

THE NEW CUBAN EXECUTIVE BRANCH: CONSTITUTIONAL CHANGES IN THE POWER STRUCTURE

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Foreword

CasaCuba, the Cuban Research Institute (CRI), and the Kimberly Green Latin American and Caribbean Center (LACC) at Florida International University (FIU) have joined forces to launch *Briefings on Cuba*. This new series will regularly commission analyses of Cuban politics, economy, culture, and society, and consequent policy recommendations, by top Cuba experts. The *Briefings* will be disseminated widely through the web, social media, and email, with the support of existing communications platforms at CasaCuba, CRI, LACC, and other FIU departments. Each *Briefing* will also be presented before a live audience at events free and open to the public, featuring a presentation by the author, followed by a question-and-answer session.

We inaugurated our *Briefings on Cuba* with an expert analysis of the Cuban economy by the Cuban-American scholar, Dr. Carmelo Mesa-Lago, published in April 2020. We are happy to continue the series with an incisive, comparative, and thought-provoking study of the new Cuban Constitution by the well-regarded Cuban historian living in Mexico, Dr. Rafael Rojas. Professor Rojas dissects recent changes in the power structure in Cuba, in the context of contemporary thinking about presidential regimes in Latin America, while bemoaning the lack of competitiveness and direct electoral representation in the island's political system, still controlled by a single party.

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For a year now, a new scheme of executive power organization has been in place in Cuba. The issue has gone unnoticed in the increasingly less articulated debate on the Cuban situation. After four decades of the concentration of power in the person of Fidel Castro, the new Cuban Constitution approved in February 2019 has shifted to a division of functions among the President of the Republic, the Prime Minister of government, and the highest authority in the Communist Party. The current leaders of these bodies, Miguel Díaz-Canel, Manuel Marrero, and Raúl Castro, rather than a deconcentration of power, have projected a differentiation of responsibilities that acquires meaning through the recipients of their decisions and messages.

Although the wording of the articles of the Constitution that define these functions is not without contradictions and lends itself to more than one misunderstanding, it is possible to notice the difference in roles. As “chief” and “representative” of the State (art. 128), the President makes decisions involving national citizenship and the international community. On the other hand, the Prime Minister, as “chief” and “representative” of the Government (art. 142), is defined as “responsible to the National Assembly of the People’s Power and to the President of the Republic,” for his own management and that of the Council of Ministers.

The highest ideological and political authority residing in the Communist Party determines the difference in roles in Cuban presidentialism. Because the president must also assume maximum responsibility within the Party—at the next eighth congress, to be held in April 2021, Raúl Castro will cede the position of First Secretary to Miguel Díaz-Canel—the responsibilities of both holders are divided into the spaces of the National Assembly and the Communist Party. The verticality of a single, non-hegemonic political organization is preserved through a pyramidal logic that compensates for the distribution of functions at the apex.

In the pages that follow I propose an approximation to some aspects of the discussion about the new format of the organization of executive power in Cuba. The most apparent peculiarity of this restructuring of presidential power on the island is the strengthening of the Communist Party as a maximum instance of national leadership. The risks of overlapping or reproduction of functions between the president and the prime minister are controlled by a merger between the figures of the head of state and the supreme leader of the Communist Party. This risk control ensures the preservation of the political command unit amid the administrative distribution of power.

Presidentialism, Parliamentarism, and other Species

In the 1990s, amid the transitions to democracy from various authoritarian regimes experienced throughout Latin America, some political theorists managed to put on the table the alternative between presidentialism and parliamentarism in the forms of government of the region. Although since the early republican and liberal decades of the nineteenth century, most Latin American regimes had opted for presidentialism, a major current of political science proposed a break with that tradition and a move toward parliamentarism. Beneath that inclination was a certainty, quite questionable from the point of view of political history, that the presidential model was more prone to *caudillismo* (autocratic leadership) and authoritarianism than the parliamentarian.

