and Interior (police); Supreme Court, the Constitutional Court, the Supreme Electoral Tribunal, the Tribunal of Accounts, the Central Bank, university boards of regents, other autonomous institutions established by law; promotions in rank to general or its equivalent
Congress: overriding veto	by 2/3 vote of both houses	by 3/5 vote of both houses
President: mode of election	elected by the provinces for a four-year term, the candidate receiving a plurality in a province being credited with a number of provincial votes equal to the total of senators and representatives to be elected from that province, the candidate receiving the largest number of provincial votes being elected; immediate reelection not allowed; to run again, a president must sit out two consecutive terms; candidates must be at least 35 years old	elected by the nation at large for a three-year term; if the first-place winner receives more than 45% of the vote, he is declared the winner; if not, a run-off is held between the two top vote-getters in the first round; reelection allowed consecutively or after a break for a maximum number of four terms in office; candidates must be at least 40 years old
President: legislative power	may introduce bills in congress; can veto bills; "pocket" veto is not allowed: if the congress will	can veto bills subject to override by congress; line-item veto not allowed, the president must veto

	<p>adjourn less than ten days after submitting a bill to the president, and he intends to veto it, he must communicate to the congress his intentions within 48 hours, so that the congress may stay in session and vote to override; if the president does not inform the congress, the bill becomes law without his signature</p>	<p>entire bill or not at all; neither is “pocket” veto permissible: any bill sent to the president less than ten days before the congress adjourns, which he neither signs nor vetoes, becomes law if, within three months of the new session of congress, it passes both houses by simple majority vote.</p>
<p>President: decree powers</p>	<p>to issue decrees and orders advisable for the purpose of executing the laws and for whatever is pertinent to the government and administration of the State, without in any case contravening what is established by law</p>	<p>to issue decrees and orders only for the purpose of executing laws duly enacted by congress, to implement judicial rulings, and what concerns the internal administration of the executive branch, narrowly construed, without in any case contravening what is established by law</p>
<p>President: budget power</p>	<p>sixty days before it is due to take effect, he presents the house with a budget; the congress may not increase funding of any of existing services beyond what is planned by the executive; nor may it abolish any “permanent” tax without enacting another in its place or reducing expenditures proportionately</p>	<p>the president is required to submit a proposed budget nine months before the start of the new fiscal year, but it is up to the congress to decide what, if any, of the president’s plan to adopt in one or more revenue and expenditure bills; there are no restrictions on congressional authority to increase or decrease taxes or expenditures</p>
<p>Cabinet</p>	<p>president “freely” appoints and removes members of the cabinet, including a prime minister who represents the government to congress; the cabinet is responsible to congress, and members of the cabinet, individually and collectively, are subject to a vote of no confidence by either house of congress, which requires their resignation; members of</p>	<p>president appoints, with approval of the lower house, members of the cabinet, and is free to remove them; no member of congress may serve in the cabinet without resigning his seat first; no prime minister</p>

	congress may serve in the cabinet, and vote in their respective chambers	
Supreme Court: mode of appointment	members of the court appointed by the president from a list of three names proposed by an electoral college appointed for the purpose by the supreme court, the president, and the law faculty of the University of Havana; chief justice and chiefs of sections shall be appointed by the president on proposal of the full bench of the supreme court with approval of the senate	appointed by the president with the approval of the senate
Supreme Court: qualifying age and length of term	must be 40 years old, appointed for life	must be 40 years old, appointed by president with senate approval; nine members appointed for staggered terms of nine years, with reappointment possible for another term (plus a chief justice, who is appointed for life); mandatory retirement at 70
Constitutional Court	supreme court doubles as constitutional court in one of its sections	a separate institution, appointed in the same manner and length of term as the supreme court
Supreme Electoral Tribunal	composed of three justices of the supreme court and two from the Havana court of appeals, named for a period of four years by the full bench of their respective courts	a separate institution, governed by a nine-member board appointed by the constitutional court for the same length of term and rules for staggering appointments as those applicable to itself
Tribunal of Accounts	composed of seven members, four attorneys and three accountants (or business professors); the supreme court appoints two of the lawyer members, the president and senate one lawyer and one	composed of nine members, six certified public accountants or university professors of business and three attorneys, appointed by the president with approval of the senate, for staggered terms of nine years, with