A key moment of the debate was the 1987 colloquium on political reform and democratic stability, at the Fortín de Santa Rosa in Uruguay, where the theses of Juan Linz, Dieter Nohlen, Aldo Solari, and Giovanni Sartori, among others,

were discussed. From the position most openly in favor of European parliamentarism to the most skeptical, through semi-presidentialism or the “two engines” theory, that relative consensus revolved around the need to balance presidential power with a form of representation that strengthened the role of congresses or better adapted party systems to electorally sound legislatures.

Since the Nicaraguan constitution of 1987, the Brazilian of 1988, and the Colombian of 1991, it could be observed that this parliamentary persuasion generated multiple resistances. As far back as the 1990s, the region’s political theory began to react against academic “transitology” by claiming the possibilities of democratic governance of presidentialism. Authors such as Luis Sánchez Agesta, Germán Bidart Campos, Antonio Colomer Vidal, or Humberto Nogueira Alcalá proposed diversifying the typologies of presidentialism without discouraging such a regime. In Mexico, Jorge Carpizo, a classic author of presidential studies and important government official under Carlos Salinas de Gortari (as Secretary of the Interior and Attorney General of the Republic), reiterated his preference for a division of powers favorable to the executive branch.

In 1996, when Mexican President Ernesto Zedillo embarked on long-delayed electoral reform, a branch of political theory—I think of studies by Alonso Lujambio, José Woldenberg, María Amparo Casar, and Ignacio Marván—argued in favor of a divided government, where a head of state with broad executive powers cohabited with a congress dominated by the opposition majority. The exercise of power, without hegemonic legislative majority, was then seen in Mexico and much of Latin America as proof of the strength of presidentialism. However, almost all Latin American constitutions, in the mid-1990s, agreed that the feasibility of presidentialism should be accompanied by an impetus to the alternation in power and control of reelection.

The new phase of Latin American constitutionalism that begins with the 1999 Bolivarian Constitution of Venezuela did not substantially alter the basic protocols of the division of powers built during transitions. However, in the middle of the first decade of the twenty-first century, amid the regional hegemony of the Bolivarian left, those consensus of transition were quickly destabilized by the second generation of the new Latin American constitutionalism. Despite the preference for presidential regimes and, at the same time, explicit progress toward consolidating the parliamentary oversight roles of the executive branch—including political trials, calls for referendums, plebiscites, and other mechanisms of direct democracy, in addition to the interrelationship between legislative representation quotas and electoral authorities—the hegemony of the left in the region, in the middle of the first decade of the twenty-first century, led to a large extent by Venezuela’s Hugo Chávez, advanced toward an unprecedented strengthening of presidentialism through indefinite reelection in some Bolivarian governments and up to three periods in the case of Evo Morales in Bolivia.

The trend toward reelectionism became widespread in Latin America in the middle of the last decade, although in its extreme version, that of indefinite reelectionism, it only managed to materialize in Venezuela and Nicaragua. It is interesting to analyze the new organization of Cuban executive power in light of this recent shift in Latin American constitutionalism, among other things, because the repertoire of geopolitical alliances of the island government includes some of the regimes that have most clearly opted for reelectionism in the region. In this sense, what first comes to light is that the restructuring of the Cuban executive branch is based on a five-year presidential term, at most, that departs from that regional trend, and approaches the model of presidential succession espoused by China’s single Communist Party.



The Distribution and Concentration of Power

Against the tide of Latin American neo-presidentialism, the new February 2019 text in Cuba distributes central power among several administrative figures: the First Secretary of the Communist Party; the President of the National Assembly, who is now also the President of the Council of State; the Prime Minister of government; and the President of the Republic. From a hyper-concentrated power structure in the figures of Fidel and Raúl Castro, the system has moved to a branching out of central authority, which must be carefully analyzed. The introduction of the figure of the Prime Minister, which removes administrative powers from the President of the Republic and the Council of State, does not correspond to a shift toward semi-parliamentarism since there is no minimal progress in the professionalization of representatives or a strengthening of the legislative and electoral authority of the National Assembly of the People's Power.