	<p>accountant each, and the university council one accountant or professor of business; appointed for a term of eight years; lawyers must be 40 years old and accountants 35</p>	<p>reappointment possible for another term, for a maximum length of service of 18 years; must be 40 years old</p>
Central Bank	<p>a National Bank of Cuba will be established; at the time of its creation, the State may require that existing banks contribute to its capital; those who comply with this requirement will be represented in its board of directors</p>	<p>a central bank is charged with safeguarding the value of the currency so that it is not eroded by inflation; it will be governed by a nine-member board appointed by the president with the consent of the senate, for staggered, nine-year terms, with one third of the membership renewable every three years, with reappointment possible for another term, for a maximum length of tenure of 18 years; must be 40 years old</p>
Provincial government	<p>an elected governor and a provincial council composed of all the mayors of the province; fiscal powers are subject to conditions, such as, in certain cases, approval by the <i>Tribunal de Cuentas</i> or popular referendum</p>	<p>an elected governor and an elected assembly, each elected for a three-year term. 1/3 of the assembly elected every year; each province will draw up its own governing charter, subject to approval by the senate; complete fiscal autonomy, except for periodic audits by the <i>Tribunal de Cuentas</i>, laws designed to insure financial transparency and protect creditors in case of default, and prohibition of taxes levied on imports, exports, or taxes and regulations that discriminate between products produced or sold within and those without the province</p>
Local government	<p>the municipality is an autonomous entity; it can draw up its own charter, as long as it fits one of three possible models (commission, council-manager</p>	<p>the municipality is an autonomous entity; it can draw up its own charter subject to referendum and approval by the provincial assembly; complete</p>

	<p>or mayor-council) subject to approval by referendum; fiscal powers are subject to restrictions similar to those imposed on the provinces; municipal elections will be held on a day different from that of general elections</p>	<p>fiscal autonomy, except for the same restrictions applicable to the provinces; one third of council seats elected every year concurrently with the same fraction of the provincial assembly, the lower house of congress, and 1/6 of the senate</p>
<p>Constitutional amendment</p>	<p>two ways to enact most reforms to the constitution: (a) by petition from at least 100,000 voters, whereupon the congress will meet in joint session and within thirty days convoke the election of a constituent assembly or a referendum; (b) by congressional initiative, by petition from at least one-fourth of the joint membership of congress, whereupon it takes a 2/3 vote of congress, meeting jointly, during three sessions in a row; certain reforms, such as one negating national sovereignty, or removing prohibition against reelection or extending the term of office are even more difficult to pass</p>	<p>two ways to enact constitutional amendments: (a) “from above”: a two-thirds vote of both houses of congress, followed by a popular referendum, with a three-fifths required for enactment; (b) “from below”: two-thirds of the provincial assemblies endorse a proposed amendment by a two-thirds vote of their respective memberships, followed by a popular referendum, with three-fifth vote required for enactment</p>

Appendix II.
Apportioning *Cámara* Members to Pre-Castro Provinces

Province	Population	Members	Election (7)
Pinar del Río (1)	594,560	9	3
La Habana (2)	3,079,133	33	11
Matanzas (3)	670,427	9	3
Las Villas (4)	1,672,906	18	6
Camagüey (5)	1,270,409	15	5
Oriente (6)	3,912,657	41	13 or 14
Total	11,200,092	125	

Notes:

(1) Approximately the same as the present-day province.

(2) Includes the present-day city of Havana along with current Mayabeque, Isla de la Juventud [i.e., Isla de Pinos], and the following municipalities of Artemisa Province: Alquizar, Artemisa, Bauta, Caimito, Guanajay, Güira de Melena, Mariel, and San Antonio de los Baños.

(3) Approximately the same as the present-day province.

(4) Includes present-day Provinces of Cienfuegos, Villa Clara and Sancti Spíritus.

(5) Includes present-day provinces of Camagüey and Ciego de Ávila, and two municipalities of South-Western Las Tunas: Amancio and Colombia.

(6) Includes the remainder of present-day Las Tunas as well as Granma, Holguín, Santiago de Cuba and Guantánamo.

(7) Number of representatives elected annually.

ENDNOTES

¹ This a substantially revised and expanded version of a paper that was presented at the 10th annual meeting of the Association for the Study of the Cuban Economy (ASCE), Coral Gables, FL, August 3-5, 2000. The original appeared in the conference's proceedings, *Cuba in Transition*, Volume 10, pp. 399-416. In this version, presented at the Southern Political Science Association, New Orleans, January 10, 2014, I have made important changes to the original proposal, the most significant having to do with the electoral cycle.

A number of scholars read the original or this version of the essay, and gave me the benefit of their comments and encouragement, or their criticism: Charles W. Anderson, John M. Carey, Juan del Aguila, Mark P. Jones, Arend Lijphart, Juan L. López, David Myers, David Ramsey, Mario Rivera, James A. Robinson, Adrian Sinkler, and Mauricio Solaún. Although nearly all of them disagreed strongly with at least one element in this framework, they deserve my thanks, even as they are exempt from responsibility for any errors of fact, omission of important considerations, or insufficient political sagacity on my part. Thanks, also, to graduate assistant Erica Evans for proofreading the text, building the bibliography from the notes, and reconfiguring the pre-Castro Cuban political map for the purpose of apportioning members of the *cámara* to the six historical provinces in proportion to what their respective populations would be today.

² Distinguished University Professor of Political Science at The University of West Florida.

³ Freedom House has been classifying regimes according to these criteria since the 1970s. In 2013, Cuba is the only country in the entire Western Hemisphere that it classified as "Not Free." <http://www.freedomhouse.org/report-types/freedom-world>.

⁴ Aristotle, *The Politics* (Cambridge: Cambridge University Press, 1988), pp. 94-95. Edmund Burke was another champion of a mixed constitution, one, however, that grows organically, so as "to unite into a consistent whole the various anomalies and contending principles that are found in the minds and affairs of men." See his *Reflections on the Revolution in France*, New York, Viking Penguin, 1969, p. 281.

⁵ *Federalist* 48, http://avalon.law.yale.edu/18th_century/fed48.asp.

⁶ Giovanni Sartori, *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*, New York University Press, 1994, p. 202.

⁷ The contrary assumption, that "constitutions do not matter, that free societies result from societal pluralism far more than from constitutional contrivance" is dismissed as "the behavioral absurdity" by Sartori, *Comparative Constitutional Engineering*, p. 200.

⁸ See, in particular, Arend Lijphart, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries* (Yale University Press, 1999); Matthew Soberg Shugart and John M. Carey, *Presidents and Assemblies. Constitutional Design and Electoral Dynamic* (Cambridge University Press, 1992). Recent research has included more fine-grained analysis of these issues. See Renske Doorenspleet, “Which Type of Democracy Performs Best?” *Acta Politica*, 48, 3 (2013), 237-267.

⁹ On the significance of founding moments, see Seymour Martin Lipset, *Continental Divide. The Values and Institutions of the United States and Canada* (New York: Routledge, 1990).

¹⁰Alexander Hamilton, “Number 1.”
http://avalon.law.yale.edu/18th_century/fed01.asp

¹¹Alexis de Tocqueville, *Democracy in America* (New York: Everyman’s Library, 1972), p. 321.

¹² Robert D. Putnam, *Making Democracy Work. Civic Traditions in Modern Italy* (Princeton University Press, 1993), pp. 58-60.

¹³ A supposition as old as Plato’s *Republic*, running through the works of Aristotle, Locke, Rousseau, Burke, de Tocqueville, and Mill, down to the “neo-institutionalists” of today.

¹⁴ For a positive assessment of this form, see Quentin L. Quade, “Democracies-To-Be: Getting it Right the First Time,” *Freedom at Issue*, 113 (1990), pp. 4-7.

¹⁵ Lijphart, *Patterns of Democracy*, Chapters 2-3 and 14-17.

¹⁶ Ibid, p. 302. Lijphart’s analysis and recommendations, particularly electing the legislature by proportional representation and organizing coalition cabinets, has not gone unchallenged. See the “debate” between him and his critics published in *Journal of Democracy*, 2 (3), 1991: Guy Lardeyret, “The Problem with PR,” pp. 30-35; Quentin L. Quade, “PR and Democratic Statecraft,” pp. 36-41; Arend Lijphart, “Double-Checking the Evidence,” pp. 42-48. See also Sartori, *Comparative Constitutional Engineering*, pp. 70-74, 129. For a recent review of the main points of contention, and conditions under which Lijphart’s findings are most reliable, see NJils-Christian Bormann, “Patterns of Democracy and Its Critics,” *Living Reviews in Democracy*, 2 (2010).
<http://democracy.livingreviews.org/index.php/lrd/article/viewarticle/lrd-2010-3/26>

¹⁷ Shugart and Carey point out that there has not been a single instance of a country exchanging a presidential system for a parliamentary one, although changes in the reverse direction have occurred. See *Presidents and Assemblies*, p. 3.

¹⁸ Lijphart, *Patterns of Democracy*, p. 306.

¹⁹ Ibid, p. 307.

²⁰ Juan Linz, "The Perils of Presidentialism," *Journal of Democracy*, 1, 1 (1990) pp. 51-70; Alfred Stepan, "Constitutional Frameworks and Democratic Consolidation," *World Politics*, 46, 1 (1992), pp. 1-22.

²¹ See, also, Scott Mainwaring and Matthew Soberg Shugart (Eds.), *Presidentialism and Democracy in Latin America* (Cambridge University Press, 1997), especially Chapters 1 and 11 and, by the same authors, "Juan Linz, Presidentialism, and Democracy," *Comparative Politics*, 29, 4 (1997), pp. 449-472.

²² Shugart and Carey, *Presidents and Assemblies*, pp. 154-161.

²³ Ibid, p. 130.

²⁴ Mark P. Jones, *Electoral Laws and the Survival of Presidential Democracies*, (Notre Dame: University of Notre Dame Press, 1995), p. 52.

²⁵ Sartori, *Comparative Constitutional Engineering*, p. 198.

²⁶ René Gómez Manzano, "Constitución y Cambio Democrático en Cuba," *Cuba in Transition*, 7 (1997), pp. 395-414; Néstor Carbonell Cortina, "La Constitución de 1940: Simbolismo y Vigencia," *Cuba in Transition*, 7 (1997), pp. 415-421.