The indirect election of the President of the Republic is another peculiarity of the political system of the island in the Latin American context. The electoral codes predominant in the region, derived mostly from the democratic transition processes of the late twentieth century, reaffirmed the direct election of the representatives, even if they expanded the powers of congresses or parliamentary groups in national electoral institutions. Nor is the indirect election of the executive branch in Cuba accompanied by minimal progress toward semi-parliamentarism in terms of electoral regulation, not only because of the absence of a multiparty system, but because of its lack of competitiveness, which impedes

public tension among candidates to legislative posts or the distinction between single-member and multi-member candidates.

At the turn of the century, the constitutional order in Latin America was inclined toward the theses of Scott Mainwaring, Matthew Soberg Shugart, and other authors, who recommended solidifying the executive power to manage the conflicts of pluralism. In the first decades of the twenty-first century, other issues related to the new pockets of ungovernability have been added to this argument: violence, insecurity, corruption, drug trafficking, inequality, regionalism. Some of these factors also manifest themselves in Cuba, although not in such a pronounced way. This might explain the logic of the deconcentration of executive power, but one of the key elements of the defense of presidentialism in the 1980s and 1990s, in Latin America, seems perfectly applicable to Cuba: the succession of powers, from a strongly symbolic authority, such as that of the historical generation of the leaders of the Revolution, to a new civil political class, born after 1959. The scenario of Cuban succession creates challenges similar to those of end-of-century Latin American transitions.

The new structure of executive power could lead to overlapping roles. The Cuban Constitution does not specify the role of the First Secretary of the Communist Party, but it holds that this single institution "is the superior leading force of society and the State, which



organizes and guides the construction of socialism." That is quite a lot. The President of the Republic "represents the State and directs its general policy." The President also "proposes, presents, knows, grants, receives, and evaluates" (these are the most repeated verbs in article 128), while being assigned the role of Supreme Chief of the Armed Forces. However, the President of the State Council, who is in turn the President of the National Assembly, is given the power to annul presidential decrees that "contradict the Constitution and the laws." According to the Constitution, the declaration of a "state of exception or emergency" corresponds to the President of the Republic, but Article 144 (Section I) states that the Prime Minister "can exceptionally take executive-administrative decisions".

I conclude by suggesting that the constitutional change that has taken place in Cuba gravitates towards a dispersion of the national executive power which, without some assimilation of parliamentary elements, the autonomization of civil society or, eventually, political pluralism, may be more conflicting than harmonious in a scenario, such as the one that will inevitably come, of a generational replacement of the country's ruling class. Collegiate presidentialism such as that which aspires to be built in Cuba requires, for its own effectiveness, greater flexibility in the dimensions of political pluralism and electoral competence.

The move toward a presidential succession scheme, every two five-year periods, under a single Communist Party, as in China, seeks a permanent generational renewal in maximum leadership, which is secured with the sixty-year-old limit to be a presidential candidate in the first term. That would mean that in ten years most of the Cuban political class will be left out of the country's top leadership. But as in China, generational renewal in executive power does not necessarily imply ideological and political easing or pluralization, given the immovable premises of the single Communist Party.

Given Cuba's verticalist power structure, with a single Communist Party, which is supposed to be "the highest leading force of society," and a vague distinction of roles between head of state (the President of the Republic) and head of government (the Prime Minister), a path to reform would be to truly strengthen the parliamentary elements of the system. In Article 128 the functions of the President are overreached, since he is given the power to "propose the election, appointment, suspension, revocation, or replacement" not only of the Prime Minister and the members of the Council of Ministers, but of the President of the People's Supreme Court, the Prosecutor of the Republic, the Comptroller-General, and the authority of the Electoral Council.

Despite the sharing of executive functions, which would foster a collegial sense in presidential authority, the current constitutional regime engages in hyper-presidentialism, which subordinates legislative, judicial, and electoral powers to the head of state. An extension of the legislative powers of the National Assembly, in the process of division of powers, could help to better balance the Cuban political system. The increase in powers of the National Assembly would provide content for the representative government and the electoral process and would make it possible to compensate, at least in part, for the one-party system that limits political plurality on the island.



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