²⁷ Marifelli Pérez Stable, *The Cuban Revolution. Origins, Course, and Legacy*, Second Edition (New York: Oxford University Press, 1999), p. 9.

²⁸ José D. Acosta, "El Marco Jurídico-Institucional de un Gobierno Provisional de Unidad Nacional en Cuba," *Cuba in Transition*, 2 (1993), pp. 61-84.

²⁹ I relied on Spanish and English versions of the text of the 1940 Constitution. For the former, see Mariano Sánchez Roca, *Leyes Civiles de Cuba y su Jurisprudencia*, Vol. I, La Habana, Editorial Lex, 1951, 1-100 and, for the latter, Amos J. Peaslee, *Constitutions of Nations*, Volume I, Concord, NH: The Rumford Press, 1950, 526-594. For the motivations of the drafters, and how well the system actually worked in practice, see William S. Stokes, "The Cuban Parliamentary System in Action, 1940-1947," *The Journal of Politics*, 11, 2 (1949), pp. 335-364; Hugh Thomas, *Cuba or The Pursuit of Freedom*, Updated Edition (New York: De Capo Press, 1998), pp. 691-789; Charles D. Ameringer, *The Cuban Democratic Experience. The Auténtico Years, 1944-1952* (Gainesville: University Press of Florida, 2000). An on-line version of the 1940 Constitution, in Spanish, is available at <http://pdba.georgetown.edu/constitutions/cuba/cuba1940.html#mozTocId826212>

³⁰ This is not to deny that extra-constitutional factors played at least as important a role in the demise of Cuban democracy. The appeasement of political gangsters by

both Grau and Prío was a particularly nefarious practice. See Ameringer, *The Cuban Democratic Experience*.

³¹ Stokes, "The Cuban Parliamentary System," p. 362.

³² Something pointedly denied by Carbonell, who concludes that "los fallos de nuestro sistema semiparlamentario . . . no fueron realmente orgánicos, sino funcionales-producto de viejas corruptelas y de hábitos presidencialistas arraigados. Esos fallos son superables, a mi juicio, con una buena dosis de la democracia, experiencia, y probidad." Carbonell, "La Constitución de 1940," p. 421.

³³ Although the trend appears to be in the direction of relaxing the prohibition against reelection, as of 2009 over half of Latin American countries still enforce it: four limit the president to a single term and another seven allow it but only after one or two interim terms. Only Venezuela places no limits on reelection, a feature that was no doubt designed by Hugo Chávez to allow him to rule for life. Source: John M. Carey, "Rules on Presidential Reelection, as of February 2009" (Power Point slide, n.d.).

³⁴ Venezuela offers two examples of former presidents who, bent upon making a come-back, prevented their parties' renewal: APRA's Andrés Pérez and COPEI's Rafael Caldera. These two men bear at least some responsibility for the decline of their respective parties, an erosion which paved the way for the populist demagogue Hugo Chávez to sweep the political slate clean.

³⁵ Ameringer, *The Cuban Democratic Experience*, pp. 77-78.

³⁶ Ibid, pp. 153, 162.

³⁷ http://avalon.law.yale.edu/18th_century/fed72.asp

³⁸ Thomas, *Cuba*, p. 720.

³⁹ For earlier papers published by ASCE that address many of the issues dealt with here, see, in addition to those already cited, the following: Néstor E. Cruz, "Legal Issues Raised by the Transition: Cuba from Marxism to Democracy, 199?-200?," *Cuba in Transition*, 2 (1993), pp. 51-60; Jorge Salazar-Carrillo, "The Case for an Independent Central Bank," *Cuba in Transition*, 4 (1994), pp. 77-79; Matías F. Travieso-Díaz and Steven R. Escobar, "Overview of Required Changes in Cuba's Laws and Legal Institutions During its Transition to a Free-Market Democracy," *Cuba in Transition*, 4 (1994), pp. 262-291; Luis L. Ubierna and Juan J. Ondarza, "Proyecto Constitucional: República Federal de Cuba," *Cuba in Transition*, 4 (1994), pp. 330-349; Néstor E. Cruz, "Legal Policy for a Free Cuba: Lessons from the Civil Law," *Cuba in Transition*, 5 (1995), pp. 191-194; Alberto Luzárraga, "El Tribunal Constitucional y su Organización: Una Propuesta de Reforma," *Cuba in Transition*, 7 (1997), pp. 422-426; Lorenzo L. Pérez, "Comentarios Sobre el Artículo XVII Sobre Hacienda Pública de la Constitución de 1940 de Cuba," *Cuba in Transition*, 7 (1997), pp. 427-429.

⁴⁰ These two assumptions are contrary to those posited by Ubierna and Ondarza, who propose a constitution for a federal, parliamentary government evidently modeled after that of the German Federal Republic. See their “Proyecto Constitucional: República Federal de Cuba.”

⁴¹ An assumption not shared by Gómez Manzano. His list of all the “most obvious objections” to a restoration of the 1940 Constitution just as it was when buried by Batista begins with the following: “Contiene la enumeración de las antiguas seis provincias, lo cual--como es lógico--no se ajusta a la realidad cubana de hoy” (“Constitución y Cambio Democrático en Cuba,” 409). But this begs the question on whose authority Fidel Castro dismembered and mangled the country, breaking up the six provinces into more than twice their number. In my judgment, just as in Russia one of the first things that was done after the demise of the Soviet Union was for old cities like St. Petersburg to recover their venerable names, so in Cuba one of the first orders of business after the Castro regime has finally expired is to restore the sexpartite division of the Island. Of course, the new constitution, like that of 1940, should include a provision for provincial subdivision, but something that is to be done not arbitrarily, as the Castro regime did, but with the consent of their elected representatives and that of congress.

⁴² Lijphart, *Patterns of Democracy*, p. 150.

⁴³ Of course, the legal definition of citizen would have to be specified. With so many Cubans and their descendants living abroad, and so many of them being citizens of other countries, something like Israel’s “Law of Return” may have to be applied to the Cuban case.

⁴⁴ Cuba’s present population is around 11 million. By comparison, among the American states with population between 8 and 13 million (in ascending order, Virginia, North Carolina, New Jersey, Georgia, Michigan, Ohio, Pennsylvania and Illinois) the size of the lower house ranges from 80 in New Jersey to 203 in Pennsylvania. The mean size is 126 members. Another basis of comparison are three Latin American countries of population of similar size to Cuba and whose lower house is elected in a single-tier proportional representation system as the one proposed here: Bolivia (11 million inhabitants), Dominican Republic (10 million), and Honduras (9 million). Their legislatures range in size from 113 to 130, with a mean of 120 members. Note that the means of these three lower houses is about the same as that of the lower houses of American states of comparable population. Accordingly, I choose 125 as the number for the Cuban *cámara*.

⁴⁵ See Appendix II for the approximate apportioning of representatives to the provinces according to population, with slight adjustments to that no province has fewer than nine representatives and in all but one case, Oriente, the number is divisible by three. Thanks again to Erica Evans for reconfiguring Cuba’s political map according to the historical sexpartite division

⁴⁶ Three years is the length of term for the unicameral legislature in El Salvador and the lower house in the Mexican congress. See Mark P. Jones, “A Guide to the Electoral Systems of the Americas,” *Electoral Studies*, 14, 1 (1995), p. 14.

⁴⁷ There are several formulas for allocation seats to parties in relation to their vote shares. See Nils-Christian Bormann and Matt Golder, “Democratic Electoral Systems around the world, 1946-2011,” *Electoral Studies*, 32 (2013), pp. 362-363.

⁴⁸ “Multi-member districts are used to select members of the lower house in all presidential systems, with the exception of the United States” Jones, “A Guide to the Electoral Systems of the Americas,” p. 9.

⁴⁹ The six pre-Castro provinces would make for rather large electoral districts. Compared to a single-member, first-past-the-post or plurality electoral system, combining proportional representation with districts of large magnitude incurs well-known trade-offs. On the one hand, it allows many parties to win seats, and this results in the “inclusion of the broadest possible array of partisan views in the legislature.” On the other hand, such an outcome makes it more difficult to organize a stable government that is accountable to the electorate, and awards disproportionate policy influence to small parties. As it turns out, in a study of more than 600 elections held in 81 democracies of a million or more inhabitants between 1945 and 2006, Carey and Hix find that most of the benefits of proportional representation can be had in a system where the median district magnitude lies “between four and eight seats,” a number that has only a moderate impact on “party system fragmentation and coalition complexity.” See John M. Carey and Simon Hix, “The Electoral Sweet Spot: Low-Magnitude Proportional Electoral Systems,” *American Journal of Political Science*, 55, 2 (2011), pp. 384, 395. By staggering legislative elections so that one-third of the lower-house of congress is up for reelection every year, as is proposed here, the effective magnitude of the median district would be six, exactly in the middle of Carey and Hix’s “ideal” range (see Appendix II). Moreover, with one senate seat being contested every year and the governor having to face reelection every three years (see below), these provincial contests would exert centripetal pressures on the party system (and might pull party positions closer to the center of the voter distribution) further limiting the multiplication of parties.

⁵⁰ Using the same American states for comparison as for the lower house (see above), the average number of senators is 46. In Ohio (33), Michigan (38), New Jersey (40) and Virginia (40), the size of the senate is very close to what is herein proposed for Cuba. The outliers are Georgia (56) and Illinois (59).

⁵¹ Should the present subdivision be retained, the number of senators elected from each province would be reduced to three and their terms staggered so that one would come up for reelection every other year.

⁵² Thus, the most important matters of state, those having to do with the administration of justice, the military, police, and foreign affairs, would be the purview

of the senators, who by virtue of their six-year term are expected to take a longer view. At the same time, responsibility over things of greater moment would contribute to the Senate's enhanced status, something that, for reasons argued in the text, is desirable.

⁵³ In recent times, outstanding leaders like Margaret Thatcher and Tony Blair of the United Kingdom served as Prime Minister for 11 and 10 years, respectively; Helmut Kohl served 16 years as Chancellor of Germany; and Pierre Trudeau served 15 years as Prime Minister of Canada (11 years and, after a term out of office, another four). Other great leaders of the 20th century also enjoyed long tenure in office: Franklin D. Roosevelt, 12 years and a few months as President of the United States; Konrad Adenauer, 14 years as Chancellor of West Germany; Charles de Gaulle, 10 years as President of France; Winston Churchill 15 consecutive years and, after one term out of office, another three and a half years (which, admittedly, he should never have attempted) as Prime Minister of the United Kingdom. These were outstanding leaders who, by their very nature, arise only occasionally. Even in their case, twelve years seems to be about the limit of what the electorate will stand. In fact, it is very possible that if they had had to face the voters every three years, as would be in the Cuban case, their tenure in office would have been shorter-lived. In any case, it is safer to allow such occasional over-achievers to offer themselves to the voters four times than to deny them, and the voters, the opportunity to make the choice.

⁵⁴ The 40% plurality rule is the one used in Costa Rica, the one Latin American country with the longest uninterrupted series of competitive elections. Since 1953, on average the winner has received 48% of the vote. Only twice since 1953.. in 2002 and 2014, has no candidate crossed the 40% threshold, and both times the one who came out ahead in the first round went on to win the run-off handily.

In email communication, Prof. Carey suggested an alternative qualified majority rule for electing the president: Any candidate who wins an absolute majority of the vote (50% + 1), or whose shortfall from 50% is less than half that of the second-place candidate, is declared the winner; if there is no first-round winner, a run-off election is held between the top two vote-getters.

⁵⁵ John M. Carey and Matthew Soberg Shugart, *Executive Decree Authority* (Cambridge University Press, 1998), p. 9. They note that "The boundaries of executive discretion, if any, are established by the constitution." Ibid, p. 14.

⁵⁶ Shugart and Carey, *Presidents and Assemblies*, p. 139.

⁵⁷ The judiciary is a key element in the rule of law, an indispensable means, in conjunction with elections, for holding accountable those who exercise the powers of government, especially the executive and its coercive instruments. It should come as no surprise that, on a scale ranging from 0 to 1, where 1 is highest, throughout the life of the Castro regime judicial independence is rated 0. By contrast, between 1960 and 2010 it rose in Costa Rica more or less steadily from 0.7 to 0.9, and since the restoration of democracy in Chile and Uruguay it has surged from around 0.2 to 0.8. See Gauri,

Staton, and Cullel (2013, p. 6). The aim here is to raise the level in Cuba to a comparable value.

⁵⁸ I leave open the qualifications, mode of appointment, and length of term of the trial and appeals courts. Like other civil law systems, e.g., present-day France and Portugal, the 1940 Cuban Constitution provided for a sort of judicial civil service, admission to which was by competitive examinations. I am agnostic as to whether this system should be replicated in the new constitution.

⁵⁹ These specifications are a composite drawn from several actual models. According to McWhinney, “By a sort of common consensus among constitutionalists, in various, widely differing legal systems, the norm seems to have emerged that a final tribunal should be composed of eight or nine members.” Also, appointing judges to the highest magistracy of the nation not for life but for a fixed term, “with or without right of renewal of the term, seems more in tune with contemporary constitutionalism and constitutional trends in it.” Edward McWhinney, *Supreme Courts and Judicial Law-Making: Constitutional Tribunals and Constitutional Review* (Dordrecht: Martinus Nijhoff Publishers, 1986), pp. 36, 63. In the Cuban Constitution of 1940 (as in the United States), the president nominates and the senate confirms lifetime appointments to the highest court. The French constitutional court consists of nine judges, appointed for nine years, staggered so that one-third is replaced every three years. In the International Court of Justice, the same applies, except that reappointment is possible. In Japan, the mandatory retirement age is 70. There, as in France, judges are normally appointed in their sixties.

⁶⁰ Alexis de Tocqueville showed how in early 19th century New England local governments would be brought into compliance with state laws not through a hierarchy of administration but by judicial action. See *Democracy in America*, pp. 70-79.

⁶¹ The fiscal power of provinces and municipalities would be subject to several political checks, including those exercised at the voting booth and, perhaps most importantly, by businesses and residents who would “vote with their feet,” changing place of residence in response to high taxes, bloated budgets, and otherwise irresponsible fiscal management .

⁶² The higher the electoral threshold, the lower the likelihood of extremist parties winning representation. See Alan de Bromhead, Barry Eichengreen and Kevin H. O'Rourke, “Political Extremism in the 1920s and 1930s: Do German Lessons Generalize?” *The Journal of Economic History*, 73, 2 (2013), pp. 371-406.

⁶³ I am assuming that the end of the Castro regime would be followed by a provisional or interim government that would call for the election of a constitutional assembly under rules specified by it. The elections herein discussed are for the government, not the convention.

⁶⁴ See “The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents,” December 12, 1787.

<http://www.constitution.org/afp/pennmio0.htm>.

See, also, Cato’s fifth letter to the Citizens of the State of New York, November 22, 1787, http://www.constitution.org/afp/cato_05.htm

⁶⁵ Robert S. Erikson, Michael B. Mackuen and James A. Stimson, *The Macro Polity* (Cambridge University Press, 2002), pp. 360-368.

⁶⁶ Be it noted that in the decade of the 1990s “Taiwan held a major election every year . . . except in 1999.” James A. Robinson, “What do you think about Taiwan’s democracy?” (<http://www.cosmosclub.org/web/journals/1999/robinson.html>). Taiwan, be it noted, had one of the smoothest transitions to democracy on record.

⁶⁷ It turns out that his idea is not original with me. Recently, reading a short biography of John Dickinson (William Murchison, *The Cost of Liberty. The Life of John Dickinson*. Wilmington, Delaware: ISI Books, 2013, p. 193), I found that at the Constitutional Convention he proposed staggered triennial terms for the House of Representatives, with one third of the membership coming up for election every year. As James Madison recorded in his *Notes* : “Mr Dickinson. The idea of annual elections was borrowed from the antient Usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He preferred triennial, and in order to prevent the inconveniency of an entire change of the whole number at the same moment, suggested a rotation, by an annual election of one third.” *The Journal of the Debates in the Convention Which Framed the Constitution of the United States. May-September 1787*. As Recorded by James Madison. Edited by Gaillard Hunt. G. P. Putnam’s Sons. New York and London: The Knickerbocker Press, 1908. Volume I, p. 207. Available on line at Gutenberg.org.

⁶⁸ For a study of the successful pursuit of power within the political opportunity structure in the United States, see Joseph A. Schlesinger, *Ambition and Politics. Political Careers in the United States* (Chicago: Rand McNally & Company, 1966) and, by the same author, *Political Parties and the Winning of Office* (Ann Arbor: The University of Michigan Press, 1994). Schlesinger finds that in the United States, the road to the White House runs through a state governorship or the U.S. Senate, and that many politicians make a career of serving in the latter.

⁶⁹ http://avalon.law.yale.edu/18th_century/fed51.asp.

⁷⁰ There appears to be a positive association between the number of parties represented in parliament and human welfare. See Nisha Mukherjee, “Party Systems and Human Well-Being,” *Party Politics*, 19 (2013), 601-623. Other research shows that the number of parties is positively associated with the size of government, something that in light of the fiscal crises that most democracies are undergoing at present, would seem to be a less desirable outcome. See Bumba Mukherjee, “Political Parties and the Size of Government in Multiparty Legislatures: Examining Cross-Country and Panel

Data Evidence,” *Comparative Political Studies*, 36 (2003), 699-728. A solution may lie in limiting the size of government, but having it spend its resources on the right things, i.e., those that enhance human welfare.

⁷¹ On the “necessity of a well-constructed senate,” see *Federalist* 62 and 63. http://avalon.law.yale.edu/18th_century/fed62.asp. Also, one of the criticisms that Burke leveled against the French revolutionaries was that they had made no provision for a senate. See *Reflections on the Revolution in France*, p. 316.

⁷² To explain, in part, why during Cuba’s final war of independence the members serving in units of the “liberation army” (*ejército libertador*) operating in a province or locality hailed largely if not overwhelmingly from those places, Pérez Guzmán puts it this way: “The drawing power of the small country [*patria chica*] derives from a profound sentiment rooted in the natural environment, the stages of life that leave the strongest emotional and psychological footprint, like infancy, adolescence and youth, family heritage, and friends.” Francisco Pérez Guzmán, *Radiografía del Ejército Libertador, 1895-1898* (La Habana: Editorial de Ciencias Sociales, 2005), p. 164. Here as elsewhere, unless otherwise noted all translation from the Spanish are mine.

⁷³ The Aristotelian view is that the state is a plurality, in contrast with theories that view it as an organic whole, e.g., National Socialism.

⁷⁴ Actually, as well as including equal provincial representation in the senate, the 1940 Constitution applied the federal principle to the election of the president, as well. He was elected not in a straight national vote, but by a sort of shadow “electoral college.” That is, the Constitution provided that the computing of the vote for president would be done by province. The plurality winner in the province would obtain as many electoral votes as the number of representatives and senators of the province. As in the United States, the candidate with the largest number of electoral votes was elected president. See Appendix I.

⁷⁵ Mark P. Jones, personal communication, October 3, 2000.

⁷⁶ The average presidential term in Latin America five years (Jones, “A Guide to the Electoral Systems of the Americas,” p. 10). Mainwaring and Shugart suggest the possibility of a three-year term for the president. See their *Presidentialism and Democracy in Latin America*, p. 38.

⁷⁷ Some research casts doubt on the idea that presidents with minority representation in congress are unable to forge a governing coalition. See José Antonio Cheibub, Adam Przeworski and Sebastian M. Saiegh, “Government Coalitions and Legislative Success under Presidentialism and Parliamentarism,” *British Journal of Political Science*, 34, 4 (2004), pp. 565-587.

⁷⁸ Fidel Castro exercised absolute power from 1959 to 2006, when his brother Raúl took over. Thus this “revolutionary” duo joins the dynastic club of the Trujillos and the Somozas of yesteryear without, however, suffering the opprobrium of the latter two. On the double-standard applied to Latin American dictatorships by the Latin American Studies Association, see my two items in the bibliography.

⁷⁹ See Matthew Soberg Shugart, “Elections: The American Process of Selecting a President: A Comparative Perspective,” *Presidential Studies Quarterly*, 34, 3 (2004), p. 634.

⁸⁰ Sartori’s view is “electoral systems should have *one logic* which conforms to their purpose” (emphasis in the original), either to promote “representative justice” or “governing capability.” He thinks that “all the mixed systems—thereby including the incomplete ones—are objectionable in that they confuse voters and, secondly, require parties to become Janus-faced.” He argues that “To require an ordinary voter to engage simultaneously in sincere (proportional) and in strategic (majoritarian) choices is a sure way of blurring them. By the same token, parties, too, are prompted to engage in schizophrenic behavior.” Giovanni Sartori, “The Party-Effects of Electoral Systems,” *Israel Affairs*, 6, 2 (1999), pp. 22-23. I do not regard Sartori’s arguments as dispositive. For one thing, every system makes substantial cognitive demands on the voters. Even what may appear as a simple choice between two or three parties requires weighing the entire package of policies offered by each. As for parties being Janus-faced, they would regard themselves as fortunate indeed if they had to present only two faces to the electorate. Given the many and varied contradictory demands and pressures that parties and their candidates face in a democracy, to succeed they need to shape themselves into a multi-headed hydra. This is because, more fundamentally, a state is a plurality, analogous to a kaleidoscope; it requires multiple angles of reflection to capture the many moving beads of opinion and interests as they combine, separate, and recombine in changing ways in response to cultural change and environmental shocks. An electoral system needs to be designed accordingly. See, again, Burke, *Reflections on the Revolution in France*, p. 281.

⁸¹ This should provide a check on the contemporary trend, witnessed not only in the United States but in many places around the world, of judges arrogating to themselves legislative and even administrative powers that in a republican regime are or should be the prerogative of elected officials. See C. Neal Tate and Torbjörn Vallinder (Eds.), *The Global Expansion of Judicial Power* (New York: New York University Press, 1995).

⁸² It may be argued, especially by those who, carrying water for the Castro regime, do so in bad faith, that this proposal imitates the American model too closely, and hence is not “authentically Cuban.” In the first place, the framework herein presented deviates from the U.S. pattern in several important respects, to wit: the constitution is unitary, not federal; the electoral cycle is not only unlike the American, but truly unique; the judiciary includes a constitutional court, which the U.S. lacks, and

contrary to the American case, none of the justices except one serves for life. Secondly, to assume that any cultural or institutional import from the United States undermines Cuban authenticity (“Cubanidad,” Cubanía” or however else one designates the national character of the Cubans) ignores important historical developments. Already in the 19th century, the U.S.A. was beginning to displace Spain as a trading partner, and it was Spain's efforts to resist that that served as one of the sparks for the independence movement. The first independence movement actually made a bid for annexation to the U.S.A. Also, starting with Father Félix Varela, many a leader of an ideological or political movement for independence or, later, democracy, found shelter or inspiration in the United States. (Mexico, France, and Spain itself also served as alternative destinations and sources of influence.) Cuban communities in Key West, New Orleans, Tampa, and New York City supplied much of the wherewithal to finance the independence wars, including military supplies and propaganda, as well as Fidel Castro’s own 26th of July movement. Moreover, the direction of cultural influence has never been in one direction. Thus, as Pérez Firmat puts it, “There is something . . . that draws Cuba and the United States together, as if the two countries and cultures complemented, perhaps completed, each other.” (Gustavo Pérez Firmat, *The Havana Habit*, Yale University Press, 2010, p. 22.) This means that to be Cuban means, in part, to be American, and vice-versa, although given the difference in size between the two countries and that many more, diverse, and larger cultural streams have emptied into the American cultural ocean, the relative contribution that each makes to the other varies accordingly. With well over a million Cubans and Cuban-Americans in the United States, one can expect that after the Castro dynasty has ended up in the dustbin of history, its nightmarish depredations nothing but a dark memory, the Americanization of Cuba, and the Cubanization of parts of the United States, will be accelerated compared to the pre-Castro era.